

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.166 OF 2019

Smt. Mandakini Pandharinath Shinde

... Applicant

Versus

1. The State of Maharashtra
2. Police Inspector,
Parner Police Station,
Dist. Ahmednagar.
3. Kundalik Nana Bhagat

... Respondents

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Mr. N. R. Shaikh, Advocate for applicant.

Mr. A. M. Phule for respondent Nos.1 and 2 – State.

Mr. D. R. Jaybhar, Advocate for respondent No.3.

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 19th October 2020

PRONOUNCED ON : 4th November, 2020

ORDER :

1. Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure to get the order passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Application No.1453 of 2019 dated 27-08-2019 set aside, by which respondent No.3 was granted anticipatory bail.

2. Respondent No.3 was apprehending his arrest in connection with Crime No.I-628 of 2019 registered with Parner Police Station, Dist. Ahmednagar,

for the offences punishable under Sections 120(B), 166A, 166, 177, 181, 182, 191, 192, 193, 196, 197, 198, 199, 200, 218, 324, 415, 418, 188, 420, 427, 463, 465, 466, 467, 468, 471, 504, 506 of Indian Penal Code.

3. Heard learned Advocate Mr. N. R. Shaikh for applicant, learned APP Mr. A. M. Phule for respondent Nos.1 and 2 – State and learned Advocate Mr. D. R. Jaybhar for respondent No.3.

4. It has been submitted on behalf of the applicant that the subject matter of this crime is the suit property situated at Gat No.239 at Panoli Shiwar, Tq. Parner Dist, Ahmednagar, admeasuring 6 Hectare 80 Gunthas out of which land admeasuring 3.5 Acres land had come to the share of the applicant – informant. Respondent No.3 is stated to be the Gramsevak. He has good relations with Sarpanch. With the conspiracy with other accused persons, respondent No.3 prepared false and bogus documents in respect of the house property of the informant. He had illegally bifurcated the single unit of the property and thereby creating two parts of the same and giving two different house numbers without any authority, then it was shown in the name of one Kamal daughter of Vishwanath Lagad, who had no right, title or interest in the said property. In fact, the applicant had lodged complaint with the Block Development Officer and protested the said bifurcation. Thereafter, the enquiry was held. Grampanchayat Panoli had issued letter dated 20-07-2015 admitting

that such false documents i.e. No objection letter and property extract have been wrongly issued. However, in the year 2017, said Kamal and one Popat @ Ashok had illegally encroached on the land of the informant and constructed the house, taking disadvantage of those documents. When the informant went to lodge the report with the police, it was not registered and ultimately the applicant was forced to come to this Court in Criminal Writ Petition No.687 of 2019 in order to get that offence registered. In spite of all these facts, yet the learned Additional Sessions Judge has granted the bail application. Further, respondent No.3 had suppressed that Crime No.175 of 2018 for the offence punishable under Section 408 of Indian Penal Code for misappropriating the amount of Rs.2,61,934/- was registered with Parner Police Station on 04-06-2018. This intentional suppression was to mislead the Court and when such bail has been taken by suppression of the facts, it deserves to be cancelled.

5. Learned APP supported the applicant and submitted that in view of the suppression of the fact by respondent No.3, his bail deserve to be cancelled.

6. Learned Advocate appearing for respondent No.3 submitted that all the documents, which were produced before the learned Additional Sessions Judge, were considered by him. It was specifically observed that the alleged offence is based on documents, which are already available with the investigation machinery. It would be for the prosecution to prove that the

documents are fabricated and they are fabricated only to give benefit to said Kamalbai. Note has been taken of the fact that the informant is the widow of one Pandharinath Shinde and said Kamalbai is also claiming to be the widow of said Pandharinath Shinde. Even the Grampanchayat says that since Pandharinath Shinde had two wives, name of both the wives were mutated to the said house and this was the explanation that was given by present respondent No.3. He has not received any benefit, nor he has helped said Kamalbai to use those documents for any purpose. There was no suppression of fact. No doubt, present respondent No.3 is arrayed as an accused in Crime No.175 of 2018 before Parner Police Station for the offence punishable under Section 408 of Indian Penal Code, yet, he has been released on bail on 06-12-2019. Present application is not maintainable under Section 439(2) of the Code of Criminal Procedure.

7. At the outset, we are required to take into consideration the facts involved in both the matters i.e. the present matter as well as the dates and events in respect of the other offence under Section 408 of Indian Penal Code. Here, in this case, the FIR has been lodged on 18-07-2019 and it appears that with the same police station, the said Crime No.175 of 2018 for the offence punishable under Section 408 of Indian Penal Code was earlier registered on 04-06-2018. The bail application filed in this case i.e. Criminal Miscellaneous Application No.1453 of 2019 pursuant to Crime No.I-628 of 2019 was decided

by learned Additional Sessions Judge, Ahmednagar on 27-08-2019, whereas the bail application i.e. Criminal Miscellaneous Application No.1834 of 2019 in connection with Crime No.I-175 of 2018 under Section 408 of the Indian Penal Code came to be decided on 06-12-2019. That means, it was the subsequent decision. If we consider the Criminal Miscellaneous Application No.1453 of 2019 in respect of present offence, it can be seen that there is absolutely no reference to the offence under Section 408 of Indian Penal Code. Copy of the bail application i.e. Criminal Miscellaneous Application No.1834 of 2019 has not been produced by the present applicant. Therefore, it cannot be gathered, when that application was filed and whether in that application, present respondent No.3 had made averment about the bail petitions filed by him or not. But in this case, when the application was filed before the concerned Court it has been mentioned, that this is the first bail petition, except this no other bail application is filed/pending or decided by any of the Hon'ble Court regarding this crime. Certainly, it was incumbent on respondent No.3 to state about his antecedents, but at the same time, copy of the say filed by the State has been produced. Say was filed in Criminal Miscellaneous Application No.1453 of 2019 at Exhibit-16 by the State and it would be obvious that the instructions for that say would have been given by the said police station, yet, there is absolutely no mention about the registration and pendency of Crime No.I-175 of 2018 for the offence punishable under Section 408 of Indian Penal Code. Another fact that is

certainly required to be mentioned is that in the impugned order, specific paragraph has been taken stating that the present applicant had opposed the said bail application by filing say at Exhibit-14. Even at that time, she could have definitely stated about criminal antecedents of respondent No.3. She has also not stated the said fact. When a specific question was asked to this effect as to why the ground on which the applicant wants to get the bail granted to respondent No.3 cancelled i.e. the criminal antecedents of respondent No.3 was not mentioned in her say; the learned Advocate for the applicant could not satisfy this Court about any reason. Even if for the sake of arguments it is accepted that there was suppression of the said fact by respondent No.3, yet, the prosecution as well as present applicant have every opportunity to bring the said fact on record before the concerned Court itself. Now, the applicant has estopped from contending that there is suppression of fact.

8. Learned Advocate appearing for the applicant has relied on the decision by this Court in ***Ramesh Devrao Gutte Vs. State of Maharashtra, [2013 (12) LJSOFT 647]***, wherein this Court had observed that “*officers who are expected to discharge their duties honestly unfortunately creating false record of implementation and virtually defeating the objects behind the schemes. Such economic offences need to be dealt with firmly and at every stage.*” The said ratio cannot be disputed, however, it is required to be seen as to whether the

custodial interrogation of the accused in a particular case is required or not. Then, the checkered history has been stated coupled with the civil proceedings in the form of R.C.S. No.129 of 2017 in which there appears to be no injunction order that was issued and further, the statement given by present respondent No.3 that it was his inadvertent mistake in view of the fact that Pandharinath Shinde had two wives, it appears that the learned Additional Sessions Judge found that the custodial interrogation is not required. Now, when all the documents were seen by the trial Court, only after the supplementary statement of Block Development Officer - Ravindra Mali recorded on 20-08-2019 disclosing about the offence under Section 408 of Indian Penal Code, not taken note by the learned Additional Sessions Judge in his order dated 27-08-2018, will not give any addition to the present applicant to get the said order cancelled. At the cost of repetition, it can be said that there was ample opportunity to the present appellant as well as prosecution to place on record the criminal antecedents of respondent No.3, yet, they did not agitate the same. It cannot be the ground now for cancellation of bail under Section 439(2) of the Code of Criminal Procedure. In ***State Through Delhi Administration vs. Sanjay Gandhi [1978 AIR 961]***, it has been observed by the Hon'ble Apex Court :-

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a

decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.”

9. In ***Sanjay Gandhi’s*** case (Supra), the Hon’ble Apex Court has further observed :-

“Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court to Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done.”

10. For the aforesaid reasons, there is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]