

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL NO. 92 OF 2021

Ramesh Shriram Jadhav ... **Applicant**
Age 39 years, Occu: Director of R.S.Multi
State Urban Credit Society, Branch at
Shevgaon r/o Shri Krushna Nagar,
Akhegao Road, Shevgaon
District Ahmednagar.

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Inspector, Shevgaon
Police Station, Tq. Shevgaon
District Ahmednagar.
2. Nandkumar s/o Uttam Mundhe
Age 42 years, Occu: Agri.
R/o Shevgaon Tq. Shevgaon,
District Ahmednagar

Mr. R. G. Hange & Mr. A. R. Hange, Advocates for the applicant,
Mr. A. V. Deshmukh, A.P.P. for the State.
Mr. Shaikh Mazhar A. Jahagirdar, Advocate for respondent No.2

CORAM : V. G. BISHT, J.
RESERVED ON : 27th September, 2021
PRONOUNCED ON : 30th September, 2021

ORDER:

1. The present application impugns the order dated 07.07.2020 passed below Exh.1 in Criminal (Bail) Misc. Application No. 596 of 2020 by the Additional Sessions Judge, Ahmednagar thereby extending benefit of anticipatory bail in favour of respondent No.2 herein with conditions.

2. The applicant/original informant is the Director of R. S. Multi State Cooperative Urban Credit Society, Branch Shevgaon Tq. Shevgaon ('credit society' for short). The credit society advances loan and overdraft facilities etc. to the people. One Bhausahab Dadasahab Mundhe has an account in the name of Mundhe Contractors with the credit society. As the said Bhausahab Dadasahab Mundhe was in need of overdraft facility for Government contract purpose, he made an application on 05.10.2018. On 09.10.2018, the credit society gave overdraft facility in the sum of Rs.6 lakhs. By way of security, the credit society also took a blank cheque bearing No. 036387 dated 15.10.2018 drawn on Central Bank of India. Accordingly, entry was taken in the inward registrar at Sr. No. 1434. The said blank cheque was kept in the drawer of counter in the office of the credit society.

3. According to prosecution, Nandkumar Uttam Mundhe i.e. respondent No. 2 herein also has an account with the credit society and has good relations with the informant. Even in the absence of informant, respondent No.2 used to visit office of the credit society and stay there.

4. The prosecution further contends that on 06.02.2020, Bhausahab Dadasahab Mundhe, by way of letter, informed the credit society that the blank cheque given by him to the credit society has been used by respondent No.2 for the purpose of withdrawal of monies. When the office of the credit society searched, they did not found the

cheque. Later on, the informant lodged report against respondent No.2 herein.

5. Mr. R. G. Hange, learned counsel for the applicant/original informant, submits that the credit society had received cheque No. 036387 from said Bhausahab Dadasahab Mundhe and entry to that effect was also taken in the inward register at Sr. No. 1434 dated 15.10.2018. Even the said Bhausahab Dadasahab Mundhe also recorded the entry of above cheque in his record slip of cheque book. Since respondent No.2 used to visit office of the credit society even in absence of the informant, he took undue advantage of the same and committed theft in respect of the said cheque and thereafter misused the same. According to learned counsel, the trial Court failed to consider that custody of respondent No.2 is necessary in order to know as to who filled up the cheque in question and misused it. In such circumstance, the application deserves to be allowed, argued learned counsel.

6. Mr. A. V. Deshmukh, learned A.P.P., has also supported the submissions of learned counsel for the applicant/original informant and further submitted that antecedents of respondent No.2 are not good and therefore, his custody is necessary for the purpose of investigation.

7. Mr. Shaikh Mazhar A. Jahagirdar, learned counsel for respondent No.2, has opposed the application by filing affidavit-in-reply.

Perused. I have also heard learned counsel for respondent No.2. According to the learned counsel, the cheque in question was given to respondent No.2 by said Bhausahab Dadasaheb Mundhe, who is none other than his uncle, towards the arrears of use of his truck/dumper. Learned counsel even invited my attention to the correspondences between respondent No.2 and said Bhausahab Dadasaheb Mundhe. Learned counsel would further submit that since the cheque in question was bounced, the proceedings under section 138 of the Negotiable Instrument Act is launched against said Bhausahab Dadasaheb Mundhe and which is pending in the Court of Judicial Magistrate, First Class, Shevgaon. Even if the recovery of said cheque is required for investigation purposes, that can be very well available in the said proceedings and can be seen for verification and examination of handwriting expert, submitted learned counsel.

8. I have perused the entire record submitted by both the parties. First of all I may note from the record that there is an extract (Exh.C-1) of account holder which at Serial No.1434 shows name of Account holder namely M/s Mundhe Contractors. It further shows cheque No.036387 was recorded in the inward register on 15.10.2018 however, the remark column is kept blank. It is not clear as to for what purpose and of what amount it was given. Then there is a record slip purportedly belonging to said Bhausahab Dadasaheb Mundhe. It also shows that on 15.10.2018, Cheque No.036387 was issued in the name

of Credit Society, however the amount withdrawal column is kept blank. How this document came in possession of the informant is not made clear. I say so because this document essentially is the document belonging to said Bhausahab Dadasahab Mundhe.

9. Then I come to a letter dated 03.01.2020 addressed by said Bhausahab Dadasahab Mundhe to respondent no.2 informing him that he is issuing the cheque No.036387 in the sum of Rs.6.5 lakhs towards the rental arrears of the truck used by him. It also recites that the said cheque is being given in the presence of relatives. The next correspondence is by Respondent No.2 to said Bhausahab Dadasahab Mundhe in the form of statutory notice under section 138 of the Negotiable Instrument Act informing the latter that the cheque, on being deposited, was bounced and therefore, he was called upon to make the payment (of cheque amount) immediately. It is also not disputed that the proceedings under section 138 of the Negotiable Instrument Act is pending in the Court of Judicial Magistrate, First Class, Shevgaon against said Bhausahab Dadasahab Mundhe.

10. The above factual background would sufficiently demonstrates from the letter of none other than of Bhausahab Dadasahab Mundhe that the cheque in question was issued in the presence of relatives in favour of respondent No.2. On being presented the cheque to the bank, the same got dishonoured and pursuant to that a statutory notice under section 138 of the Negotiable Instrument Act was also served on said

Bhausahab Dadasahab Mundhe. It is also not in dispute that since the said Bhausahab Dadasahab Mundhe failed to comply the statutory notice, the proceedings under section 138 of the Negotiable Instrument Act came to be launched and which is pending in the Court of J.M.F.C. Shegaon.

11. Except the extract of account holders, there is nothing with the informant to suggest that the cheque in question was given towards security in respect of overdraft facility availed by said Bhausahab Dadasahab Mundhe. As far as record slip which is filed by the applicant on record, I have already mentioned that this document essentially being the document of said Bhausahab Dadasahab Mundhe, how it came in the possession of the informant is nowhere explained. There seems to be some differences between the said Bhausahab Dadasahab Mundhe and respondent No.2 over the transaction of arrears of rent of the truck allegedly used by the former. All these aspects can be looked into at the time of trial.

12. Since the cheque in question is already now in the custody of the J.M.F.C., Shevgaon in the proceedings under section 138 of the Negotiable Instrument Act, in my considered opinion, if it is required in any proceedings initiated by the informant, the same can be requisitioned for the purpose of investigation from the Court of J.M.F.C., Shegaon.

13. Having regard to the above factual aspect, I am of the considered opinion that there is no necessity of custodial interrogation. Already necessary conditions have been imposed by the learned Additional Sessions Judge, Ahmednagar while granting the benefit of pre-arrest bail in favour of respondent No.2. That would definitely take care of the concern raised by the learned counsel for the applicant.

14. For the aforesaid reason, I am not in favour of present application. Hence, the following order.

ORDER

The application is rejected.

(V. G. BISHT, J.)

JPC