IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 APPLICATION FOR CANCELLATION OF BAIL NO.70 OF 2020

SANJIVANI SANJAY KALHAPURE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. A.G. Ambetkar, Advocate for the applicant.
Mr. S.B. Narwade, A.P.P. for respondent - State
Mr. R.K. Temkar, Advocate for respondent Nos. 3 and 4.
Mr. Rajesh Dada Kale (API) from Parner Police Station is present.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 12-10-2021

**ORDER** :

1. This application is preferred under Section 439 (2) of the Code of Criminal Procedure (for short, “Cr.P.C.”) seeking cancellation of anticipatory bail granted to respondent Nos.3 and 4 by order dated 25th June 2020 passed by learned Additional Sessions Judge, Ahmednagar in Criminal Bail Misc. Application No. 370 of 2020 and 371 of 2020.

2. The informant is daughter of Bhanudas, who had obtained loan of Rs. 2,50,000/- in 2001 from Sampada Nagari Patsanstha, Branch Kanhur Pathar. She had repaid the entire loan. The mutation entry of encumbrance of the loan was not removed from the record of rights. Inquiry was made by husband of the informant and it was found that the borrower had repaid the loan, but even then Credit Society has shown loan amount outstanding and it was shown that as on 31.03.2007 the informant’s father had

obtained loan of Rs. 5,50,000/- which is outstanding to the tune of Rs. 42,34,771/-. There was a public notice in newspaper dated 12.02.2020 regarding auction of land Gut No. 1778 which was in the name of the informant's father. Thereafter it was revealed that the signature of informant's father was fabricated. An application was moved for mutation of encumbrance of loan by the Credit Society. Thus, the concerned Directors and Sureties had acted in collusion with each other and forged the signature of the informant's father. Respondent Nos.3 and 4 are the sureties to the loan referred to herein above.

3. In pursuant to registration of the First Information Report, the investigation proceeded. Respondent Nos.3 and 4 were accused Nos.4 and 5. They preferred application for anticipatory bail before Court of Session at Ahmednagar and the said application was allowed vide order dated 25th June 2020. This order is under challenge before this Court.

4. Learned Counsel for the applicant submitted that there is active participation of respondent Nos. 3 and 4 in the offence. Respondent Nos.3 and 4 are involved in fabrication of documents. They have not cooperated with the investigation agency. Learned Sessions Judge has not taken into consideration the fact that custodial interrogation of the respondent Nos.3 and 4 was necessary. They have not provided requisite documents during the course of investigation. There is sufficient evidence to show the complicity of respondent Nos.3 and 4. in the fraudulent acts. They

were not entitled for the relief under Section 438 of Cr.P.C. It is further submitted that the impugned order was passed without considering the material on record. The offence is serious. The learned Judge has not taken into consideration the fact that investigation was required to be conducted by subjecting the accused to custody. The informant had paid entire loan amount to the Credit Society and the question of recovery of loan does not arise. Respondent Nos. 3 and 4 were sureties / guarantors and they have played vital role in the offence. The informant’s father did not mortgage the agricultural land Gut No. 1778 with the Credit Society for suspected loan, which was obtained in the year 2007. Thus, the order passed by the learned Sessions Judge granting anticipatory bail, deserves to be set aside and respondent Nos.3 and 4 be arrested and subjected to custody.

5. Learned A.P.P. submitted that the accused have not cooperated with the investigation agency. The relevant documents which were requisitioned by the Investigating Officer, are not supplied by them. Investigation shows involvement of respondents / accused. Charge-sheet has not been filed by the prosecution. The documents are required to be recovered.

6. Learned Counsel for respondent Nos. 3 and 4 submitted that the Additional Sessions Judge has taken into consideration the relevant factual aspects and by assigning reasons, allowed the application for anticipatory bail. It is submitted that the reasons assigned by the learned Sessions Judge are reflected in paragraph

No.8 of the impugned order. The matter relates to documents. Custodial interrogation of respondent Nos. 3 and 4 is not necessary. The recovery proceedings were initiated in the year 2010. Order was passed under Section 101 of the Maharashtra Co-operative Societies Act. There is no reason to interfere in the impugned order granting anticipatory bail.

7. The impugned order was passed on 25th June 2020. Respondent Nos.3 and 4 were the sureties to the loan transaction which is the subject-matter of the proceedings. The complaint was lodged on 9th March 2020. In paragraph No.8 of the impugned order, it is observed that it is not in dispute that the F.I.R. was lodged after the landed property of the father of informant was put up for auction sale for recovery of outstanding loan amount. Xerox copies of the loan documents pertaining to the loan were produced and it appears that Bhanudas was in arrears of loan amount and recovery certificate under Maharashtra Co-operative Societies Act, 1961 and Rules therein was issued by the District Sub-Registrar of the Co-operative Society. The District Sub-Registrar has also given sanction for the auction sale of the land of borrower as per the letter dated 28.01.2020 addressed to the Recovery Officer. Accordingly auction sale was declared as per public notice published in the newspaper. Thereafter further procedure was adopted by the Special Recovery Officer. In paragraph No. 9 of the impugned order, it was observed that it is clearly established that the dispute is in respect of loan transaction obtained by the father of informant which

is of civil nature. The Credit Society has adopted the procedure laid down in the law for recovery of outstanding loan amount. Had there been any alleged offence committed by accused, the borrower ought to have made complaint at the time of relevant documents of the mutation entry or when it was noticed by him. The anticipatory bail was allowed on certain terms and conditions.

8. I do not find any reason to deviate from the view expressed by the learned Additional Sessions Judge, Ahmednagar while granting anticipatory bail. The impugned order is in operation from 25th June 2020. The learned Judge has observed that the custodial interrogation was not necessary.

9. In view of the above circumstances, no case for setting aside the order granting anticipatory bail, is made out. Hence, the following order.

**ORDER**

Application for Cancellation of Bail No. 70 of 2020 is rejected and stands disposed of.

**(PRAKASH D. NAIK, J.)**

*VD_Dhirde*