

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

APPLICATION FOR CANCELLATION OF BAIL NO. 108 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 252 OF 2020

THE STATE OF MAHARASHTRA
VERSUS
AMIT RAM ZENDE

APP for State : Mr. S.B. Narwade
Advocate for Respondent : Mr. Satej S. Jadhav
h/f. Mr. S.D. Nagode

CORAM : PRAKASH D. NAIK, J.

DATE : 22.12.2021.

Per Court :

1. The State of Maharashtra has preferred this application under Section 439 (2) of Code of Criminal Procedure, for cancellation of anticipatory bail granted by this Court vide order dated 22.01.2021 in ABA No. 252/2020.

2. The respondent had preferred an application for anticipatory bail in Crime No. 09/2020, registered with Anandnagar Police Station, Osmanabad, for the offence under Section 420 of IPC. The first informant is an octogenarian. It is alleged that he has been staying with his grandchildren of

predeceased son and predeceased daughter-in-law. On 18.09.2019, he received a phone call from a specific number. The person speaking on the other side identified himself to be one S.R. Kulkarni, Agricultural Extension Officer, who told him that his proposal for sprinklers and drip irrigation has been approved and he will have to pay Rs. 8,000/-. He also promised to help in getting the insurance money in respect of deceased son and daughter-in-law. That person called him to meet at a specific place. Accordingly, he went to the spot along with his brother. He then made a phone call to said S.R. Kulkarni. A person arrived there in a car. The informant paid Rs. 8,000/- . On the next day, he received a phone call from S.R. Kulkarni, asking for an amount of Rs. 80,000/- for getting grants in respect of sprinklers and drip irrigation system and promised to help in getting Rs. 1,50,000/-. The informant went to the spot along with his brother and paid Rs. 80,000/- to said S.R. Kulkarni. Thereafter, the complainant was again lured by S.R. Kulkarni saying that he would help him in getting Rs. 36 Lakhs as insurance for his deceased son and daughter-in-law and would help him in getting grant of Rs. 20 Lakhs from the Government for the marriage of grandchildren. From time to time, the

informant paid various amounts to S.R. Kulkarni. On account of repeated demands of money, the complainant and his brother became suspicious. It was realized that the informant was duped for an amount of Rs. 29,77,500/- in aggregate. The accused is the same person who was posing himself to be S.R. Kulkarni. The SIM card from which he was making the calls stood in the name of one Deepali. A photograph of the applicant was also shown to informant to identify him to be the same person to whom money was paid from time to time.

3. Interim relief was granted to the respondent – accused vide order dated 04.03.2020 with direction that the respondent shall attend the concerned police station as and when called by the Investigating Officer and cooperate with him. He shall not tamper the evidence or influence the witnesses.

4. The application was finally heard. By order dated 22.01.2021 this Court confirmed the interim relief granted to respondent with the same terms and conditions with a modification that he shall continue to attend the concerned police station only till filing of the chargesheet.

5. Learned APP submitted that the offence is of serious

nature. The respondent have not complied the direction of reporting the police station. The Investigating Officer has issued notice on 10.03.2020, directing the respondent - accused to remain present at police station on Monday, Wednesday and Friday between 10:00 a.m. and 02:00 p.m. As the accused was not at home, the notice was served upon the wife of respondent - Anita Amit Zende. On 09.12.2020, the respondent was not found. The notice was served upon his wife. On 04.01.2021, 20.02.2021, 28.02.2021 and 09.03.2021, notices were issued to the respondent. He could not be traced. The notices were served upon his wife who acknowledged the same. The copies of notices are annexed to the application. In spite of several attempts made by Investigating Officer, the respondent - accused did not remain present before the Investigating Officer for enquiry and for further investigation in Crime No. 09/2020 and the investigation could not be completed. There is breach of conditions imposed by this Court. While granting interim relief, the respondent was directed to attend the concerned police station as and when called by the Investigating Officer. In spite of several attempts made by the Investigating Officer, the accused did not cooperate with investigation. Hence,

anticipatory bail granted to the respondent - accused be cancelled. There are several offences registered against him at various police station. He is a habitual offender. The list of the cases registered against him is annexed to this application. Most of the offences were registered under Section 420 of IPC. Forty eight cases were registered against the respondent - accused with Osmanabad Police Station, Osmanabad City Police Station, Bebamli Osmanabad Police Station, Tuljapur Police Station, Kalamb Police Station, Latur Police Station, Ambajogai Beed Police Station, Solapur Police Station, Barsi Police Station, Pandharpur Police Station and Anandnagar Police Station. The respondent - accused has no respect for the law and orders passed by this Court. In spite of directions of this Court, he did not attend the police station and committed breach of order. During the pendency of the application, the respondent was directed to remain present before this Court. Even the said direction was not complied, false excuse was given by the respondent - accused that he was hospitalized. Thus there is deliberate breach of order of this Court, the conditions were not complied. The respondents had preferred Criminal Writ Petition No. 646/2020 and Criminal Writ Petition No. 830/2020 before this

Court. Superintendent of Police, Osmanabad, SDO, Aurangabad, Police Inspectors and several police personnel were impleaded as respondents. The said petitions were dismissed by order dated 20.10.2020 by the Division Bench of this Court. Hence anticipatory bail granted to respondents be set aside.

6. The respondent has filed affidavit opposing the application for cancellation of bail. In the affidavit, it is contended by the respondent that for a period of about nine to ten months, the respondent has attended police station. His presence was not recorded by the police. They did not give signature on personal diary of respondent about attendance of police station. The respondent have been falsely implicated in this case. This Court while granting interim relief in this case has dealt with the merit of this case. The Court has considered the cases registered against him and on merits interim relief was granted which was subsequently confirmed. Out of forty eight cases registered against him the respondent has been acquitted in forty one cases. Cases were registered for small amount. The police has refused to give acknowledgment of attendance. The respondent was hospitalized for treatment and therefore, could not remain

present before this Court. Whenever the respondent had attended the police station, he was made to sweep the premises. No ground is made out for cancellation of anticipatory bail. The police machinery is acting in connivance with the complainant and others. The respondent had forwarded notice through Advocate dated 13.02.2020 to the Hon'ble Home Minister, Government of Maharashtra, Mantralaya, Mumbai, seeking directions to the concerned, not to unnecessarily harass the respondent and in the event, if any, untoward incident happens causing human loss to the respondent - accused and his family members, the entire police machinery of Osmanabad police station would be held responsible. The respondent was suffering from Covid 19. He was hospitalized for treatment. The wife of the respondent had filed a complaint before the Court of learned Judicial Magistrate First Class, against the medical professionals and others. The accused therein are acting in connivance with police and initiated this application for cancellation of bail and harassing the respondent. The respondent has also forwarded complaint dated 20.10.2021 to Superintendent of Police stating that police administration is threatening him for withdrawing complaints against doctor.

7. I have perused the documents. The applicant had applied for anticipatory bail before this Court. Interim relief was granted to him on a condition that he shall report the concerned police station. The main ground for cancellation of anticipatory bail granted to respondents is that in spite of repeated notices forwarded to him, the respondent did not appear before the Investigating Officer. Most of the time, the notices were served upon the wife of the respondent. Acknowledgments were issued by her. Several cases were registered against the respondent. According to the learned counsel for the respondent, the accused has been acquitted in majority of the cases. However, no material is placed on record in support of submission. While adjudicating his application for anticipatory bail, it was not the contention of respondent that he has been acquitted in cases. The correspondence forwarded by him vide notice dated 13.02.2020 do not refer to ground of acquittal. The notices were served upon him repeatedly. The respondent has no regard for law. He has contended that he had attended the police station, however, no acknowledgment was given him by the Investigating Officer. It is difficult to believe the said statement. The respondent did not complain about it to police authorities.

Several notices were issued to him but he has disobeyed the orders by the Court. The application preferred by the State, was heard by this Court and notice was issued to the respondent on 08.09.2021. The notice was served upon him on 25.10.2021. The respondent was represented by Advocate who sought time to file affidavit-in-reply. The application was adjourned to 30.11.2021. The application was heard on 30.11.2021, wherein, it was contended by the prosecution that the respondent did not appear before the Investigating Officer. The said submission was controverted by the learned Advocate for the respondent. By order dated 30.11.2021, it was recorded that the contention of respondent's Advocate is vague. He did not protest against the Investigating Officer alleging that the acknowledgment is not given. He was directed to remain present before the Court on 10.12.2021. However, the respondent did not appear before this Court. The learned Advocate for respondent was present in the Court, and on instructions from mother of respondent who was present in the Court, it was submitted that the respondent is ill and he was hospitalized, at Solapur. The respondent is resident of Osmanabad. The application was adjourned to 16.12.2021. There was change in Advocate for respondent. The

Advocate representing him sought time as he was newly appointed Advocate for him. On 16.12.2021, it was submitted by the Advocate of respondent that the respondent was suffering from Covid and he is home quarantined. The conduct of respondent appeared to be suspicious. The application was adjourned to 20.02.2021. Learned counsel appearing for respondent submitted that the respondent No. 1 is suffering from Covid and produced the test report. The test report mentions that the respondent was tested positive on 10.12.2021 when the application was listed on 10.12.2021, it was contended at the instance of respondent that he is admitted in Hospital for ailment. It was not stated that he is suffering from Covid-19. Subsequently it was stated that he is home quarantined. The respondent forwarded complaint to the Superintendent of Police on 20.10.2021, alleging harassment by the police. Thus the material on record indicate that the respondent has committed breach of order. The respondent had forwarded notice through Advocate dated 13.02.2020 alleging harassment by police. He had preferred petitions before this Court alleging harassment by police. The petitions were dismissed by order dated 20.10.2020. While dismissing the petitions, it was observed that it was

brought to the notice of Court, that, there is probability that false allegations are made against the public officials by petitioner with ulterior motive. The learned prosecutor produced the record of enquiry showing antecedents of petitions. There was no possibility of commission of such offences in view of the particulars mentioned in the report and statements recorded during the enquiry. It was otherwise fit case for imposing heavy costs. Now again, another complaint is forwarded by respondent, on 21.10.2021 (dated 20.10.2021), during the pendency of this application. In view of the above, the order passed by this Court granting anticipatory bail to respondent is required to be set aside. Hence, I pass the following order :

ORDER

- i. Application for Cancellation of Anticipatory Bail No. 108 of 2021 is allowed.
- ii. Order dated 22.01.2021, passed by this Court in ABA No. 252/2020 is set aside and anticipatory bail granted to the respondent stands cancelled.
- iii. Respondent is granted four weeks time to surrender before

the Investigating Officer.

iv. Respondent will be at liberty to prefer application for regular bail after his surrender / arrest.

v. Application for cancellation of anticipatory bail is disposed of.

(PRAKASH D. NAIK, J.)

S.P.C.