

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

CRIMINAL APPLICATION NO.1418 OF 2020

1] Shri Ashok Kacharu Malve
Age 69 years, Occu. Pensioner

2] Rameshwar Kacharu Malve
Age 55, Occu. Labour
R/o. Lonar Galli, Opp. to Ram Mandir,
Shrirampur, Ta. Shrirampur,
Dist. Ahmadnagar.

... **Applicants**
(Orig. accused)

VERSUS

1] The State of Maharashtra

2] Ahmadnagar District Central
Co-operative Bank Ltd.,
Ahmadnagar Branch Shrirampur
through Parag Ashok Dhumne
Age 41, Occu. Service
R/o. Ward No.1, Bank Colony,
Shrirampur, Tal. Shrirampur,
Dist. Ahmadnagar.

... **Respondents**
(Ori. Compl.)

...

Advocate for Applicants : Mr. Atmaram J. Patil
APP for Respondent/State: Mr. P.G. Borade
Advocate for Respondent No.2 : Mr. V.R. Dhorde

...

CORAM : MANGESH S. PATIL, J.

DATE : 02.03.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. Couple of accused from the Crime No.347/2019 registered with

Shrirampur City Police Station, for the offence punishable under Section 406, 420, 465, 468 read with Section 34 of the Indian Penal Code are before this Court invoking the powers under Section 482 of the Code of Criminal Procedure being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge, Shrirampur in Criminal MA.No.106/2020 on 09.07.2020 whereby the learned Additional Sessions Judge imposed further conditions for releasing them on bail, over and above what were imposed by the learned Magistrate while granting bail under Section 437 of the Code of Criminal Procedure.

3. The learned advocate for the applicants would submit that the learned Magistrate for the reasons recorded in the order had directed the applicants to be released on bail subject to usual conditions. Being aggrieved and dissatisfied the original informant who represents his bank preferred a Revision under Section 397 of the Code of Criminal Procedure seeking cancellation of the bail. The learned Additional Sessions Judge, *suo moto*, having concluded that the Revision was not maintainable, the order granting bail being an interlocutory order directed the proceeding to be converted as an Application under Section 439 (2) of the Code of Criminal Procedure. It is thereafter by the impugned order few onerous conditions have been imposed which in effect deprive the applicants of their valuable right to be released on bail. No such onerous conditions could have been imposed. The learned Additional Sessions Judge has over enthusiastically sought an undertaking from the applicants that they would not alienate or transfer their properties and further directed them to deposit Rs.5,00,000/- each as a cash security.

4. The learned advocate would submit that apart from the fact that the informant had also not sought such conditions to be put, the conditions would work as an impediment in the applicants getting released on bail. He would refer to the decision in the case of **Sumit Mehta Vs. State of N.C.T. of Delhi** in Criminal Appeal No.1436/2013 arising out of SLP

(Crl.) Appeal No.2/2013 dated 13.09.2013 and the decision in the case of Ramathal and Ors. Vs. Inspector of Police and Anr. in Criminal Appeal No.418/2009 arising out of SLP (Crl.) No.5668/2008.

5. The learned advocate for the applicant would further submit that the learned Additional Sessions Judge had no power or jurisdiction under Section 439 (2) of the Code of Criminal Procedure to put any such condition. The power would vest either in the Magistrate granting the bail under Section 437 in view of Sub-Section 5 of that Section, whereas, even the Sessions Court or the High Court could exercise such power under Clause (b) of Sub-Section 1 of Section 439 of the Code of Criminal Procedure. When the learned Additional Session Judge was not intending to invoke such power, he could not have imposed the conditions. The impugned order being illegal it be quashed and set aside.

6. The learned advocate for the respondent informant would submit that there is no illegality in exercising the powers vested in the learned Additional Sessions Judge. Nomenclature apart, when the law confers upon the learned Additional Sessions Judge powers to put such conditions under Sub-clause (b) of Sub-Section 1 of Section 439 of the Code of Criminal Procedure, no fault can be found with the jurisdiction of the learned Additional Sessions Judge in putting the conditions.

7. The learned advocate would further submit that the applicants were the authorized gold valuers of the Bank. They fraudulently and dishonestly certified the gold ornaments of the borrowers of the purity which they were not and thereby helped these borrowers to borrow money from the Bank and the applicants have thereby committed the serious crime whereby the Bank has been defrauded to the tune of more than Rupees One Crore. Considering the role attributable to them and the fact that it was a matter involving public money, the learned Additional Sessions Judge has exercised the discretion in putting few conditions which ought to have been

put by the learned Magistrate while granting bail.

8. I have carefully considered the impugned order and the papers. As far as the aspect of jurisdiction is concerned, it is trite that the reference to a provision is immaterial. Though learned Additional Sessions Judge has passed the impugned order in purported exercise of the powers under Section 439 (2) of the Code of Criminal Procedure, which he could not have but when clause (b) of Sub-Section 1 of Section 439 of the Code of Criminal Procedure empowers him to modify the orders granting bail passed by a Magistrate, there is no apparent error in exercising the jurisdiction.

9. However, as far as the merit and propriety of putting the conditions are concerned, as can be seen from the impugned order particularly paragraph No.11, the learned Additional Sessions Judge had formed an opinion that the fact that the crime involved public money which need to be secured he did not find any other ground to modify the order granting bail. The observations in paragraph Nos. 11 and 12 of the impugned order read thus :

11. It is admitted position on record that before the release of respondent no.2 and 3, present application has been filed seeking cancellation of bail granted to them. Of course, there is no material on record to find that either the respondent No.2 or the respondent no.3 has committed breach of any of the condition imposed upon them. Similarly, no case has been made out to find that respondents have interfered with the due course of administration of justice. There is no abuse of concession granted to them. There is no possibility that they would abscond and nothing to that effect has been brought on record.
12. After hearing both sides, I find that the main grievance of the informant is that the amount involved in the crime is to the tune of Rs.1,17,76,005/- and no condition has been imposed by the learned Magistrate to secure the said public money. It is apparent from the order passed by the learned Magistrate that no condition has been imposed towards the security of above public money. In this context, end of justice would be met if some additional conditions are imposed upon

the respondent no.2 and 3 in addition to conditions already imposed by taking the recourse of Sub-Section 2 of Section 439 of the Cr.P.C. so that the interest of bank can be protected.

10. If the learned Judge was of the opinion that there was no material to show that the applicants had committed any breach of the condition or that they had interfered in the administration of justice or that they had abused the concession with the further observation that even there was no material to show that they would abscond or jump the bail, the learned Judge seems to have persuaded himself in concurring with the stand of the informant bank that the offence was involving public money and it needed to be secured.

11. Having concluded thus the learned Additional Sessions Judge imposed couple of conditions which require the applicants to undertake in writing that they would not alienate or transfer their immovable properties and would furnish cash security to the tune of Rs.5,00,000/- each. One fails to understand as to how by imposing such conditions public money could be secured.

12. Pertinently, it is not the case of the Investigating Officer that these immovable properties were acquired by them from the money allegedly misappropriated or earned by committing the crime in question. If such is the state of affairs, hypothetically, even if ultimately the applicants are convicted one cannot comprehend as to how their property would secure the public money.

13. Assuming for the sake of arguments that may be in order to avoid further complications the applicants had started alienating their properties, as is demonstrated, by executing a gift deed in favour of their relations, so long as it is not the case of the Investigating Officer that there is any nexus as far as the crime in question and the sources from where these properties were acquired, it was grossly inappropriate for the learned

Additional Sessions Judge to have imposed such a condition under a belief that it would secure the money in question.

14. Again insisting for cash security even while observing that there was no possibility of applicants jumping the bail was equally uncalled for.

15. All in all, the learned Additional Sessions Judge without there being any rhyme or reason seems to have imposed the conditions which are inappropriate in the facts and circumstances of the case. Imposing such cumbersome conditions would tantamount to refusing bail.

16. The Application is allowed. The impugned order is quashed and set aside. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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