

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 178 OF 2021
IN ABA NO. 463 OF 2019

VIJAY ASHRUBA SHIRSATH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...
Mr. S.S. Thombre, Advocate for applicants,
Mr. A.S. Shinde, APP for respondent No.1 .

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CORAM : PRAKASH D. NAIK J.

DATE : 17th NOVEMBER, 2021.

PER COURT:

1] The applicant has preferred this application under Section 439(2) of Cr.P.C. seeking cancellation of anticipatory bail granted to the respondent Nos. 2 and 3 by order dated 19.6.2019 by this court.

2] The applicant is the original complainant in Crime No. 127 of 2019 registered with CIDCO police station, Aurangabad. The FIR was lodged for offences punishable under Sections 420, 467, 468, 471 r/w. 34 of IPC. It was alleged that the accused tried to grab the land in Survey No. 8 owned by the Agricultural Produce Market Committee by producing fake documents and stamp for land admeasuring 2 Acres 8 R out of land admeasuring 3 Hectare 15 R land in Survey No. 8. In the year 1987, Government acquired the land from different survey numbers of Jadhav Wadi and Harsul areas for the establishment and development of APMC. Survey No. 8 of Jadhav Wadi consists of total amount admeasuring 6 Hectare 35 R of which land admeasuring 3 Hectare 15 R is assigned for APMC.

3] Civil Suit No. 998 of 1997 was filed in respect to survey No. 8 and the commissioner for measuring the said land was appointed by the court and a map was prepared. By taking disadvantage of the said map, respondent Nos. 2 and 3 prepared false map and misused it to obtain favourable order.

4] The respondent Nos. 2 and 3 preferred ABA No. 463 of 2019 before this court. The said application was allowed by order dated 19.6.2019.

5] The learned Advocate for the applicant submits that order of this court is required to be recalled and anticipatory bail granted to the respondent/accused has to be cancelled. Certain factual aspects which were incriminating against respondents/accused were not brought to the notice of this court while deciding the application for anticipatory bail. There were serious allegations against respondent Nos. 2 and 3. They tried to grab the land in Survey No. 8 owned by APMC by producing fake and bogus documents and stamp for the land admeasuring 2 Acres 8 R out of 3 Hectares 15 R. They misused forged map and stamp for misleading the court to get favourable order. The respondents provided wrong mutation entry No. 68 to the Sub Divisional officer. The order dated 25.7.2020 was passed by the SDO observing that 38R land was shown excess in the name of APMC in which the complainant was not added as a party respondent though the final award was passed in 1986, land admeasuring 3 Hectare 15 R from Gat No. 8 was already acquired by APMC. The SDO modified the order on 9.5.2001 and it was directed to delete the names of Tanaji Parshuram and Kailas Gunjal from 7 x12 extract of survey No.8. The order was confirmed by the Additional Collector. 7 x 12 extract shows that the APMC is in possession of the land. NC was registered

on 2.2.2019 against respondent No.2 and others for having abused and assaulted the Secretary and other employees of the applicant. The accused are obstructing construction in property of the complainant having abused and assaulted the employees of the applicant. Bogus map was before the court while considering the application. The accused were involved in manipulating the record.

6] The learned APP submitted that the application for anticipatory bail was opposed at the instance of prosecution. Relevant material was brought to the notice of this court. There is sufficient evidence showing involvement of the respondents/accused in the crime.

7] This court allowed the application for anticipatory bail preferred by respondent Nos. 2 and 3 by order dated 19.6.2019. The submissions of both the learned counsel for respondent/accused as well as prosecution were heard. While allowing the said application it was observed that on going through the allegations in the complaint and investigation papers it appears that the dispute is of civil nature. The suit was dismissed long back. Court commissioner was appointed under the orders of the court and report was submitted pertaining to measurement of land survey No. 8. RCS No. 62 of 2001 instituted by Raosaheb Gunjal and his family members are party to the said suit. The court commissioner was appointed in the earlier suit was examined. The decree passed by the trial court in RCS No. 62 of 2001 was produced in which it is nowhere observed that the map has been falsely prepared. In the light of the observations made in the said order, the application was allowed. Thus, this Court has taken into consideration the factual aspects. The contention of the applicant that certain material was not pointed out or was not before the court from the prosecution side is not a ground for granting relief prayed in this application. The order of this

court was passed in detail by analysing the factual aspects. The State has not filed any application for cancellation of anticipatory bail. The impugned order was passed on 19.6.2021. Almost 2 years have lapsed after impugned order was passed. If the complainant was aggrieved by the aforesaid order, he could have challenged the said order before the higher court. There cannot be review of said order by this Court.

8] In the light of the aforesaid facts, no case is made out for setting aside the impugned order dated 19.6.2019. Hence, Application for Cancellation of Bail No. 178 of 2021 stands rejected and disposed of.

[PRAKASH D. NAIK]
JUDGE

GRT/-