

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

**CRIMINAL APPLICATION NO.6244 OF 2017
WITH
CRIMINAL APPLICATION NO.6267 OF 2017**

**THE STATE OF MAHARASHTRA
VERSUS
BHAGWAN UTTAM ZAMPALWAD**

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APP for Applicant : Mr. VM. Kagne
Advocate for respondent : Mr. Shembole Gajanan S.
Advocate for Respondent in APPLN/6267/2017 : Mr. A.S. Deshpande h/f.
Mr. N.E. Deshmukh

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CORAM : MANGESH S. PATIL, J.

DATE : 13.01.2021

PER COURT :

These are the applications by the State purportedly filed under Sub-Section 2 of Section 439 of the Code of Criminal Procedure seeking cancellation of bail granted to the respondents by the orders dated 03.07.2017 and 02.08.2017 respectively.

2. The learned APP would submit that the offence is serious. The prime accused ran a racket allowing several aspirants succeed in Service Examinations by making dummy candidates to appear on their behalf and for that purpose also manipulated their admit cards etc. He would point out that during the course of investigation, the then Investigating Officer also indulged in criminal activity. He along with the prime accused conspired to manipulate the record of the investigation. Blank panchnama forms were handed over to the respondent in Application No.6267/2017 who was then

working as a handwriting expert in the Forensic Lab. He in turn used those blank forms to manipulate the record so as to give a negative opinion. Even the other respondent in Application No.6244/2017 was working as a subordinate of that Investigating Officer as the scribe and on the latter's instructions filled in the contents of those blank Panchnamas/Forms. Since it is a matter of grave conspiracy, the learned Trial Judge ought not to have granted bail to these respondents and the orders being illegal be quashed and set aside and the bail be cancelled.

3. The learned advocates for the respondents submit that since it is a matter of cancellation of bail the parameters are well set. Unless it is demonstrated that the trial court commits a gross error in appreciating the facts and exercises the discretion injudiciously, the bail cannot be cancelled.

4. I have carefully gone through the papers and the impugned orders.

5. At the out set, it is necessary to observe that the Supreme Court in several matters has laid down parameters which should be borne in mind while exercising the powers of cancelling bail under Section 439 (2) of the Code of Criminal Procedure.

6. One can simply refer to the following decisions:

- i. **Kanwar Singh Meena Vs. State of Rajasthan and Anr;**
AIR 2013 SC 296
- ii. **Gurucharan Singh and Ors. Vs. State (Delhi Administration);**
AIR 1978 SC 179

iii. Subodh Kumar Yadav Vs. State of Bihar and Anr.;
AIR 2009 SCW 7299

7. It is to be borne in mind that the State is seeking cancellation of bail not on the ground of there being some supervening circumstances or breach of condition. It is basically challenging the orders granting bail on merits. Obviously, the scope of the present inquiry is limited in ascertaining if the learned Judge of the trial court can be said to have exercised the discretion injudiciously or is there any gross illegality.

8. Bearing in mind these principles if one peruses both the orders, the learned Trial Judge though is cryptic but has specifically assigned the reasons for exercising the discretion in granting bail. He has specifically observed in respect of the respondent in Application No.6244/2017 that the respondent was not ascribed with any pivotal role in commission of crime. He was not an impostor who had appeared in examination as a dummy candidate. He was already in jail since 01.06.2017. The investigation to his extent was already over.

9. So far as the respondent in Application No.6267/2017 is concerned the learned Judge has observed in paragraph No.5 of the order that the role attributed to the respondent was of having conspired with the principal accused in helping the main accused to disappear the evidence. He was already suspended by the Department. The investigation to his extent was already over. The charge sheet was also filed.

10. *Ex facie*, it cannot be said that the learned Judge has committed

any gross impropriety in granting the bail. It is a matter of use of discretion. The view taken by the learned Judge is a plausible one in the facts and circumstances of the case. This Court cannot substitute the discretion.

11. There is nothing to demonstrate that the orders are either perverse, arbitrary or capricious so as to enable this Court to exercise the powers under Section 439 (2) of the Code of Criminal Procedure. It is in view of such state of affairs the applications are liable to be rejected.

12. The Applications are rejected. However, considering the enormity and gravity of the crime coupled with the fact that the offence has been committed long back, the trial is expedited.

(MANGESH S. PATIL, J.)

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