

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.208 OF 2017

Sudhir Popatlal Kotak

...Applicant

Versus

Bharatkumar Hansraj Danaini and
Ors.

...Respondents

....

Mr. Niranjan Mundargi i/b. Mr. Kunal Ambulkar for the Applicant.

Ms P.N. Dabholkar, APP for the Respondent -State.

Mr. Kiran Jain i/b. M/s. Kiran Jain and Co. for Respondent Nos.6 and 7.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 15th SEPTEMBER, 2021.

P.C.:-

This is an application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of pre-arrest bail granted to Respondent Nos.1 to 7 vide orders date 21/03/2017 in ABA No.2038 of 2016 and 2039 of 2016.

2. Heard learned counsel for the Applicant and learned APP for the Respondent -State. Perused the records. The Applicant herein has filed a private complaint before learned Metropolitan Magistrate, Mazgaon alleging that Respondent Nos.1 to 7 had prepared false documents, bogus rubber stamp and had obtained tender in respect of the Government land, which was leased to Cutchhi Lohana Nivas Trust.

The Applicant therefore claimed that Respondent Nos.1 to 7 had committed offence of cheating and misappropriation. Learned Metropolitan Magistrate vide order dated 11/11/2016 ordered investigation under Section 156(3) of Cr.P.C. Subsequent thereto MECR No.348 of 2016 came to be registered for offence under Sections 409, 420, 465, 467, 471 r/w 34 and 120 B of the IPC. Apprehending their arrest in the said crime Respondent Nos.1 to 7 filed application under Section 438 of the Cr.P.C.

3. Learned Additional Sessions Judge, Greater Bombay after hearing the respective parties and considering the nature of accusations held that presence of the Respondents is not required for custodial interrogation. Respondents were earlier on interim bail and the learned Judge has held that they have not misused the liberty. Learned Judge therefore allowed the applications under Section 438 of the Cr.P.C. and accordingly granted relief of pre-arrest bail.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. Aforesaid order is sought to be cancelled mainly on the ground that the order is perverse. It is to be noted that crime was

registered in the year 2017. Learned APP has stated that investigation is completed and charge sheet will be filed within a period of one week and that the presence of the Applicant is not required for interrogation. Moreover, as rightly held by the learned Judge, nature of accusations made against Respondents did not justify custodial interrogation. Hence, the order cannot be termed as perverse and does not suffer from infirmities. Respondents have not misused the liberty and not violated any of the terms and conditions of the bail. Application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)