IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.298 OF 2017

The State of Maharashtra ...Applicant

Versus

Mohammed Mubaraque Vaheed Patel ...Respondent

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Mr. S.V. Gavand, APP for the Applicant.
Ms Mansha Khemka with Ms Bhagyashree Upadhyay, Ms Twinkle Khemka i/b. M/s. Khemka and Associates for the Respondent.
Mr. Pravin Khandare, P.I., EOW, present,

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 2nd DECEMBER, 2021.

P.C.:-

1. By this application filed under Section 439 (2) of the Code of Criminal Procedure, 1973, the State has sought cancellation of pre-arrest bail granted to the Applicant vide order dated 06/11/2016 in Anticipatory Bail Application No.1926 of 2016 arising from C.R. No.52 of 2016 (old C.R. No.10 of 2016).

2. Heard Mr. S.V. Gavand, learned APP for the Applicant - State and Ms Mansha Khemka, learned counsel for the Respondent. I have perused the records and considered the submissions advanced

by learned counsel for the respective parties.

3. The records reveal that pursuant to the FIR lodged by Rajendra Krishnaji Gadgil, Chief Executive Officer, Kurla Nagari Sahakari Bank Ltd., crime was registered against the Respondent and others for offences punishable under Sections 120 B, 419, 420, 465, 467, 468 and 471 of the IPC. The Complainant had alleged that the Respondent had entered into a criminal conspiracy with the other co-accused and forged some documents and submitted the same before the Bank for availing loan. On the basis of the said documents, the Bank sanctioned loan of Rs. 3 crores to the main accused Chandak. Based on the said FIR Crime No.52 of 2016 for the above stated offence was registered against the Respondent and other co-accused on 12/1/2016.

4. The Respondent was not traceable, hence charge sheet was filed against the co-accused on 05/04/2016, in which Respondent was shown as 'wanted accused'. The Respondent filed application under Section 438 of the Cr.P.C. being Anticipatory Bail

Application No.1926 of 2016 before the learned Sessions Court, Greater Mumbai. By order dated 06/11/2016 the learned Judge granted anticipatory bail mainly on the ground that the name of the Respondent is not disclosed in the FIR, the statement of Munawar does not implicate the Respondent and that the charge sheet is already filed against the Respondent.

5. The bail granted to the Respondent is sought to be cancelled mainly on the ground that order is perverse and totally erroneous. Mr. S.V. Gavand, learned APP for the Applicant-State submits that as on the date of the order no charge sheet was filed against the accused. He further submits that in the charge sheet filed against the co-accused the name of the Respondent was shown in the Form-5 as a wanted accused. Learned APP further submits that the observations of the learned Judge that the statement of Munawar Bhagat does not show involvement of the Applicant in the said crime, is totally erroneous. He submits that the Respondent has played an active role in commission of the crime and is a beneficiary of the said crime. He also submits that several other crimes of similar nature

are registered against the Respondent. He has stated that the Respondent has received over Rs.1 crore in his bank account. He submits that the offence is of serious nature and that the order of granting pre-arrest bail is totally perverse.

6. Per contra, Ms Mansha Khemka, learned counsel for the Respondent submits that the loan was disbursed on 07/07/2015. Bank entries relied upon by the prosecution are prior to the disbursement of the loan. She states that statement of Munawar Bhagat does not prima facie indicate that the Respondent had purchased the immovable property. There is no material to indicate that the Respondent has misused or forged the document for the purpose of availing loan. She states that the Respondent is not in any manner associated with the main accused-Chandak. She submits that there is no material to show the involvement of the Respondent in commission of the said crime.

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

8. At the outset it may be mentioned that before adverting to the facts of the case it would be advantageous to refer to the decision of the Hon'ble Supreme Court in ***Vipin kumar Dhir vs. State of Punjab AIR 2021 SC 4865*** wherein the Apex Court has held thus : -

> *"9. At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram &Ors. vs. State of Haryana observed that:*
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> > *"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail,already granted. Generally speaking, the grounds for cancellation of bail, broadly(illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening*

> *circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."*

These principles have been reiterated time and again, more recently by a 3 judge Bench of this Court in X vs. State of Telengana & Anr. 10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation,ought not to be overlooked."

9. In the instant case, the bail is sought to be cancelled on the ground that the order is perverse. In this regard, the records prima facie reveal that the Kurla Nagari Sahakari Bank had sanctioned loan of Rs.3 crores to one Naval Chandak, proprietor of Blue Cross Network. At the time of sanctioning the said loan, the main accused Naval Chandak had produced an agreement for sale

dated 30/07/2009 between M/s. Ravi Developers and Munawar Bhagat in respect of shops at Super Market, first and second floor of Gaurav Valley, near GCC Club, Mira Road, agreement for sale dated 30/07/2009 in respect of the ground floor in the same building between M/s. Ravi Developers and Munawar Bhagat and agreements for sale dated 14/03/2014 and 13/03/2014 in respect of the same premises between Munawar Bhagat and Naval Chandak. The records indicate that said Chandak failed to repay the loan amount. On going through the documents, the Bank realised that the documents furnished by said Chandak were forged. When the officers of the Bank visited the premises on 06/11/2015 they found that the said shops were closed and locked. The Bank was also informed by the Society that it had not given any NOC and that the certificate produced was forged. Upon further enquiries it was learnt that the said two premises were sealed by City Co-operative Bank on 28/10/2015. It was also learnt that the loan availed by Chandak was transferred to Millennium Exports, G.S.K. Trading Corporation and that the said amount was later transferred to the account of Central Bank to close the OD Account No.3325570878, which had granted the overdraft facility to the main accused -Chandak.

10. In the course of the investigation statement of Munawar Bhagat was recorded. The statement of this witness prima facie indicates that on 20/07/2009 he had purchased the said two shops from Jayesh T. Shah, partner of M/s. Ravi Developers. He has stated that in the year 2014, Respondent-Mubarak Patel had shown interest in purchasing the said property for Rs.3 crores 80 lakhs. He had paid an amount of Rs.51,000/- as earnest money and later transferred Rs.25,00,000/- by RTGS. He has stated that on the next day said Mubarak (the Respondent) took from him the original documents under the pretext that the same were to be shown to his lawyer. He returned the said documents about two days later. He has stated that on 14/03/2014 when he had gone to the Sub Registrar's office for registration of documents, he noticed that the name and photograph of Naval Chandak-accused No.1 was on the registration paper. The Respondent told him that accused No.1 was his business partner and that there was an agreement between him and the accused No.1. He has stated that subsequently, the Respondent did not make payment

and that the transaction /sale deed could not be finalised and by notice dated 03/03/2015 he had cancelled the agreement.

11. The statement of this witness prima facie indicates that the Respondent herein had entered into part payment agreement in respect of the said shops at Mira Road. As per the agreement, he had paid only Rs.25,00,000/- and the balance amount from the sale consideration of Rs.3.80 crores was to be paid later. The Respondent had collected the original documents from Munawar Bhagat. Subsequently the main accused Chandak had produced the documents before the Bank showing that entire sale consideration in respect of the shop has been paid. Hence, the observations of the learned Judge that the statement of Munawar Bhagat does not show the involvement of the Applicant in the aforesaid crime is totally perverse.

12. The records further reveal that the Central Bank had given OD facility to the extent of Rs.3 crores to the main accused Naval Chandak, proprietor of Blue Cross Networks under OD Account

No.3325570878. The records reveal that the Respondent herein had received an amount of Rs.68,25,000, Rs.31,50,000/-, Rs.14,00,000/- from the OD Account No.3325570878 and transferred the amount of Rs.5,00,000/- and 12,00,000/-in the account of Chandak. It is to be noted that the main accused -Chandak has utilised the loan amount availed from Kurla Nagri Sahakari Bank to close the OD Account No.3325570878. The records thus prima facie reveal close nexus between the Respondent and the main accused -Chandak and he is the beneficiary of the fraud.

13. The learned Judge has grossly erred in granting bail to the Respondent on the ground that his name is not reflected in the FIR. This is a case of criminal conspiracy and it is not necessary that names of all the conspirators must be reflected in the FIR. Moreover, the records reveal that the role of the Respondent had come to light in the course of the investigation and as such he was arrayed as an accused. The finding of the learned Judge that the charge sheet had been filed against the Respondent is also totally perverse as the records reveal that the Respondent was not available and hence

charge sheet was filed on 05/04/2016 only against accused Nos.1 and 2 wherein this Respondent was shown as wanted accused.

14. The material on record particularly the Bank entries and statement of Munawar Bhagat prima facie show the involvement of the Respondent in commission of the crime, which is of serious nature. The learned Judge has exercised the discretion in arbitrary manner and has granted bail to this Respondent not only on erroneous but on the basis of perverse findings. The order is totally perverse and hence the bail is liable to be cancelled.

15. Hence, the application is allowed. The pre-arrest bail granted to Respondent vide order dated 06/11/2016 in Anticipatory Bail Application No.1926 of 2016 arising from C.R. No.52 of 2016 (old C.R. No.10 of 2016), is cancelled. It is stated that the Respondent is already in custody in Crime No.325 of 2017 registered at Bhandup Police Station and is presently lodged in Taloja jail. Hence, no order for surrender.

(SMT. ANUJA PRABHUDESSAI, J.)