

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

ANTICIPATORY BAIL APPLICATION NO. 2271 OF 2021

Maula Sattar Sayyad Applicant
Versus
The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2226 OF 2021**

Santosh Laxman Bhajibhakare Applicant
Versus
The State of Maharashtra Respondent

Mr. Satyavrat Joshi for Applicant in ABA/2271/2021.
Mr. V. V. Purvant, for Applicant in ABA/2226/2021.
Mr. Ajay Patil, APP for State/Respondent in both ABAs.

**CORAM : SARANG V. KOTWAL, J.
DATE : 22nd SEPTEMBER, 2021**

P.C. :

1. Both these applications are decided by this common order because they arise out of the same registered offence and the same investigation. For the sake of convenience, both the applicants are referred to by their names.

2. The Applicants are seeking anticipatory bail in

connection with C.R.No. 903 of 2019, registered at Sadar Bazar Police Station, Solapur, on 03/12/2019, under sections 467, 468, 420 and 167 r/w. 34 of the Indian Penal Code (for short 'IPC').

3. Heard Shri. Satyavrat Joshi, learned counsel for the applicant in A.B.A.No.2271 of 2021, Shri. Viresh Purvant, learned counsel for the applicant in A.B.A.No.2226 of 2021 and Shri. Ajay Patil, learned APP for the State in both applications.

4. The First Information Report (for short 'F.I.R.') is logged on 03/12/2019 by one Santosh Tibe who was working as Assistant Superintendent with Railway court, Daund. He was directed by the learned Magistrate, who was conducting the case bearing R.C.C.No.30 of 2014 on the file of Railway court, Daund; to lodge this F.I.R.

5. The present F.I.R. is an offshoot of the earlier investigation and trial. It started with the investigation of C.R.No.07 of 2013 dated 28/01/2013 registered at Railway police station, Solapur under sections 379 and 411 of the IPC. That complaint was in respect of some theft committed in a train while the first informant Jamir Qureshi in that case was travelling with

his friend Hiralal Thorat. Hiralal was carrying Rs.72000/- which he had withdrawn from his bank account. He had kept that amount in his bag. It is not in dispute that the said amount belonged to said Hiralal. Hiralal and Jamir boarded the train at Solapur on 27/01/2013 at about 11.30p.m. The accused in that case by name Nitin Hosmani committed theft of that bag and took away the money. Out of Rs.72000/-, Rs.59800/- were found from the accused No.2 Nagesh Kasbe in that case. The amount was deposited in the railway police station, Solapur in muddemal section. F.I.R. in that particular offence i.e. C.R.No.7 of 2013 of Railway police station, Solapur was lodged by the aforementioned Jamir. During the course of investigation and trial the owner of that amount Hiralal had passed away. Jamir gave his deposition during the trial on 01/10/2016. He had deposed that, Hiralal had not left any legal heir. Hiralal had a sister, but her whereabouts were not known. The matter was kept for passing final Judgment and order. In the meantime, the learned Magistrate decided to verify whether the amount of Rs.59800/- was available with the Railway police station, Solapur. Some documents in that behalf

were produced before him mentioning that the said amount was already returned. The F.I.R. in this case mentions that the amount was already returned to Jamir on 09/03/2018. It was found by the learned Magistrate that, Jamir was not entitled for that amount. It was alleged that, the investigating officer in that case, applicant Maula Sayyad along with other applicant Bhajibhakare were instrumental in preparing the forged order of the court. They in collusion with each other had returned that amount to Jamir. The applicant Bhajibhakare was working as a Clerk at the relevant time at Railway police station, Solapur. On this basis the F.I.R. was lodged under sections 467, 468, 420 and 167 r/w. 34 of the IPC.

6. Both the learned counsel for the applicants invited my attention to another order dated 09/12/2020. In that order, it was clarified that the order directing return of the amount was available. However, vide order dated 09/12/2020 passed in R.C.C.No.30 of 2014 by the same learned J.M.F.C., Railway Court, Daund, he directed the Police Inspector, Sadarbazar police station, Solapur to record supplementary statement of Shri. S. R. Tibe i.e. the first informant in this case and also directed to remove

application of section 467 and 468 of IPC. Learned Magistrate vide his another order dated 12/02/2021 passed in same R.C.C.No.30 of 2014 directed the Police Inspector investigating in C.R.No.903 of 2019 to arrest both these applicants. Therefore, both these applicants are apprehending their arrest.

7. Both learned counsel for the applicants submitted that the learned Magistrate has exceeded his jurisdiction in passing all these orders. It was beyond his jurisdiction to direct the arrest of applicants. It was prerogative of the investigating agency to conduct the investigation in the manner which they found convenient. They submitted that, learned Magistrate had acted in haste in assuming that the order was not in existence. When the order was found, he simply directed removal of sections 467 and 468 of IPC. No further reasoning was given as to how both the applicants were responsible. They submitted that, assuming that the aforementioned Jamir was not entitled for the amount, the final Judgment and order in R.C.C.No.30 of 2014 could have taken care of that situation. They submitted that the applicant Maula had made an application before the court in routine manner and it was

for the court to grant or reject it. Once the court has passed that order, without the order being set aside, no fault can be found with the applicant Maula Sayyad. Shri. Purvant, learned counsel for the applicant Santosh submitted that, he was duty bound to follow the directions of the court for returning the amount and also to follow the directions of his superior Maula Sayyad. Therefore, no offence is committed by him.

8. Learned APP submitted that, Maula Sayyad should not have made an application before the Magistrate for directing return of amount to Jamir who was not entitled for the same. However, he concedes that the amount was returned only after Jamir had executed bond to that effect.

9. I have considered these submissions. Since the bond is already executed by Jamir, the amount was protected and the learned Magistrate was sufficiently empowered to pass final order in respect of said amount at the time of deciding said case. The order under which the amount was returned was only for the interim period. Both learned counsel submitted that the amount, as of today, is returned to the court and, therefore, there is no loss

caused to anybody. In any case, nobody from Hiralal's family has claimed that amount.

10. From the history it does not appear that the applicant Maula Sayyad had acted deliberately with dishonest intention. The money was returned after bond was executed by Jamir. Therefore, sufficient precaution was taken. It was always within the power of learned Magistrate deciding the case to pass final orders. To that extent the money was secured. Therefore, it cannot be said that the money was already misappropriated.

11. The F.I.R. was lodged by the informant on the footing that there was no order passed in directing return of that amount and the order was forged. That was a serious allegation. But it turned out to be incorrect as the order was in existence. The only fault the learned Magistrate found with that order is that the aforementioned Jamir was not entitled to receive that amount. There is considerable force in the submission of learned counsel for the applicants that the learned Magistrate has exceeded his jurisdiction in directing arrest of the present applicants.

12. As rightly submitted by Shri. Purvant, the applicant

Bhajibhakare had in any way no role to play because he was bound to follow the order of the court, as well as, directions of his superior officer. Even, so far as, applicant Maula Sayyad is concerned, from the submissions and record of the case, it does not appear that he had any other intentions. There were sufficient precautions taken in the form of the bond. The money has already come back to the court. Therefore, in this background, custodial interrogation of both the applicants is not necessary. They can be protected by an order of anticipatory bail.

13. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No. 903 of 2019, registered at Sadar Bazar Police Station, Solapur, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) Both the applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)