

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.433 OF 2017

Sunil s/o Uttam Belokar
Aged about 58 years,
Occ: Service, Secretary,
Village Panchayat, Pimpalgaon Raja,
R/o Pimpalgaon Raja,
Tah. Khamgaon,
District Buldhana.

..... **APPLICANT**

...V E R S U S...

1. State of Maharashtra, through
Police Station Officer, Police Station,
Pimpalgaon Raja, Tah. Khamgaon,
District Buldhana.
2. Ataullakhan Latifullakhan
Aged 62 years, R/o Pimpalgaon Raja,
Tq. Khamgaon, Dist. Buldhana..... **RESPONDENTS**

Mr. A.V. Bhide, Advocate for Applicant.
Mr. S.S. Doifode, APP for Respondent 1/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **20th JANUARY, 2021.**

ORAL JUDGMENT:

The applicant is arraigned as accused in Crime 76/2016 registered with the Pimpalgaon Raja Police Station, Tahsil Khamgaon, District Buldhana for offences punishable under sections 420, 465, 468, 471 read with 34 of IPC on the basis of report lodged by Ataullakhan s/o Latifullakhan.

2. The gist of the allegations in the report is that there is a public well in existence on plots 107, 108 and 111 owned by Hafiza Munaf Minority Education and Multipurpose Society (Society). It is alleged that the elected members of the Gram Panchayat, Pimpalgaon Raja prepared a “false” resolution dated 14.08.2009, granting no objection to the said society for construction of school building and discontinuing the user of well. The report alleges that such resolution is not passed at all. The applicant is implicated in the capacity of the Secretary of the concerned village panchayat.

3. The applicant approached the learned Sessions Judge seeking pre-arrest protection and vide order dated 10.11.2016 in A.B.A. 316/2016 the learned Additional Sessions Judge, Khamgaon was pleased to grant the pre-arrest protection observing thus:

2. Ad-interim anticipatory bail was granted to applicant on 27.9.2016 on certain conditions. There is nothing on record to indicate that the applicant has committed breach of any of the conditions. The State has filed its reply contending that no offence is registered against the applicant as yet on the basis of the report lodged by the complainant. The applicant has filed the copy of report on record. The Collector, Buldhana has investigated matter in connection with the alleged meeting in the year 2015 and found the allegations baseless. The apprehension of the

applicant appears to be reasonable and well founded and therefore, he is entitled to anticipatory bail. Hence, I proceed to pass the following order.

Order

Application is allowed and ad-interim anticipatory bail so granted to applicant on 27.9.2016 stands confirmed on the same conditions.

Inform accordingly to P.S.O. Pimpalgaon Raja.

4. Be it noted, that the learned Additional Sessions Judge relied on the copy of the report of the investigation done by the Collector, Buldhana, which found the allegations baseless.

5. The State of Maharashtra preferred Miscellaneous Criminal Application 4/2017 under section 439(2) of the Code of Criminal Procedure (Code) seeking cancellation of the pre-arrest protection.

6. It would be apposite to note the averments in support of the prayer for cancellation of pre-arrest protection.

2. It is submitted that, before registration of Crime with Pimpalgaon Raja Police Station the non-applicant moved an application for anticipatory ad-interim bail application before Hon'ble Court of Session at Khamgaon bearing registration no. A.B.A. No.316/16 Sunil-Vrs-State of Maharashtra which was finally decided on 10/11/2016. The non-applicant succeeded in granting anticipatory bail because when bail granted to the non-applicant that time offence was

not registered against him.

3. It is submitted that on 31/12/2016 the offence came to be registered against the following accused including this non-applicant Sunil Uttam Belokar, 2) Mohd. Javed Iqbal Abdul Munaf, 3) Jabbar Khan Salam Khan, 4) Mohd. Anwar Razi Mohd. Harun, 5) Famida Tabbsum Sk. Nazir, 6) Shahin Begum Javed Iqbal, 7) Wajid Khan Daulat Khan, 8) Abeda Anjum, 9) Ayub Khan

The Non-applicant Sunil Uttam Belokar was serving as a Secretary to the Gram Panchayat Pimpalgaon Raja and other accused as above mention accused persons have a registered Society and running a School namely Gulshan-a Hafij Urdu Primary School, at Pimpalgaon Raja.

3. (wrongly mention) It is submitted that, on dtd 14/08/2009 there was a meeting of members of Village Panchayat of Pimpalgaon Raja on that day near about Seven (७) resolution had been passed by the majority of members of Village Panchayat and signed thereon. But the non-applicant and other accused persons have with joining hands fraudly and with the malicious intention they commits forgery obtained a resolution (7E) in proceeding book of Village Panchayat but that was not signed by any member of the Village Panchayat.

4. It is submitted that the said forged resolution used by the other accused for their benefits and for obtaining grant from the Government to their society. The complainant got the bogus resolution from the office of various authority and demanded the Certified Copy of the said proceeding book to the Secretary of village Panchayat of Pimpalgaon Raja. Unfortunately, the said proceeding books was not available in the said office. The non-applicant while enquiry has told to the investigation Officer that the said proceeding book submitted to the Panchayat Samiti, Khamgaon.

Accordingly the investigation officer made an enquiry with the officers of Panchayat Samiti. The concerned officer said that the proceeding book was submitted by the non-applicant.

5. It is submitted that the non-applicant is the habitually offender. There are many offences registered against him at Pimpalgaon Raja, Police Station 1) M.Case No.03/13/U/Sec.167, 468, 471, 34 of IPC.

2) M.Case No.1/14 USec. 420, 467, 471 r/w 34 of IPC. Accordingly, he was Chargesheeted and proceeding are pending against him in the court.

6. It is submitted that in Crime No.76/16 U/Sec. 420, 465, 468, 471 r/w 34 of IPC the non-applicant is accused and from whom the proceeding book and other record of village Panchayat of Pimpalgaon Raja. The said proceeding book is a important piece of documentary evidence in the said case and it is required to be seized from the possession of the non-applicant. The non-applicant knows that where the said proceeding books kept by him for that purpose the personal custody of non-applicant is necessary.

7. It is submitted that, the Chief Officer of Zilla Parishad, Buldana has conducted the Departmental Enquiry against the non-applicant Sunil Belokar. After enquiry he hold that the charges levelled against him are proved. Accordingly, the non-applicant after suspension as per order rejoined as a Secretary on the basis of original basic payment.

8. It is submitted that, from the date of anticipatory bail the non-applicant failed to attend the Police Station as per order of Session Court. Neither he has co-operated the Investigation Officer into the investigation nor produce documents such as proceeding book and other record of village Panchayat of Pimpalgaon Raja.

For the purpose of seizure of proceeding

book and bogus stamp the custody of non-applicant is required. For that purpose the Anticipatory Bail may kindly be cancelled and permission may kindly be granted to applicant to arrest the non-applicant.

7. The learned Sessions Judge cancelled the pre-arrest protection vide order dated 16.06.2017. The accused emphatically submitted that the pre-arrest protection can be cancelled only if there is a breach of the conditions, and that a review of the material is not permissible. The reasons which impelled the learned Sessions Judge to cancel the pre-arrest protection are reflected in paragraph 7 of the order impugned, which reads thus:

7. Keeping in view the aforesaid authoritative judicial pronouncement, the circumstances of the present case will have to be scrutinized. Undoubtedly, the non-applicant was duty bound to hand-over the charge of all the books and accounts including the proceedings book, muster roll etc. to his successor at the time of his transfer. But, the non-applicant appears to have given charge of all the books except the proceedings book and the muster roll to his successor. It appears that the non-applicant did not hand over the custody of proceedings book to his successor because he knew that the fabricated resolution dated 14.8.2009 was not contained in the proceedings book and if the said proceedings book was handed over to his successor, his misdeed would be exposed. At the time of filing anticipatory bail application, the non-applicant did not bring this fact into the notice of this court. After registration of the offence, when the Investigating Officer inquired with him about the proceedings book of the year 2009, non-applicant

did not produce the same. On the other hand, he tried to show as if he had handed over the said proceedings book to the Block Development Officer, with whom non-applicant was not supposed to have deposited the same. As noted above, the witnesses categorically stated that non-applicant did not deposit the proceedings book with them. The proceedings book is absolutely necessary for the effective investigation of the crime. Since the proceedings book was not deposited, it is supposed to be in the custody of non-applicant and therefore, to recover the proceedings book, custodial interrogation of non-applicant is absolutely necessary. The fact of non-production of the proceedings book is a new material fact and that the anticipatory bail was granted to applicant before registration of the offence and therefore, in view of the ruling cited supra the bail granted to non-applicant shall have to be cancelled. Considering all these facts and circumstances of the case as well as the conduct of non-applicant, gravity of the offences and necessity of the custodial interrogation of the non-applicant, I am of the firm view that the anticipatory bail granted to applicant in ABA no. 316/2016 needs to be cancelled and the application filed by the State to be allowed. In the result, I proceed to pass the following order.

Order

Application is allowed.

Anticipatory bail so granted to non-applicant/accused on 10.11.2016, stands cancelled.

Non-applicant/accused Sunil Uttamrao Belokar shall surrender himself before PSO Pimpalgaon Raja forthwith.

Inform accordingly to PSO Pimpalgaon Raja.

8. Be it noted, that the pre-arrest protection is not

cancelled on the ground that the applicant committed breach of the conditions of bail. The learned Sessions Judge has considered the entire material and was persuaded to cancel the pre-arrest protection primarily by the alleged refusal of the applicant to handover the proceedings book to his successor. The learned Additional Sessions Judge observes that while granting pre-arrest protection, the fact that the applicant did not handover the proceedings book to his successor, was not brought to the notice of the Court. The learned Additional Sessions Judge then observes that the non-production of the proceedings book is a new material fact warranting cancellation of pre-arrest protection.

9. It is difficult to appreciate the reasons recorded by the learned Additional Sessions Judge.

10. Cancellation of pre-arrest bail or bail is a serious matter. It is well settled, that the Court can cancel bail if the conditions are breached or the liberty misused. Assuming that the applicant did not handover copy of the proceedings book to his successor, as is observed by the learned Additional Sessions Judge, this was a fact known to the Investigating Agency while the applicant was protected. In my considered view, the fact that it was not brought to the notice of the Court by the prosecution that

the proceedings book is not handed over, cannot be considered as new material warranting cancellation of pre-arrest protection by the Court which granted the protection. It was always open for the prosecution to approach this Court under section 439 (2) of the Code seeking cancellation of bail on merits, which the prosecution failed to do.

11. I may further note, that the investigation is complete and the charge-sheet is filed on 29.11.2017 and no useful purpose will be served by cancelling the pre-arrest protection, assuming that the pre-arrest protection is liable to be cancelled for reasons recorded in the order impugned.

12. The application is allowed in terms of prayer clause (i) which reads thus:

i) the order dated 16.06.2017 passed by the Additional Sessions Judge, Khamgaon on Exh.1 in Misc. Criminal Application No.4/2017 which is at Annexure-IX be quashed and set aside by issuing appropriate writ, order or direction.

JUDGE