

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

CRIMINAL WRIT PETITION NO. 1123 OF 2019

Tushar s/o Jagdish Lambe,
Age 38 years, Occupation - Service,
R/o D1-401, Swapna Nagari,
Pimpri, Pune.

.... **PETITIONER**

VERSUS

State of Maharashtra,
Assistant Commissioner of Police,
Crime Branch, Nagpur (Bajaj Nagar)

.... **RESPONDENT**

Mr. P.S. Jaiswal, Counsel for the petitioner,
Mr. M.K. Pathan, Addl.P.P. for the respondent/State.

CORAM : ROHIT B. DEO, J.
DATED : 4th FEBRUARY, 2021

ORAL JUDGMENT :

Rule. Heard finally by consent of the parties.

2. The petitioner is arraigned as accused in Crime 155/2018 registered with Bajaj Nagar Police Station, Nagpur for offences punishable under Sections 341, 448 and 506-II read with Section 34 of the Indian Penal Code.

3. The learned Sessions Judge granted pre-arrest protection vide order dated 06-10-2018, the operative part of which reads thus :

“I) Application (Exhibit 1) is allowed.

II) The ad interim anticipatory bail granted to the applicant Tushar s/o Jagdish Lambe, vide order dated 11-9-2018, is hereby confirmed on the same terms and conditions and now applicant shall attend P.S. Bajajnagar, Nagpur on 1st day of every month, in between 11-00 a.m. to 2-00 p.m. and as and when called by the investigating officer till filing of the charge-sheet.

III) Inform the concerned Police Station accordingly.”

4. Notably, while confirming the interim pre-arrest protection, the learned Sessions Judge observes thus :

“8. It is also argued by the learned counsel for the applicant that the said investigating officer has also prepared the C.D. of entire process of opening lock carried on that particular day which is in the custody of the investigating officer. The applicant has produced the xerox copies of the photographs wherein the police officials can be seen. This fact on record supports the contentions of the applicants. Considering all these facts I find that the custodial interrogation of the applicant is not at all necessary for the investigation of this offence. The applicant was directed to attend the P.S. Bajajnagar on every Monday. Accordingly, he has filed pursis (Exh.7) stating therein that he has attended the police station and has complied with the directions given to him in the order dated 11-9-2018, passed below Exhibit 3.”

5. The State preferred Miscellaneous Criminal Application 565/2019 under Section 439(2) of the Criminal Procedure Code (Code) seeking cancellation of bail on the ground that the accused is not cooperating with the Investigating Officer. Paragraph 9 of the application reads thus :

“9. That the complainant in his complaint specifically stated that along with other valuable articles present articles produced by the non-applicant is stolen by him. That during interrogation the non-applicant told to produce all the stolen articles as submitted by the complainant during First Information Report however the non-applicant has not cooperated to depositing the same with the applicant police officer. That when constantly interrogated the non-applicant said that he has granted anticipatory bail and hence he could not supply anything to the police.

It is submitted that valuable articles like laptop, tablet, mobile phone, router, camera, foreign currency, T.V., Fridge, jewellery, grains etc. had been stolen and thefts by non-applicant. Thus by taking the undue advantage of anticipatory bail by the non-applicant he is not cooperating with the police. It is submitted that without obtaining the physical custody he would not cooperate with the Investigation agency and would not produce the muddled articles. Hence it is expedite to cancel the anticipatory bail of non-applicant in the interest of justice.”

6. The learned Sessions Judge was pleased to cancel the bail observing thus :

“15. Considering the entire facts on record, I find substance in the contentions raised by the applicant as the non-applicant has produced certain property which were included in the list of stolen property, this can be termed as cogent and overwhelming circumstance which is necessary for cancellation of bail as observed by the Hon’ble Apex Court in the case Dolat Ram (supra). Therefore I am of the opinion that this is a fit case to cancel the anticipatory bail granted to the non-applicant.

In the result, I proceed to pass the following order.

Order

I) Application (Exh.1) is allowed.

II) The anticipatory bail granted to non-applicant Tushar s/o Jagdish Lambe, vide order dated 6-10-2018, in Misc. Cri. Application No. 2336/2018, in Crime No.155/2018, for the

offence punishable under Sections 341, 448, 506(b) r/w Section 34 of the Indian Penal Code at P.S. Bajaj Nagar, Nagpur stands cancelled.”

7. In my considered view, the cancellation of bail is unsustainable. The accused was protected with the observation that he attended the police station and complied with the conditions of pre-arrest protection. The allegations in the report cannot be treated as gospel truth. According to the accused, since he is not possessing the articles to which a reference is made, there is no question of producing the same before the Investigating Officer. The fact that the response of the accused is not palatable to the Investigating Officer or is not consistent with the allegations in the report cannot be *ipso facto* branded as non-cooperation.

8. The order impugned is set aside.

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

“(i) Quash and set aside the order dated 24-12-2019 passed by the learned Additional Sessions Court-5, Nagpur in MCA No.1565/2019 (Annexure No.5).”

JUDGE