

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.2 OF 2020

SANJAY S/O VANA BADGUJAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. S. J. Salunke
Advocate for Respondents No.2 to 5, 7 to 9, 12 and 13: Mr. M. M.
Bhokariker
APP for Respondent No.1 : Mr. V. M. Kagne
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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
24-02-2022**

**Date of Pronouncing The Order :
08-06-2022**

ORDER :

1. Present application has been filed by the victims of the crime for cancellation of bail granted to respondents No.2 to 13 in Criminal Bail Application No.78 of 2016 dated 10-05-2016 by learned Additional Sessions Judge, Amalner, District Jalgaon. It will not be out of place to mention here that respondents No.2, 6 and 13 have been reported to be dead, and therefore, the application remains as against the other respondents only.

2. Perusal of the FIR would show that it has been lodged by one Kishor Ramdas Badgujar who was also one of the depositor with Shri Chamunda Devi Urban Co-op. Patsanstha Ltd., Chopda, District Jalgaon. He says that he had fixed deposits as well as saving accounts of himself as well as his wife, son and daughters in the said Patsanstha to the tune of Rs.10,34,249/-, and in spite of maturity of his fixed deposits, the Pat Sanstha has not returned the said amount. Therefore, he has been cheated and duped by the Chairman, Vice-Chairman, Directors of the said Patsanstha, and therefore, lodged the FIR on 21-04-2016 vide Crime No.65 of 2016 for the offence punishable under Section 420, 406, 409, 120(B) r.w.34 of IPC.

3. It has been submitted on behalf of the applicants that a very cryptic order has been passed by the learned Additional Sessions Judge, Amalner, District Jalgaon. Only the advance age of some of the applicants and the fact that they are permanent residence of said town has been taken into consideration with no previous criminal record. It was wrongly interpreted by the learned Sessions Judge that if the Investigating Officer would have been in need of physical custody of the applicants, then he would have arrested

them long ago. Merely because the Investigating Officer had not arrested them till that date, that does not mean that those applicants were entitled to the reliefs. In fact, what has been not considered by the learned Judge is that a huge public money has been misappropriated and the hard earned money of the various depositors has not been returned. The *modus operandi* of the respondents No.2 to 13 can be seen that whenever any depositor including the informant had filed application for cancellation of bail, then their money was returned and then those persons have withdrawn those applications. The learned Advocate for the applicant has indicated order passed by this Court in Criminal Application No.3891 of 2017 dated 08-08-2017 wherein the accused persons deposited amount of Rs.13,44,816/- in the Court and the informant Kishor Badgujar had withdrawn the said application for cancellation of bail and sought the withdrawal of the amount that was deposited by respondent/accused. Similar strategy was adopted when Criminal Applications No.5372 of 2017, 5373 of 2017 and 5374 of 2017 were filed. Even now ACB No.1 of 2020 came to be withdrawn on 23-02-2022 when the amount was paid to the concerned applicants. With such *modus operandi* the respondents cannot be allowed to be on bail when they have committed

misappropriation of huge amount and the applicants are deprived of their amounts since 2015.

4. The learned Advocate appearing for the applicant has relied on *Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, reported in AIR 2013 Supreme Court 1933*, wherein it has been observed that :-

“Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.”

He further relied on the decision in *Pokar Ram Vs. State of Rajasthan and others, reported in AIR 1985 Supreme Court 969*, wherein it has been observed that :-

“Orders of granting bail which will result in loss faith of common people from administration of justice shall not stand.”

In *Subodh Kumar Yadav Vs. State of Bihar and Another, reported in (2009) 14 Supreme Court Cases 638*, it has been observed that :-

“If a superior court finds that a court granting bail had acted on irrelevant material, or if there was non-application of mind etc., and order of cancellation of bail

in fact be made.”

Further in *Vaijanath s/o Devappa Longaonkar Vs. State of Maharashtra and Ors.*, reported in 2011 ALL MR (Cri) 1957, it has been observed that :-

“Duration of enjoyment of liberty is immaterial. The confidence of the common man in the judiciary cannot be sacrificed too lightly.”

The learned Advocate for the applicants, therefore, prayed for the cancellation of the bail granted to the respondents.

5. The learned Advocate appearing for the respondents relied on the affidavit-in-reply filed by respondent No.3 on behalf of himself as well as others. It has been stated that after the completion of the investigation, charge-sheet has been filed on 06-05-2019 before the Special Court under MPID Act which is numbered as Special Case MPID No.1 of 2019 and it is pending before the learned Special Judge/Additional Sessions Judge, Amalner, District Jalgaon. At no earlier point of time the present applicants had approached any of the authorities in respect of refund/return of their amount. The respondents are abiding by the terms of the bail, and therefore, no cause of action has ever arose for the applicants to file such

application. Similar affidavit-in-reply has been filed by the respondents No.5, 7, 8, 9 and 12. The learned Advocate for the applicants relied on the decision by this Court in *Divya Deepak Parkhe Vs. State of Maharashtra*, reported in AIR OnLine 2021 BOM 429, wherein in spite of charge-sheets being filed but there was no progress in the case, the accused lady having two children was granted bail on condition.

He also relied on the decision in *Sanjay Chandra Vs. Central Bureau of Investigation*, reported in 2011 AIR SCW 6838, wherein it has been observed that :-

“Object of bail generally is to secure appearance of accused person at the time of trial, it is neither punitive nor preventative.”

He further relied on *Manoj Kumar Sood and Anr. Vs. State of Jharkhand*, Special Leave to Appeal (Cri.) No.1274 of 2021, dated 19-03-2021, wherein Hon’ble Apex Court has observed that :-

“A Criminal Court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realize the dues of the complainant, and that too, without any trial.”

Similar view has been taken in *Dilip Singh Vs. State of Madhya*

Pradesh and Another, Criminal appeal No.53 of 2021, dated 19-01-2021, by Apex Court.

He further relied on *Ms. 'X' Vs. State of Telangana and Anr., reported in AIR 2018 Supreme Court 2466*, wherein it has been held that :-

“Bail once granted cannot be cancelled unless cogent case, based on supervening event is made out.”

He has also relied on the decision in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., reported in 2011 AIR SCW 3813, Manjit Prakash Vs. Shobha Devi, reported in AIR 2008 SC 3032, Samarendra Nath Bhattacharjee Vs. State of West Bengal, reported in AIR 2004 SC 4207, Aslam Babalal Desai Vs. State of Maharashtra, reported in AIR 1993 SC 1*, to support his contention as to what should have been considered by the learned Judge and how cancellation is not called for at this stage. It will not be out of place to mention here that both the learned Advocates have taken this Court through the copy of the charge-sheet.

6. At the outset, it is to be noted that though the charge-sheet appears to have been filed in the year 2016, there is no much progress in the trial. There are provisions under MPID Act wherein

the concern Court can refund or repay the amount of course, if those parameters have been fulfilled upon the seizure of the property of the accused etc. It appears that no such application was ever made by the present applicants. Another fact that is also required to be noted is that the impugned order came to be passed on 10-05-2016 and after about four years, the present applicants are approaching this Court for cancellation of bail. It appears that when they had not got their amount, they have taken help of this application. Whether such application or powers under Section 439 (2) of Cr.P.C. can be utilized for such recovery of amount which was due towards the applicants is a question and answer is definitely in the negative. If at all the present applicants were really agreed by the impugned order which was passed on 10-05-2016, they could have approach this Court immediately, and therefore, the application suffers from delay and latches. No doubt, the order that has been passed by the learned Additional Sessions Judge, Amalner while granting bail to the respondents, is too cryptic and without taking into consideration appropriate material which was before him. In the normal course, had the applicants approached this Court immediately, the impugned order could not have been allowed to sustain for a moment, but it is because of the inaction on the part of the applicants. This Court

refrains itself from curtailing the liberty that has been granted to the respondents. Another fact to be noted is that the same Advocate had represented the informant when he had filed application for cancellation of bail and then when the informant received his amount, he had withdrawn that application i.e. Criminal Bail Application No.389 of 2017 by order dated 08-08-2017. One more factor that is required be considered is that the present applicants had not filed any complaint/FIR independently, but only their statements have been recorded under Section 161 of Cr.P.C and they are shown as victims. The informant who had similar cause to challenge the impugned order had then withdrawn the said application under Section 439 (2) of Cr.P.C. He had seen his own interest only. Thereafter also three more victims had approached this Court by filing the Criminal Application No.5372 of 2017 and companion matters. By order dated 12-03-2019 it appears that certain amount was directed to be deposited. Except respondent No.10 who was not represented, the learned Advocate appearing for the other respondents sought time to deposit the amount. However, on 22-08-2019 all the three applications for cancellation of bail were rejected by this Court, meaning thereby when those victims were also challenging the same order which is under challenge in this

case, the said challenge was not accepted by this Court and even those applicants were also represented by the same Advocate who is now representing the present applicants. The learned Advocate for the present applicants could have raise the same objections which he has now raised to challenge the impugned order before this Court in those three applications for cancellation of bail. Some other victim will not now get a fresh cause of action to challenge the same impugned order which was refused to be cancelled by this Court earlier. The ratio laid down in the various authorities relied on both the sides cannot be disputed, but taking into consideration the fact before this Court that the present applicants are approaching after about four years and also the fact that this Court on the basis of application filed by different victims had refused to cancel the bail granted to the present respondents in the same order those ratios cannot be made applicable. Therefore, there is no merit in the present application, it is filed with some ulterior motive for which even the applicants have different remedy with them, accordingly the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.