IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.22 OF 2021

KRISHNA SAHEBRAO PATIL DONGAONKAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. S.R. Sapkal and Mr. A.B. Chormal, Advocates for the applicant

Mr. A.M. Phule, APP for the respondent No.1

Mr. A.S. Barlota, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 11th FEBRUARY, 2022

PRONOUNCED ON : 11th APRIL, 2022

ORDER :

1 Present application has been filed under Section 439(2) of the Code of Criminal Procedure, 1973 by the original informant, for cancellation of bail of the respondent No.2 granted by the I/c Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Criminal Bail Application No.285/2020 dated 18.12.2020. Respondent No.2 had filed the said application under Section 438 of the Code of Criminal Procedure as he was apprehending his arrest in connection with Crime No.402/2020 registered with Gangapur Police

Station, Dist. Aurangabad, for the offence punishable under Section 420, 406, 467, 468, 469, 471, 472, 474, 120-B read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.R. Sapkal for the applicant, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate Mr. A.S. Barlota for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge failed to consider the facts of the case. It was the huge economic offence that has been committed by the accused persons. Applicant is an agriculturist. He is the member of Gangapur Co-operative Sugar Factory. Said factory is closed since 2007-08. It has been attached by State Co-operative Bank for recovery of debt amount. It was put to sale. The Board of Directors had challenged the proceedings of the sale before the Court and in the said Court proceeding amount of Rs.9,00,00,000/- was deposited and the sale was cancelled. The said amount was returned by the Court to the Sugar Factory with interest. Demand Draft of Rs.15,75,33,338/- was received on behalf of the Sugar Factory on 07.11.2020. With an intention to misappropriate the said amount the Chairman MLA Mr. Prashant Bansilal Bumb and I/c Executive Director Mr.

B.M. Patil illegally opened an account on 20.07.2020 with the Vaijapur Merchants Co-operative Bank, Branch at Lasur Station. A resolution was shown to have been passed on 19.07.2020 to that effect. In fact, there was lock-down in Gangapur taluka as well as in the entire State of Maharashtra on 19.07.2020 and, therefore, it was not possible for the Board of Directors to gather at one place. At the time of opening the account the said factory was shown to be a partnership firm of MLA Mr. Prashant Bang and Executive Engineer Mr. Patil. The said DD was deposited in the said account and from that an amount of Rs.2,00,00,000/- was transferred by way of cheque in the account of Bhimrao Pandav on 07.11.2020. An amount of Rs.50,00,000/- was transferred by R.T.G.S. to Smt. Manorama Kabra. Further transfers have been made in the name of different accounts or in the name of different persons. The other director viz. Sanjay Jadhav gave letter to Vaijapur Merchant’s Bank, Lasur Branch on 09.11.2020 that they should not allow withdrawal of any amount from the said account. It was specifically stated that about 1400-1500 members have been cheated. Another letter was given to another Bank i.e. I.D.B.I. Bank, Gangapur Branch. One Ramrao Vitthal Pachpute had given complaint with Police Station on 11.11.2020 stating in the Co-operative Court dispute was filed on 26.10.2020, wherein General Power of Attorney was filed that General Power of Attorney is illegally got executed and forged document. It is stated that said Ramrao Pachpute and other 244 persons had given General Power of Attorney and it has been illegally notarized by the present respondent No.2 Advocate Mr. Ashok Sakharam Karde. It has been stated that the signatures and thumb marks on the document of General Power of Attorney are forged. Even a person by name Dada Narayan Ishtake at Sr.No.157 in the said forged document of Power of Attorney had expired much earlier to 31.01.2020. Still thumb impression is appearing as against his name. It shows the falsity of the said document. By creating such forged document the amount has been withdrawn.

4 It has been vehemently submitted that the said General Power of Attorney has been got executed in presence of the present respondent No.2. It was his duty to see whether all the persons were present before him and give consent for the General Power of Attorney. Therefore, there is room to believe that the respondent No.2 had conspired with the co-accused to bring the forged document into existence. All these aspects were not considered by the learned Additional Sessions Judge and a cryptic order has been passed. Therefore, the said order deserves to be set aside and the bail should be cancelled.

5 Per contra, the learned Advocate appearing for the respondent

No.2 supported the reasons given by the learned Additional Sessions Judge and submitted that the respondent No.2 is the Notary Public and has done the act in his official capacity. In fact, it was the dispute between the factory and its members. The respondent No.2 came in picture when the authorities as well as the signatories had approached the applicant. Taking into consideration the number of the executants it might not have been humanly possible to count the heads and take names of every persons, so as to ensure that all are present before him. Whatever has been done by the respondent No.2 was bona fide act and, therefore, his liberty has been rightly restored by the Court. It need not be curtailed.

6 At the outset, it is to be noted that as regards the respondent No.2 is concerned, the applicant has objection for the grant of anticipatory bail to the respondent No.2. It is to be noted from impugned order that the concerned Judge had considered the documents on record. The learned Judge has gone slightly ahead and after going through the contents of the First Information Report it was seen that the applicant had not drafted the General Power of Attorney but it was only Notarized before him. It was also identified by two persons and, therefore, the procedure that was adopted by the respondent No.2 appears to be fairly correct.

7 Now, turning towards impugned order and the contents of the First Information Report it can be seen that the role attributed to the respondent No.2 was that of Notary and the document was executed in favour of the Factory authorities. When so many persons were executing the documents it can be presumed that there would have been some kind of chaos. When the respondent No.2 was acting as Notary Public within the definition and governed under the Notaries Act, then, we must take into account the provisions of Section 13 of the Notaries Act. It provides for prohibition on the part of the Magistrate to take any action against a Notary Public if the act has been done or purported to have been done by such Notary in his official capacity.

8 In **Chandmal Motilal Bora vs. The State of Maharashtra, 2004 (4) Mh.L.J., 41**, it has been observed as follows :

> "Therefore, if any allegation is made against a Notary which touches the official performance as a notary, the Criminal Court is forbidden from taking cognizance unless the complaint in writing is made by an officer authorised by the Central Government or State Government by general or special order in this behalf. Therefore, whenever an official act of Notary comes in picture, it becomes the duty of the criminal Court to see, whether the allegations is directly concerned with his official duty or the performance which he has to do as indicated in Section 8 of Notaries Act. The Court which has been

requested to take cognizance of the complaint has to apply its judicial mind and to see whether the act which is the subject-matter of the complaint is the official act of a Notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need of sanction, because, the said act is not connected with his official performance, like an allegation showing that notary committed the murder or notary assaulted a person for the purposes of causing simple hurt, grievous hurt etc. If the allegations show that by an act which is not in accordance with the provisions of Notaries Act, the notary has been alleged to have committed an offence, there is no need of having a sanction to the complaint is writing of an officer as contemplated by provisions of Section 13 of Notaries Act. But if act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognizance of the allegations against the Notary".

The purpose for which such protection has been granted to the Notaries has been stated in this case as follows :

"If such protection is not granted to the Notary, he would be involved, implicated and roped in, in number of offences, because number of documents are being notarised before him in his notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offence of commercial transactions. He would be involved in number of offences concerned with the disposing of property, transfer of the property, sale of the property, exchange of property. He would be also coming in picture as an accused in number of offences connected with number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons who happen to be persons of his acquaintance. Such person may be an advocates, clerks of the advocates, or some persons who are connected with him by his profession as Notary or by his profession generally as a lawyer. If such protection is not granted to a notary, it would be very difficult for him to work as notary and members of public at large would be facing number of difficulties at every step and with this object Section 13 has been enacted by the Legislature with a foresight".

Same observations have been made in **Ejaj Ahemad Khan vs. State of Maharashtra and another, 2013 ALL MR (Cri.) 522**.

These two authorities have been relied by this Court in **Devyani d/o Govind Ambilwade vs. The State of Maharashtra and others, Criminal Writ Petition No.1226 of 2018** decided on 05.03.2020. The observations by this Court in **Devyani d/o Govind Ambilwade** (supra) are applicable to the facts of this case also. In view of the bar quoted under the Act and the protection that is given to the Notary Public under the Act, the concerned Court i.e. Additional Sessions Judge ought to have considered, as to whether such sanction has been applied or not. If no such steps would have been taken at the earliest opportunity, the benefit of the same should go to the respondent No.2.

9 It also appears that the applicant has approached the Co-operative Court against the factory. The rights of the parties would be decided there. However, at this stage, the applicant ought to have disclosed, as to what gain the respondent No.2 would have received by taking part in creation of an illegal document. As regards the respondent No.2 is concerned, it was not the economic offence. It might be the fact that one of the so called signatory to the General Power of Attorney was in fact dead long ago, but then, whether the respondent No.2 had intention to create that document would be the crux of the matter and it could be revealed only after the full-fledged trial. Therefore, the learned Judge was justified in using discretion in favour of the respondent No.2 who is a Notary Public and a practicing Advocate. There is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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