

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.40 OF 2021

Damodhar s/o Namdeo Gaikwad ... Applicant

Versus

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| 1. | The State of Maharashtra | |
| 2. | Sunil s/o Ambadas Tambe | ... Respondents |

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Mr. B. M. Dhanure, Advocate for applicant.

Mr. B. V. Virdhe, APP for respondent No.1- State.

Mr. R. R. Karpe, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.02.2022

ORDER :-

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure.

2. The applicant is the original informant, who had lodged First Information Report vide Crime No.100 of 2020 with Newasa Police Station, Dist. Ahmednagar for the offence punishable under Section 420 read with Section 34 of Indian Penal Code.

3. Present respondent No.2 is the accused No.1 in the said FIR.

4. Learned Advocate appearing for the applicant submitted that respondent No.2 has taken disadvantage of old age of the applicant and

under the pretext that he would obtain N.A. permission, deceived and cheated the informant in order to grab the property. Respondent No.2 got executed Power of Attorney in his favour from the informant and on the next day, he has sold out the said property to his mother, who is also an accused in the crime. A false consideration has been shown, of which amount was never received by the informant. Respondent No.2 was having criminal antecedents, however, he had not disclosed it in his application before the learned Additional Sessions Judge for the anticipatory bail. The said history was not even pointed out by the prosecution to the concerned Court. Respondent No.2 has been externed from Ahmednagar district for a period of six months from 17.10.2019. All these facts were not pointed out by respondent No.2 and the anticipatory bail which has been so sought deserves to be set aside. The civil litigation has been taken note of between the parties, however, only on the basis of the nature of that transaction, it cannot be said that there was no criminal angle to the facts of the case. The approach of the learned Additional Sessions Judge was not correct in dealing with the anticipatory bail application and, therefore, that order deserves to be set aside.

5. Learned Advocate appearing for respondent No.2 while relying on the affidavit by respondent No.2 submitted that all the facts were before

the concerned Court and taking into consideration the facts of the case, especially the civil suit that was already filed by the applicant i.e. Regular Civil Suit No.1080 of 2019 and also another criminal case bearing OMA No.418 of 2019, the discretion has been used by the learned Judge. The non cognizable cases need not be considered or they cannot restrict the powers of the Court from considering the application. A well reasoned order has been passed and, therefore, interference is not required. Reliance has been placed on the decision in ***XYZ Vs. State of Maharashtra and another, [Criminal Application No.2624 of 2015]*** decided by this Court on 21.07.2015, wherein after relying on the decision in ***Dolat Ram and Ors. Vs. State of Haryana, [(1995) 1 Supreme Court Cases 349]***, it was held that “bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of the bail during the trial.” Another case that was relied was ***Sanjay Chandra Vs. Central Bureau of Investigation, [AIR 2012 Supreme Court 830]***. The application under Section 439(2) of the Code of Criminal Procedure was rejected.

6. At the outset, it is to be noted that the FIR was lodged by the present applicant stating that he was cheated by respondent No.2 and

forged documents have been created. That offence though initially appears to be registered under Section 420 read with Section 34 of Indian Penal Code, it appears that later on Sections 464, 465, 467, 468 of Indian Penal Code were added. The learned Additional Sessions Judge in Bail Application No.144 of 2020 has considered the civil angle to the facts of the case and also that the civil suit was already filed. It is to be noted that the FIR came to be lodged on 18.02.2020 and prior to that, the civil suit was filed in the year 2019 itself. The FIR moves around general Power of Attorney dated 10.10.2019 and sale deed dated 11.10.2019. When the doors of Civil Court were already knocked, only note of the same can be taken. Further, as regards the criminal antecedents are concerned, unless those were brought to the notice of the learned Additional Sessions Judge, he could not have considered the same. Written say was filed on behalf of State, but it appears that no such information was produced. Now also the copy of the order of externment has been produced which was given by Sub Divisional Officer on 17.10.2019 and that externment period was for six months only from that date. It makes mention of in all five offences against present respondent No.2. Respondent No.2 has not even addressed the same in his affidavit-in-reply. The chart of the criminal antecedents of respondent No.2 are as follows :-

Sr. Nos.	Police Station	Crime Nos.	Sections
1	Sonai	I-165/2017	Under Sections 323, 324, 504, 506 of IPC
2	Sonai	I-07/2019	Under Sections 366, 376, 324, 323, 504 of IPC, Under Section 3/25 of Arms Act.
3	Pathardi	I-458/2011	Under Sections 420, 506 of IPC.
4	Sangamner	I-79/2017	Under Sections 379, 511 of IPC
5	Sonai	Chapter Case No.13/2019	Under Sections 107 of Cr.PC.

Merely because the cases are pending against the person that does not totally dis-entitle him from seeking anticipatory bail. No doubt, it is for the accused who seeks discretionary relief under Section 438 of the Code of Criminal Procedure that he should open his all the cards, rather in this case, in the application for bail, a specific statement has been made that there are no criminal antecedents against the applicant therein i.e. present respondent No.2. In spite of the criminal antecedents, the concerned Court can grant anticipatory bail taking into consideration the fresh allegations in the FIR in which there is apprehension of his arrest. Independently also, if we see the facts of the case on the basis of allegations made by the present applicant, it can be seen that custodial interrogation of respondent No.2 was not necessary and the civil suit was already pending. Conditions have been imposed on the accused while granting anticipatory bail. When all the necessary

precautions have been taken and on the basis of the facts of the case, when discretion has been judiciously exercised, the order does not require any interference by this Court. The application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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