

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 13 OF 2022

Hirasingh s/o Bhisuji Jadhav ...APPLICANT

VERSUS

The State of Maharashtra and Others ...RESPONDENTS

ALONG WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 14 OF 2022

Hirasingh s/o Bhisuji Jadhav ...APPLICANT

VERSUS

The State of Maharashtra and Others ...RESPONDENTS

ALONG WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 61 OF 2022

The State of Maharashtra ...APPLICANT

VERSUS

Ramesh Kashinath Patil ...RESPONDENT

ALONG WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 62 OF 2022

The State of Maharashtra ...APPLICANT

VERSUS

Chhaya Prashant Deshmukh ...RESPONDENT

ALONG WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 28 OF 2022

The State of Maharashtra ...APPLICANT

VERSUS

Uttam Bhisuji Jadhav & Others ...RESPONDENTS

ALONG WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 12 OF 2022

Hirasingh s/o Bhisuji Jadhav

...APPLICANT

VERSUS

The State of Maharashtra and Another

...RESPONDENTS

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Mr. P.M. Nagargoje, Advocate for the applicant in Application Nos. 13/2022, 12/2022 and 14/2022.

Mr. V.S. Badakh, APP for applicant-State in Application No. 61/22, 28/2022 and 62/2022.

Mr. Nilesh Ghanekar, Advocate for respondents No. 2 to 4 in Application No. 13/2022.

Mr. Sachin Deshmukh, Advocate for respondent No. 2 in Application No. 12/2022.

Mr. S.B. Ghatol Patil, Advocate for respondent No. 2 in Application No. 14/2022.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 13th OCTOBER, 2022

PRONOUNCED ON: 30th NOVEMBER, 2022

ORDER :

1. By these applications, the informant seeks cancellation of anticipatory bail granted to the respondents/original accused, by the learned Additional Sessions Judge, Aurangabad.

2. The informant is a retired Superintendent of Police. Accused No. 1 is a brother. Accused No. 2 is a wife of Accused No. 1 and Accused No. 3 is the son of Accused Nos. 1 and 2.

Accused No. 4 is a practicing advocate at Yavatmal and Accused No. 5 is an advocate and notary.

3. The applicant lodged the First Information Report alleging that, all the accused persons have conspired together and by fabricating the documents, have withdrawn the amount of compensation to which the informant was entitled to. It is alleged that there was a partition of the ancestral property between the informant, Accused No. 1 and their sister. The informant is residing at Aurangabad. Ancestral property Survey No. 98 situated at village Bhosa, Taluka- Mahagaon was owned and possessed by his father Bhisu Nanu Jadhav, who expired on 31.08.2003. Informant, Accused No. 1 and one sister are the legal heirs. Sister expired in the year 2011. Thus, the informant, Accused No. 1 and the deceased sister had equal share in the ancestral property. After the death of father there was a dispute between the informant, Accused No. 1 and the sister. When the informant applied for entering his name to the ancestral property, Accused No. 1 prepared a forged partition deed and has shown Survey Nos. 122/1, 122/2 and 123 of Mauje Bhosa, Taluka- Mahagaon, District- Yavatmal and house at Mauje Tivrang and Aurangabad wherein the informant is residing are

given to the share of informant. Accused No. 1 has shown that Survey Nos. 98/1, 122/3, 122/4 and 122/5 and house at Tivrang are given to the share of himself and his two sons. From Survey No. 98, 1444 and 8954 sq.mtr land was acquired for National Highway. So also, 53 ghunta land was acquired from Survey No. 123. In the partition deed said lands were shown to the share of the informant. Accused No. 1 has filed Regular Civil Suit No. 26/2020 through his son Dinesh, in the Court of learned Civil Judge, Mahagaon on 29.09.2020. In the said suit, it is claimed that partition deed executed in the year 2016 be cancelled and Dinesh has share in all the ancestral properties

4. It is further alleged that towards acquisition of portion from Survey No. 98, compensation of Rs. 38,27,694/- and Rs. 2,11,32,764/- is awarded to Accused Nos. 1 to 3. Similarly, for acquisition of 53 ghunta land from Survey No. 123 belonging to the informant, compensation of Rs. 1,02,29,673/- is awarded to the informant. Accused Nos. 1 to 3 gave proposal to the informant that he should give no objection for withdrawal of compensation of Rs. 38,27,694/- and they will give no objection for releasing compensation of Rs. 1,02,29,673/- in favour of the informant. They also agreed that since huge amount is of Rs.

2,11,32,764/- from Survey No. 98, nobody will withdraw that amount and after the decision of Civil Court the said amount will be distributed.

5. Accused prepared indemnity bond on stamp paper wherein no objection was given for releasing amount of compensation of land gut No. 123 in favour of the informant and in case of any issue, the informant will indemnify the said amount to the government. Along with indemnity document, two page application was also there, wherein the informant gave no objection for releasing the amount of Rs. 38,27,694/- in favour of Accused Nos. 1 to 3. The informant's signatures were obtained in Aurangabad by the accused on 27.01.2021. His signatures were also obtained on verification. Believing the accused persons, informant signed the documents. Accordingly, compensation of Rs. 1,02,29,673/- was credited to the account of the informant on 31.01.2021. Therefore, the informant was under impression that accused persons will receive amount of Rs. 38,27,694/- only. However, on 10.07.2021, he came to know that Accused Nos. 1 to 3 have withdrawn the amount of Rs. 2,11,32,764/- by producing forged documents. Hence, he lodged the First Information Report in question, which is registered at

Crime No. 451/2021, for the offences punishable under section 463-A, 465, 467, 468, 471, 420, 120-B, 405 and 406 of Indian Penal Code.

6. Accused persons thereafter filed anticipatory bail applications before the learned Sessions Judge, Aurangabad who has allowed the applications. The informant is therefore, seeking cancellation of anticipatory bail granted to the accused persons.

7. Heard the learned advocate for the informant, learned Additional Public Prosecutor for State and learned advocates representing the accused persons.

8. The learned advocate for the informant and learned Additional Public Prosecutor for State vehemently submitted that, it is clear that the accused persons have deceived the informant by producing fabricated documents and the allegations in the First Information Report clearly make out offence of criminal breach of trust, cheating, forgery and fabrication of documents. Taking into consideration the gravity of offences and the fact that the offences alleged against accused persons are punishable for life imprisonment, the Sessions Court erred in

granting discretionary relief in favour of accused persons. He therefore submits that the anticipatory bail granted in favour of accused persons is liable to be cancelled.

9. In support of submissions, the learned advocate for the informant relied on *Pokar Ram Vs. State of Rajasthan and Others*, (1985) 2 SCC 597, *State Rep. By the C.B.I. Vs. Anil Sharma*, (1997) 7 SCC 187, *Dr. Naresh Kumar Mangla Vs. Anita Agarwal and Others*, 2020 SCC OnLine SC 1031 and *Jaibunisha Vs. Meharban and Another*, (2022) 5 SCC 465.

10. The learned advocates for the accused on the other hand support the order passed by the Sessions Court. It is submitted that, admittedly, civil dispute is pending between the informant and the accused persons and only with a view to pressurize the accused, First Information in question is lodged against the accused persons. In support of submissions, learned advocate for Accused No. 5 relied on *Mohammed Zulfekharuddin Alinuddin Siddiqui Vs. State of Maharashtra and Ors.*, 2014 ALL MR(Cri) 2961.

11. Heard the learned advocate for the informant, learned Additional Public Prosecutor and learned advocates for accused at length. Perused the investigation papers made available by learned Additional Public Prosecutor.

12. It is a matter of record that civil dispute is going on between the informant and the accused persons. Prima facie, it appears that on the basis of partition deed executed in the year 2016, land Survey No. 98 was given to the share of accused and land Survey No. 123 is given to the share of informant. Admittedly, informant has received compensation of Rs. 1,02,29,673/- for the land acquired from Survey No. 123. It is therefore clear that after withdrawing compensation of the land fallen to the share of the informant, he has after thought lodged First Information Report alleging forgery, fabrication of documents and withdrawal of compensation by accused persons which prima facie cannot be believed.

13. The informant who is a retired Superintendent of Police cannot be believed to have signed papers without going through them. It is a matter of record that on 22.07.2020, Collector passed an award and in that proceeding Accused No. 4,

advocate, was engaged by the informant to represent him. It further appears from the record that the accused and the informant have signed the compromise on 28.07.2021 which is placed on record. The applicant has admitted his signature on the indemnity stamp and the application giving no objection for withdrawal of amount awarded to the accused persons. Son of the informant appears to have purchased said stamp paper. Along with indemnity stamp, stamp of compromise wherein terms are recorded is signed by the informant.

14. There is nothing on record to show that by forging signatures of the informant, accused persons have obtained compensation amount of land Survey No. 98. Compensation amounts are transferred in the respective accounts of the informant and the accused persons. It is therefore clear that the allegations of the informant are in respect of forgery and fabrication of documents and the said documents are presented in the office of Sub Divisional Officer, in these facts, custodial interrogation of the accused persons is not necessary.

15. Considering all these aspects, in my view, the Sessions Court was justified in exercising discretion in favour of

accused persons. The Sessions Court has passed a reasoned order which is not liable to be interfered with.

16. In *Pokar Ram* (supra), the Sessions Court had granted anticipatory bail on irrelevant or extraneous ground and High Court refused to cancel the bail. In the facts of that case the Apex Court held that, miscarriage of justice has occasioned.

This ruling is not applicable to the facts of the present case.

17. In *State Rep. By the C.B.I.* (Supra), factors to be considered in exercising discretion by the Court while granting anticipatory bail are mentioned. It is held that '*advantage in custodial interrogation of eliciting more useful information and material should be kept in view.*'

Considering the facts of the present case, this ruling does not help the case of the informant.

18. In *Dr. Naresh Kumar Mangla* (supra), it is held that, '*if the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of*

grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.'

In this ruling, it is also held,

'each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice.'

In the light of these observations and considering the facts of the present case, this ruling does not help the informant.

19. In *Jaibunisha* (supra), principles of relevant consideration for grant of bail under section 439 of Code of

Criminal Procedure, 1973, are stated. The case in hand is of grant of anticipatory bail under section 438 of Code of Criminal Procedure, 1973 and hence, this ruling is not applicable to the facts of the present case.

20. For the aforesaid reasons, no case is made out by the informant or by the prosecution for cancellation of bail granted in favour of the accused. The applications being devoid of merit are dismissed.

[NITIN B. SURYAWANSHI, J.]