

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL NO.99 OF 2021

EKNATH LAXAN KANHERE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr.Vaibhav B. Kulkarni

APP for Respondent No.1 : Mr.A.M.Phule

Advocate for Respondent No.2 : Mr.S.S.Kulkarni

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 22nd February, 2022

DATE OF PRONOUNCING ORDER : 7th June, 2022

ORDER :-

1. Present application has been filed by the original informant under Section 439(2) of the Code of Criminal procedure to challenge the order dated 8th January, 2021 passed by the learned Additional Sessions Judge, Jalna in Criminal Misc. Petition (Bail) No.1670 of 2020, granting bail under Section 438 of the Code of Criminal Procedure.

2. Heard Mr.V.B.Kulkarni, learned Advocate for the applicant, Mr.A.M.Phule, learned APP for respondent No.1-State and Mr.S.S.Kulkarni, learned Advocate for respondent No.2.

3. The learned Advocate for the applicant submitted that the impugned order is illegal and perverse. He had clearly stated in his First Information Report (FIR) that he had an occasion to take 7/12 extracts of his land in the year 2017, however, there was no mention of the name of respondent No.2 in the same. But when he took fresh copies of 7/12 extracts in the year 2020, he found entry of name of respondent No.2 in Column 7-B since 2008-2009. Therefore, according to the informant, it amounts to forgery of documents by the Revenue Authorities for which the said FIR has been lodged vide Crime No.0454 of 2020 with Badnapur Police Station, District Jalna for the offence punishable under Sections 465, 466, 467, 468, 471, 420 read with Section 34 of the Indian Penal Code (IPC). The Revenue Authorities had joined hands with respondent No.2 in commission of the said crime. The observations made by the learned Additional Sessions Judge while passing the impugned order are objectionable. Unnecessary doubt has been raised on the applicant that he has not taken the 7/12 extracts from 2017 to 2020, so also he had not taken the 7/12 extracts from 2008, 2009 to 2017. It was wrong to hold that no documents are with respondent No.2 and therefore, his custodial interrogation is not necessary. The learned Advocate for the applicant has filed written notes of arguments alongwith certain documents, which

are infact 7/12 extracts and also decision and notices in revenue proceedings. According to the applicant, custodial interrogation of respondent No.2 is necessary to unearth the allegations about forgery and therefore, the impugned order deserves to be set aside.

4. Learned Advocate for respondent No.2 supported the reasons given by the learned Additional Sessions Judge and he also relied on the affidavit-in-reply filed by respondent No.2. It was pointed out that one more application bearing Criminal Misc. (Bail) Application No.19 of 2021 under Section 439(2) of the Code of Criminal Procedure was filed by the applicant before the learned Additional Sessions Judge, who had granted the bail, stating that respondent No.2 herein had breached the terms and therefore, the said order deserves to be cancelled. However, the learned Additional Sessions Judge has rejected that application for cancellation of bail with costs of Rs.200/- on 29th June, 2021. Respondent No.2 is co-operating in the investigation and the applicant has suppressed certain facts. The applicant - informant is the husband of sister of respondent No.2. The sister of respondent No.2 got mutation of extra land in Gut Nos.16, 22, 237, 238, 242 at village Najikpangri, Tq.Badnapur, Dist.Jalna. The cultivation and possession of these lands are with respondent

No.2. Therefore, in order to protect the possession and for getting effective equal partition, he has filed R.C.S.No.25 of 2019 before the learned C.J.J.D. at Badnapur and it is pending. The informant has not even filed written statement in that matter. He filed the fabricated and false FIR. No interference is required in the order passed by the learned Additional Sessions Judge.

5. At the outset, we will have to consider that the common man cannot directly make changes in the 7/12 extracts. At the most, a person would make application to the Revenue Authorities for mutating his name. Thereafter, that will be decided by the Revenue Authorities. If we consider the FIR lodged by the applicant, he has named only respondent No.2 and the other accused persons by their designations. This shows that without much enquiry, the informant has lodged the report. The learned Additional Sessions Judge, on the basis of the contents of the FIR, has stated that the informant had taken the 7/12 extracts of the land for the first time in the year 2017. When the land is belonging to him, then the question definitely has been raised as to why prior to 2017, the 7/12 extracts were not taken by the informant. Thereafter, there is also no reason as to why in between 2017 to 2020, he had not tried to take 7/12 extracts. He says that in the year 2020 he saw the name of respondent

No.2 has been entered into 7/12 extracts since 2008-2009. It appears that he made necessary application to Tahasildar for correction of record but his application has been rejected. The tenor of the FIR, therefore, shows that whatever changes have been made in the Government record are by the concerned Officers and not by respondent No.2. At the most, it can be said that respondent No.2 gave application for effecting change. Under this circumstance, whether he can be said to be the author of the fabricated document is a question for which the learned Additional Sessions Judge was justified for arriving at a conclusion that the custodial interrogation is not necessary. Further, when respondent No.2 has stated that he has filed civil suit in the year 2019 for partition, atleast at that time, the informant could have got noticed about these changes, still he has not filed any complaint/report prior to 3rd December, 2020. The discretion under Section 438 of the Code of Criminal Procedure has been correctly applied and therefore, it does not require any kind of interference. The application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT