

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.212 OF 2021
WITH APPLN/1560/2022 IN ACB/212/2021

AMARLAL PARMANAND KHATRI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. Vivek M. Punjabi h/f.
Mr. Pratik P. Kothari
APP for Respondents No.1 to 3 / State : Mr. S. B. Narwade
Advocate for Respondent No.4 : Mr. Suraj B. Gothwal along with
Mr. Saisagar A. Ambilwade
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CORAM : S. G. MEHARE, J.

DATE : 08-09-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondents Nos. 1 to 3 / State and the learned counsel for respondent No.4.

2. The present respondent No.4 has been granted bail by the learned Additional Sessions Judge, Bhusawal, in Criminal Bail Application No. 506 of 2021 dated 16.09.2021. The serious allegations of fraud of Crores of rupees by the present respondent No.4 and other co-accused under the garb of supply of milk powder have been alleged. The complainant has a specific case that, an amount of Rs.2,75,00,000/- was transferred to Prashant

Mangurkar, a broker. There were bank entries to the effect of how the amount has been transferred from one account to the account of the firm.

3. The complainant approached under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail, mainly on the ground that the learned Sessions Court did not discuss or assigned any reason about change in circumstances as it was second bail application after rejection of first application No. 390 of 2021 by order dated 08.07.2021.

4. The learned counsel for the applicant has vehemently argued that the learned Additional Sessions Judge, Bhusawal, has committed an error on the face of the record in not recording the change in circumstances that were placed before it by the present respondent No.4. The order is apparently illegal, incorrect and perverse. He also pointed out that the learned Additional Sessions Judge has recorded similar findings in various applications filed by the present respondent No.4 and other co-accused. He would submit that the learned Additional Sessions Judge has passed mechanical order without perusing the documents and without referring the documents. There was an ample record before the learned Additional Sessions Judge for consideration while deciding the Criminal Bail Application No. 506 of 2021, dated 16.09.2021. He relied on the order of the Honourable Supreme Court in the

case of ***G. R. Ananda Babu Versus The State of Tamil Nadu and another*** reported in ***2021(1) Supreme Court 600***. Taking through the bulky charge sheet and other material, the learned counsel for the applicant would pray to cancel the bail granted in favour of respondent No. 4 by the learned Additional Sessions Judge.

5. The learned counsel for respondent No.4 has tried to argue that there was sufficient material before the learned Sessions Court to grant anticipatory bail to present respondent No.4. He has taken a stand that respondent No.4 has no concern at all with the alleged transaction. The Investigating Officer did not transpire any incriminating material against him. He has vehemently argued that it is not a case that the present respondent No.4 suppressed the fact from the learned Sessions Court about the rejection of earlier anticipatory bail application. He had tried his best to argue that after the notice under Section 41A of the Cr.P.C., ample material was available before the learned Sessions Court as there was material progress in the investigation. Therefore, merely not assigning the reason for the change in circumstance does not mean that the learned Sessions Court did not consider the material before the Court. He would also argue that consecutive bail applications are not prohibited. Therefore, the application deserves to be dismissed.

6. Perusal of the papers reveals that there was a business transaction between the complainant and all the accused. There were some written agreements and promissory notes. The learned Additional Sessions Judge recorded the findings about the legality and validity of those documents for various reasons. Its validity also needs to be reconsidered by assigning the reasons for rejecting such commercial documents. However, the material issue that has been ignored by the learned Additional Sessions Court, while allowing Criminal Bail Application No. 506 of 2021, is not assigning or giving reasons for the material issue of change in circumstances. In every subsequent bail application, the burden is on the applicant to satisfy the Court first that there is change in the circumstances and that is required to be considered for the relief sought afresh. However, in the order passed in Criminal Bail Application No. 506 of 2021, dated 16.09.2021, there is no reasoning about the change in circumstances while dealing with the second anticipatory bail application after the rejection of the first bail application. The Honourable Apex Court, in the case of **G. R. Ananda Babu** (*supra*) has clearly observed that, as a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason for the change in circumstances cannot be invoked for successive

anticipatory bail applications once it is rejected by a speaking order and that too by the same Judge.

7. The ratio laid down in the above-cited case is, in specific words, that once the anticipatory bail application is rejected on considering the case diary and other material and a speaking order is passed, the second anticipatory bail ought not to be entertained. A perusal of earlier order passed by the same Sessions Court/ Judicial Officer, in Criminal Bail Application No. 390 of 2021 dated 08.07.2021, it has been observed that the learned Judicial Officer had perused the application, case dairy, reply of the prosecution side, concerned material provisions, and then he was pleased to reject the anticipatory bail application for present respondent No.4 by the said order.

8. In view of the facts and law, the Court is of the opinion that the order dated 16.09.2021 passed by the learned Additional Sessions Judge, granting anticipatory bail to the present respondent No.4, is apparently illegal for the reason that he did not assign the reasons for the change in circumstances. On the contrary, he again reproduced the findings that he perused that application, case dairy, the reply of the prosecution side and concerned material provision of law. It seems that it is a model copy-paste order. The order granting bail to respondent No.4 herein is apparently illegal, against the provisions of law and facts.

Hence, it is liable to be set aside. However, the present respondent No.4 did not suppress the factum of rejection of the earlier bail application, so he cannot be blamed at this juncture. In the facts and circumstances of the case, the impugned order is set aside and the matter remitted back to the learned Additional Sessions Judge, Bhusawal, for considering the application afresh, on its merits, with all grounds and particularly change in the circumstances, within a month from the date of receipt of this order. Till then, the protection granted to respondent No.4, by order dated 16.09.2021, shall continue.

9. Both the parties, i.e. present applicant and respondent No.4, are directed to appear before the learned Sessions Judge, Bhusawal, District Jalgaon, on 16.09.2022.

10. In view of the aforesaid order, Criminal Application No. 1560 of 2022 stands disposed of.

(S. G. MEHARE)
JUDGE

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