

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

APPLICATION FOR CANCELLATION OF BAIL NO.78 OF 2020

ASHOK S/O. SHRAVAN PATANKAR
VERSUS
DINKAR S/O. ANANT ADAWADKAR AND ANR.

...
Advocate for Applicant : Mr.Ajay G. Talhar
Advocate for Respondent No.1 : Mr.Afzal Husain M.Vakil
APP for Respondent No.2 : Mr.V.M.Kagne
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 21st 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 5th August, 2020 passed by the learned Additional Sessions Judge, Dhule in Criminal Bail Application No.308 of 2020, thereby granting bail to respondent No.1 under Section 438 of the Code of Criminal Procedure, in connection with Crime No.79 of 2020, registered with Dhule City Police Station, for the offence punishable under Sections 463, 464, 465, 466, 467, 468, 469, 470, 471, 474, 420, 120B read with Section 34 of the Indian Penal Code (IPC).

2. Heard Mr.A.G.Talhar, learned Advocate for the applicant, Mr.Afzal Husain M.Vakil, learned Advocate for respondent No.1 and Mr.V.M.Kagne, learned APP for respondent no.2.

3. It has been submitted on behalf of the applicant - original informant that the learned Additional Sessions Judge has passed a cryptic order and had not taken into consideration the facts of the case. Some irrelevant material appears to have been considered. The approach of the learned Additional Sessions Judge is very casual and technical. The complaint was filed by the present applicant when earlier the Police had not taken cognizance and therefore, he had to approach the learned Judicial Magistrate First Class (JMFC) for direction under Section 156(3) of the Code of Criminal Procedure for the investigation. Criminal Misc. Application No.323 of 2019 was filed. It came to be allowed by the learned JMFC on 17th March, 2020 and thereupon the said offence was registered vide Crime No.79 of 2020 on 20th March, 2020. In unequivocal words in the complaint and FIR it was alleged that respondent No.1 in collusion with accused Nos.2 and 3 had created forged and fabricated documents and entered the name of one Snehal Gopal Kulkarni and others in the ownership column of the property of the Trust by the name Priyadarshini Charitable Trust. Respondent no.1 had no authority to get effected entry in the revenue records of such

a nature. It was not at all the family dispute. Infact the applicant was the Trustee of the said Trust, which came to be registered on 18th September, 1992. It was stated that the mutation has been carried out vide Mutation Entry No.7062 on the basis of Decree passed in Special Civil Suit No.53 of 2003 by the learned Civil Judge (Senior Division), Dhule on 1st August, 2018. If the said Decree is seen, then it appears that only shares have been demarcated, however, that Decree was not put to any execution. Necessary notice prior to certifying to the said mutation entry was not given to the Trust. This act would show that respondent No.1 has intention to grab the property which belongs to the Trust and that grabbing is on the basis of forged and fabricated record. The custody of respondent No.1 was necessary, however, due to the order passed under Section 438 of the Code of Criminal Procedure, the Police will not be able to investigate the matter properly. The impugned order, being illegal, deserves to be set aside.

4. Per contra, the learned Advocate representing respondent No.1 supported the reasons given by the learned Additional Sessions Judge and reiterated that in the year 2020 itself respondent No.1 was 80 years old Advocate. Now, he is 82 years old person. The investigation if at all be made would be in

respect of documents for which custodial interrogation is not necessary.

5. It will have to be observed that the learned Additional Sessions Judge, while deciding the application, has passed a rather cryptic order. The facts of the case were not narrated at all in the way they are required to be taking into consideration the allegations. The objections those were filed in writing by the present applicant have not been dealt with. Only one line is mentioned that he has filed the written objections. Thus, objections will have to be dealt with and reasons will have to be assigned for not considering those objections. Passing of cryptic order or unreasoned order is not expected from the Courts of Law. There are catena of judgments of the Hon'ble Apex Court as well as this Court reiterating that every order that should be passed by the Court of Law should be reasoned one, still such cryptic orders are being passed. Further in catena of judgments, the Hon'ble Apex Court as well as this Court has stated as to what are the factors, which required to be considered while dealing with the application under Section 438 of the Code of Criminal Procedure. The order that should be passed, should reflect that those factors should be considered in proper perspective.

6. No doubt 2 to 3 points those have been considered in one line are relevant. The copy of the Judgment in Special Civil Suit No.53 of 2003 dated 1st August, 2018 has been produced. The said matter of the said Suit was the open vacant land ad-measuring 1,05,100 sq.ft. of Survey Nos.42/2 and 44/7 situated at Shamwadi, Deopur within the Municipal limits of Dhule. In complaint that was filed by the present applicant, it is stated that 21,000 sq.ft. area from Survey Nos.42/2 + 44/7 situated at Deopur area of Dhule Taluka is the Trust property. In the same Decree, it has been held that the plaintiffs therein as well as Defendants have share in the said suit property. Priyadarshini Charitable Trust appears to be not a party to the suit, however, as aforesaid, the subject matter is the same Survey Numbers. The Property Register Card copy, however, shows that 1/9th share of the property stands in the name of applicant as Trustee of the said Trust. The area is shown as (6076.00) 2300 sq.mtrs. and the entry has been taken in respect of those plaintiffs and Defendants on 16th November, 2018 on the basis of the Decree. How the said mutation entry can be said to be forged and fabricated is a question when there is a Decree. If at all the concerned Revenue Officer has not followed proper procedure at the time of taking that mutation entry, then how it will amount to a forgery by respondent No.1 is a question which will have to be

proved by the prosecution at the time of trial. Definitely taking into consideration the documents on record, it can be said that there is a dispute regarding the immovable property between the families of the Plaintiffs and the Defendants to the suit. Even if it is accepted that the statement of the learned Additional Sessions Judge that "It appears that there was Judgment of Charity Commissioner and on the basis of that order some entries were taken in revenue record", but it appears that due to slip of mind the word Charity Commissioner would have been used when it ought to have been Civil Judge (Senior Division).

7. The facts remain that the applicant was then 80 years old man, there was a Decree by the Civil Court in respect of the same property and the dispute is pending with various authorities. Under this circumstance as well as the fact that the investigation was mainly in respect of the documents, it can be still said that inspite of the cryptic order, the learned Additional Sessions Judge has used the discretion under Section 438 of the Code of Criminal Procedure properly. There is no necessity to interfere. Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE