

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

**APPLICATION FOR CANCELLATION OF BAIL**  
**NO.79 OF 2018**

Dwarkadas Mantri Nagri Sahkari Bank  
Ltd. Beed, Through it's  
Authorised Officer  
Babasaheb S/o Radhakisan Kadam

**...APPLICANT**

**VERSUS**

- 1) The State of Maharashtra,
- 2) Pradeep Surjmal Gandhi

**...RESPONDENTS**

...  
Mr.Nilkanth P. Bangar Advocate for Applicant.  
Mr.A.M. Phule, A.P.P. for Respondent No.1 – State.  
Mr.A.N. Patil – Barhate Advocate for Respondent No.2.  
...

**CORAM: SMT. VIBHA KANKANWADI, J.**

**DATE : 3<sup>rd</sup> MARCH, 2022**

**ORDER :**

1. The applicant Bank can be said to be the informant, in a sense that it's authorized officer had lodged the First Information Report (for short "FIR") against present respondent No.2, which came to be registered vide Crime No.138 of 2018 with Shrirampur City Police Station, District-Ahmednagar for the

offence punishable under Sections 188, 452, 454 read with Section 29 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short "SARFAESI Act"). It was alleged in the FIR that respondent No.2 had made application for loan to the tune of Rs.35,00,000/- (Rupees Thirty Five Lakh) to the informant Bank. Loan was taken for the development of business, namely, "Nayan Motors", which was having dealership of Maruti vehicles. After entering into all the documents and also the mortgage deed in respect of Sai Suraj Complex building, the loan was sanctioned. However as respondent No.2 had not paid the loan amount regularly, the Bank was constrained to initiate action under SARFAESI Act. The applicant Bank has taken measures under Section 13(4) of the SARFAESI Act on 6<sup>th</sup> October 2008, which was the symbolic possession. That action was challenged by respondent No.2 before this Court by filing Writ Petition No.4696 of 2010. That Writ Petition was dismissed by this Court on the ground of alternate remedy to take up the matter with Debts Recovery Tribunal, Aurangabad. Respondent No.2 then preferred Original Application No.61 of 2011, however, Debts Recovery Tribunal, Aurangabad rejected his Application on 11<sup>th</sup> December 2013. After exhausting all the remedies, it was expected that the

accused – respondent No.2 ought to have given specific possession of the property of which symbolic possession was taken, however, since he did not do that, Application under Section 14 of the SARFAESI Act was filed before the District Magistrate, Ahmednagar by the applicant Bank. Directions were issued by the learned District Magistrate to his subordinate for taking the possession. The Sub Divisional officer, Shrirampur went at the spot on 29<sup>th</sup> September 2015 for handing over possession to the applicant Bank but due to resistance by respondent No.2, the act could not be completed. Once again the same actions were taken and then this time Tahasildar, Shrirampur received the orders and accordingly he went at the spot on 25<sup>th</sup> April 2018 for taking possession. Respondent No.2 gave undertaking that he has no objection for taking the possession of the secured assets. Accordingly the possession was taken. However, on 30<sup>th</sup> April 2018 it was found by the applicant Bank that sealed shop tenements were de-sealed by respondent No.2 by breaking open the locks and illegally entering into the said premises and therefore, the said FIR came to be lodged.

2. Respondent No.2, thereafter, filed application under Section 438 of the Code of Criminal Procedure, bearing Criminal

Misc. Application No.83 of 2018 before the learned Additional Sessions Judge, Shrirampur for grant of anticipatory bail. That application was objected by the applicant Bank. However, still, the said application came to be granted on 11<sup>th</sup> May 2018 and therefore the applicant Bank has come to this Court for cancellation of the pre-arrest bail granted to respondent No.2.

3. Heard learned Advocate for the applicant and learned APP for respondent No.1 – State and learned Advocate for respondent No.2.

4. Before turning to the other merits, how the present application proceeded, is also required to be considered. After the notice was issued to respondent No.2 in this application, he appeared through Advocate. Thereafter, when the matter was on Board on 21<sup>st</sup> January 2019 before this Court (**CORAM: V.K. JADHAV, J.**), learned Advocate for respondent No.2 made a statement that he would take instructions from his client about either handing over the possession of the property or in the alternative, to deposit the entire amount which was then outstanding towards the loan. Thereafter, the matter was adjourned from time to time and when again it was on Board on 20<sup>th</sup> March 2019, as no concrete statement was made on behalf

of respondent No.2, this Court (**CORAM: V.M. DESHPANDE, J.**) in order to give one chance to respondent No.2, directed that respondent No.2 should deposit the amount of Rs.35,00,000/- (Rupees Thirty Five Lakh), which is principal amount borrowed from the applicant Bank, within a period of four weeks from that date. It was also stated in the order that if the amount would not be deposited, then the Court would consider to pass appropriate order for cancellation of bail and also for taking the steps for obtaining possession from respondent No.2.

5. The said order dated 20<sup>th</sup> March 2019 was challenged by respondent No.2 before the Hon'ble Supreme Court in ***Petition for Special Leave to Appeal (Criminal) No.3854 of 2019***, which came to be dismissed on 2<sup>nd</sup> May 2019, thereby the order passed by this Court on 20<sup>th</sup> March 2019 was confirmed.

6. However, in the meantime, it appears that respondent No.2 had approached before the Division Bench of this Court (**CORAM: PRASANNA B. VARALE AND R.G. AVACHAT, JJ.**) in Writ Petition No.696 of 2016. The said Writ Petition came to be disposed of on 25<sup>th</sup> July 2019. When present application was again on Board on 2<sup>nd</sup> August 2019, this Court (**CORAM: V.K. JADHAV, J.**) has observed that order passed in Special Leave to

Appeal appears to have not been brought to the notice of the Division Bench of this Court, and therefore, the learned Advocate for the Bank sought time to file review application before the Division Bench. Once again a statement was made on behalf of respondent No.2 that he would take specific instructions about deposit of the decretal amount before this Court. It appears that on 14<sup>th</sup> October 2019 it was informed to this Court that Review Application filed by the Bank has been dismissed, however certain observations / directions were given by the Division Bench which were relevant.

7. Ultimately, the fact remains is that respondent No.2 has not deposited the amount as per the order passed by this Court on 20<sup>th</sup> March 2019, which was then confirmed by the Hon'ble Apex Court on 2<sup>nd</sup> May 2019.

8. In the meantime the charge-sheet came to be filed in respect of the investigation done in the crime and the case is pending before 4<sup>th</sup> Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Shrirampur bearing R.C.C. No.206 of 2018. Therefore, this Court, by order dated 18<sup>th</sup> February 2022 called upon the status of the said case and candid opinion of the learned Magistrate as to how much time the learned Magistrate

would require for the disposal of the case on merits. The report dated 25<sup>th</sup> February 2022 has been received. It appears that charge has been framed against respondent No.2 on 25<sup>th</sup> June 2019 and thereafter on 21<sup>st</sup> June 2021 summons were issued to the witnesses. It is then stated that on 14<sup>th</sup> September 2021 the original informant filed Vakalatnama on record and the witness summons issued to panch witnesses on 21<sup>st</sup> October 2021 but they failed to appear and therefore bailable warrant was issued against panch witnesses and also witness summons was issued to the informant. No doubt, due to pandemic situation the learned Magistrate might not have been able to take up the task of recording evidence due to the SOP given by this Court to the District judiciary from time to time. However, now since the situation has been improved, the learned Magistrate has given schedule as to how she would approach the case and she has stated that she would be able to deliver the Judgment, latest by 22<sup>nd</sup> April 2022.

9. Though this fact is on record, what is required to be considered is that the applicant Bank has challenged the grant of anticipatory bail to respondent No.2 by the learned Additional Sessions Judge, Shrirampur on 11<sup>th</sup> May 2018. The said order passed in Criminal Misc. Application No.83 of 2018 by the

learned Additional Sessions Judge, Shrirampur on 11<sup>th</sup> May 2018 appears to be very cryptic. Only Para-5 of the order appears to be the reasons for grant of bail, if at all the same are considered as "reasons". The learned Additional Sessions Judge had not considered that already the Bank had exhausted its civil remedy under the SARFAESI Act and the decision was in its favour. The possession was directed to be given and accordingly the attempts were made. Ultimately, the possession, though symbolic, was given to the Bank, yet the learned Judge observes that the nature of the dispute is civil. Reasons quoted in Para-5 of the order as reproduced here:

"5] Having considered the entire facts and rival submissions, it appears that the nature of dispute is civil. It is argued that the applicant is ready to abide by the conditions while granting the anticipatory bail. Considering the nature of allegations, it appears that custodial interrogation is not necessary. It is argued that the applicant is respected person of the society. He is social worker and politician. He has hopes of success in the case. If he sent behind bars, the above dispute, he will suffer irreparable loss."

10. It is to be noted that there is absolutely no discussion about what had happened in the past and how the Bank could

reach up to the stage of getting possession. Even the bail orders are required to be reasoned orders. Reliance can be placed on the decision in ***Brijmani Devi vs. Pappu Kumar and another*** (Criminal Appeal No.1633 of 2021, dated 17<sup>th</sup> December 2021) by Three-Judge Bench of the Hon'ble Supreme Court, wherein the Apex Court set aside an unreasoned and casual order of the High Court granting bail to the accused, by observing that:

“While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case. Particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a *prima facie* conclusion. While considering an application for grant of bail a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, If any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.”

12. Those observations have been reiterated by the Hon'ble Supreme Court in ***Manoj Kumar Khokhar vs. State of Rajasthan and another*** (Criminal Appeal No.36 of 2022 [Arising out of SLP (CRL.) No.4062 of 2020] dated 11<sup>th</sup> January 2022). By this Criminal Appeal, the order granting bail to the respondent -accused by the High Court was cancelled and further observations are made in Para 22 as under:-

"22. The High Court has lost sight of the aforesaid material aspects of the case and has, by a very cryptic and causal order, *de hors* coherent reasoning, granted bail to the accused. We find that the High Court was not right in allowing the application for bail filed by the respondent – accused. Hence the impugned order dated 7<sup>th</sup> May, 2020 is set aside. The appeal is allowed."

13. These observations guide this Court to hold that the order passed by the learned Additional Sessions Judge in granting anticipatory bail to respondent No.2 on 11<sup>th</sup> May 2018 is unsustainable order.

14. The affidavit-in-reply given by respondent No.2 is restricted to the fact that the decision by Debts Recovery Tribunal, Aurangabad challenged by him in Writ Petition No.696 of 2016 which is stated to be pending before this Court. He states that he had not broke open the seal and has not taken the possession of the part of the property. This appears to be contrary to the prima facie evidence in the form of Panchnama drawn by the Revenue Authorities. Further fact is that when the order was passed by this Court, though it was in the form of an opportunity to respondent No.2 to deposit the amount in a particular period and then the said order was confirmed by the Hon'ble Supreme Court, yet prima facie it appears that those facts were not brought to the notice of the Division Bench of this Court. Obviously inference can be drawn that respondent No.2 wanted to get decision in his favour. No doubt the review appears to have been rejected by the Division Bench but there are certain observations. Therefore, taking into consideration these extraordinary facts and the fact that the order passed by the learned Additional Sessions Judge was cryptic, unsustainable, it deserves to be set aside by cancelling the bail granted to respondent No.2. Hence the following order:-

**ORDER**

- i) Application stands allowed.
- ii) The order passed by the learned Additional Sessions Judge, Shrirampur in Criminal Misc. Application No.83 of 2018 dated 11<sup>th</sup> May 2018 granting bail to present respondent No.2 in Crime No.138 of 2018 registered with Shrirampur City Police Station, District-Ahmednagar, stands set aside.
- iii) Respondent No.2 is directed to surrender before the Police Inspector. Shrirampur City Police Station, Shrirampur on or before 5.00 p.m. on 11<sup>th</sup> March 2022.
- iv) If respondent No.2 fails to surrender, the Investigating Officer / Police Inspector, Shrirampur is at liberty to have appropriate legal recourse.

**[ SMT. VIBHA KANKANWADI , J. ]**