

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

APPLICATION FOR CANCELLATION OF BAIL NO.99 OF 2020

Ashok S/o Keshavrao Munde

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Arjun S/o Yadavrao Andhale,
- 3) Juneid Kalim Shaikh

...RESPONDENTS

...

Mr.R.G. Hange Advocate and Mr. A.R. Hange Advocate
for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent No.1- State.
Mr.D.K. Kulkarni Advocate for Respondent No.2 **(Absent)**.
Mr.G.R. Syed Advocate for Respondent No.3.

...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 30th MARCH 2022

DATE OF PRONOUNCING ORDER : 8th JUNE 2022

ORDER :

1. Present Application has been filed under Section 439(2) of

the Code of Criminal Procedure to challenge the order dated 18th March 2020 in Criminal Misc. Application No.120 of 2020 passed by the learned Additional Sessions Judge, Ahmednagar granting anticipatory bail under Section 438 of the Code of Criminal Procedure to respondent No.3.

2. It will not be out of place to mention here that the present applicant has been posed as an accused No.4 in the charge-sheet which has been filed before J.M.F.C. Court No.16, Ahmednagar i.e. R.C.C. No.571 of 2021 on 18th April 2021 for the offence punishable under Sections 420, 465, 468, 471, 109 read with Section 34 of the Indian Penal Code. Therefore, the question is, whether this Application itself is maintainable.

3. With the above said background, heard learned Advocate for the applicant, learned APP for the respondent No.1 – State and learned Advocate for respondent No.3.

4. Learned Advocate appearing for the applicant has submitted that it was the present applicant who had made complaint on 6th May 2019 to Chief Executive Officer, Zilla Parishad, Ahmednagar against respondent No.3. In the said complaint application, he had narrated as to how respondent

No.3 has deceived the State Exchequer. Inquiry was ordered and in the said inquiry, it was found that there is substance in the allegations made by the applicant. After receiving inquiry report, the Additional Chief Executive Officer, Zilla Parishad, Ahmednagar asked Executive Engineer, Zilla Parishad (PWD), North Division, Ahmednagar to take action and thereafter the said report came to be lodged on 16th December 2019. However, while filing the said report, the Executive Engineer was in collusion with respondent No.3 and then the informant had tried to give clean chit to respondent No.3. Kotwali Police Station did not register the First Information Report, on the basis of that report, against respondent No.3. It has been then stated that respondent No.2 filed complaint on 24th January 2020 with Kotwali Police Station alleging that respondent No.3 had deceived the State by preparing forged documents of sample test report of the material which is used for construction work and it is stated that State has been deceived to the tune of Rs.46,01,249/-. On the basis of that report, offence was registered against respondent No.3 bearing Crime No.157 of 2020. Respondent No.3 then filed the said application for anticipatory bail, which came to be allowed under Section 438 of the Code of Criminal Procedure. Learned Additional Sessions

Judge, while passing the order, relied on the report dated 16th December 2019 but failed to note that Police had not registered offence nor taken cognizance of that report. Therefore, that report ought not to have been read by the learned Additional Sessions Judge. Even the report which was filed by respondent No.2 has the result of saving the officers of the department, which is illegal. In fact, respondent No.3 had prepared forged and fabricated documents and thereby cheated the Government. Therefore, the order that has been passed by the learned Additional Sessions Judge is illegal and cryptic. Unnecessarily blame has been put on the present applicant in the said order questioning the complaint application that was filed by the applicant on the basis of which the inquiry was conducted. As regards the fact that the applicant has been posed as an accused, a photo copy across the Bar was handed over, which appear to be the communication by Chief Executive Officer, Zilla Parishad, Ahmednagar to A.S.I., Kotwali Police Station, Ahmednagar dated 11th March 2022 stating that sanction to prosecute the applicant cannot be given. Therefore, though the applicant has been posed as an accused in the charge-sheet, he has not yet been arrested and therefore, it cannot be said that

he is an accused in the case. The Application is perfectly maintainable.

5. Learned Advocate appearing for respondent No.3 objected the Application. He supported the reasons given by the learned Additional Sessions Judge while granting anticipatory bail to respondent No.3. The fact has been considered by the learned Additional Sessions Judge that the present applicant was held responsible in the said inquiry report and fine amount of Rs.85,00,000/- has been slapped. Definitely the applicant would have been aggrieved by such act and therefore in order to malign the reputation of respondent No.3, a false Application has been filed. Learned Advocate for respondent No.3 has relied on the affidavit-in-reply of respondent No.3 and it has been stated that the applicant has been convicted / held guilty in the report. In order to settle the personal score against respondent No.3, such Application has been filed.

6. At the outset, it is made clear that the background under which the Application has been filed has been already narrated and therefore, it is not reproduced. Learned Additional Sessions Judge has considered all the documents which were placed before him. Note was taken that the payment in respect of the

construction was made to the accused contractor after due scrutiny. The mechanism that is required to be adopted in institutions like Zilla Parishad is required to be considered and therefore, the word "due scrutiny" has been used by the learned Additional Sessions Judge. Present applicant was then Sectional Engineer and was having the responsibility of quality control of the work allotted to respondent No.3. The complaint application was made by the present applicant but he has not produced on record as to whether, prior to the said complaint application and before the payments were cleared, by way of any report the applicant had taken objection for the quality of the construction. It appears that the applicant had raised objection to the quality of the construction at a very later point of time. He has not intentionally produced those documents on record by which he has been held guilty by the department and fine has been slapped on him. The bills appear to have been raised and as per the procedure those have been cleared. Therefore, *prima facie* there was no such evidence before the concerned Judge to clarify as to how the cheating would have been taken place. Therefore, the learned Additional Sessions Judge was justified in exercising powers under Section 438 of the Code of Criminal Procedure.

7. It is to be noted that present applicant has been posed as accused No.4 and it is stated in the remark column that after giving him notice under Section 41-A (1) of the Code of Criminal Procedure, investigation has been carried out. Applicant having the control of the quality, yet allowed respondent No.3 to get the payments. That means, in a way he had allowed respondent No.3 to get the amount from Zilla Parishad of that construction for which he has later on objected. The objection which he has later on made, could have been raised by him earlier also, which could have avoided the payment, thereby it appears that the Investigating Officer is of the opinion that there is role for the applicant to play. Under such circumstance, an accused cannot ask for cancellation of bail of co-accused. Therefore, there is no merit in the present Application and it deserves to be rejected.

8. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]