IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.149 OF 2021

ANILKUMAR SUNIL JAISWAL
VERSUS
BHAVNA W/O. PRASHANT DHUMAL AND ANR

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Advocate for Applicant : Mr. Dhakane Rajendra B.
Advocate for Respondent No.1 : Mr. Menchirel S. N.
APP for Respondent No.2-State : Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 01.12.2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned counsel for respondent No.1 and learned APP for respondent No.2/State.

2. The applicant has filed an application under Section 439(2) of the Cr.P.C. for cancellation of bail granted to respondent No.1 by the learned Additional Sessions Judge, Court No.10, Aurangabad, in Crime No.184 of 2019, dated 29.07.2021.

3. The respondent is admittedly the wife of the owner of CTA Company, against which the complaints have been lodged for fraudulent defaults in repayment of deposit on maturity

along with benefits in the form of interest, bonus, or profit. It is not in dispute that the husband of respondent No.1 was running the said financial establishment. The financial establishment failed to repay the amount on deposit as contemplated under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short 'MPID Act'). One of the depositors also lodged the report against respondent No.1, alleging that she was the Director of the financial establishment. She is the wife of the owner of the said financial establishment. Since the crime was registered, she was arrested for the crime. She was behind bars for two days. However, the learned Additional Sessions Judge examined the facts of the case and recorded the findings that the respondent is a teacher and was holding no post in the said financial establishment. Considering the facts of the case and the concern of respondent No.1 with the Financial establishment, the learned Additional Sessions Judge was pleased to release him on bail.

4. The bail granted to respondent No.1 has been impugned on the ground that she being the wife of the owner of the establishment, is an interested person and had a concern with the fraudulent defaults made in repayment by the financial

establishment i.e. CTA company. It has also been alleged that her husband transferred an amount of Rs.4,00,000/- and an odd to her bank account from the said Financial establishment. That proves her nexus with the crime. It has also been a ground raised that respondent No.1 is the beneficiary of the depositors' money. The learned Additional Sessions Judge ignored this material aspect and granted bail in breach and violation of the settled principle of law granting or rejecting the bail.

5. Learned counsel for the applicant has vehemently argued that since respondent No.1 is the wife of the main accused, she is the beneficiary and interested. The money transferred to her bank account is the direct evidence against her to prove the nexus with the fraudulent defaults. He read Section 3 of the MPID Act and tried to convince this Court that the term 'any other person' contemplated in the said Section, includes the wife of the owner of the financial establishment. He has vehemently argued that the offence is serious. The financial establishment has siphoned a huge amount. Hence, the bail granted to her is liable to be cancelled.

6. Per contra, the learned counsel for respondent No.1 has vehemently argued that respondent No.1 is barely the wife of the person in whose name the financial establishment was registered. There are no specific allegations levelled against her that she was the Director or the person responsible for the business of the said financial establishment. The prosecution has no *prima facie* material against her to prove her nexus with the business and the management of the financial establishment. She has been made a scapegoat, only being the wife of the person in whose name the company was registered. She was never part of the management, business or affairs of the financial establishment. Transferring money from a financial institution by a husband to a wife's bank account is surely not sufficient to believe that she was part of the financial establishment. The learned Additional Sessions Judge has appropriately considered the facts of the case. The order is neither arbitrary nor perverse. The depositor has filed the present application with an ill motive to pressure her husband to extract the money. There is no substance in the application. Hence, it is liable to be dismissed with heavy costs.

7. Section 3 of the MPID Act pertains to the punishment for fraudulent defaults made by any financial establishment in

repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised for failing fraudulently to render service as assured against the deposit. It has also been provided in the said Section who shall be responsible for such fraudulent defaults. It has been provided that every person including the Promoter, Partner, Director or Manager or any other person or an employee responsible for the management of or conducting of business or affair of such financial establishment shall be responsible for the fraudulent defaults in repayment of the deposits. In the case at hand, it has been alleged against respondent No.1 that she was the Director of the company run by her husband. However, the prosecution has no document or material to satisfy the Court that she was the Director, Promoter, Partner, Manager or employee responsible for the management or the conduct of the business or affair of the financial institution. It has been established that she had no concern with the said financial establishment. She was only the wife of the person who had registered the financial institution. It is strange that without any material, the Investigating Officer arrested her, and she had to face the investigation and remain behind the bar till the Court released her. It also appears that, in this case, the approach of the Investigating Officer was very casual.

Without making a *prima facie* inquiry about the connection of respondent No.1 with the financial establishment, the Investigating Officer directly arrested her and sent her behind the bar. Sending the money by a husband to the account of a wife may not be sufficient material to believe that she had a concern with the financial establishment. It has been established that she was a teacher and had no connection or relation with the financial establishment against which the allegations of fraudulent defaults in repayment of deposits have been levelled.

8. The Law is well settled that there must be overwhelming circumstances for cancellation of bail. The Hon'ble Supreme Court in the case of ***Dolat Ram and others Vs. State of Haryana (1995) 1 SCC 349*** held that rejection of bail in a non-bailable case at the initial stage, and the cancellation of bail already granted have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse or the concession

granted to the accused in any manner. The Hon'ble Supreme Court has clarified that these instances are merely illustrative and not exhaustive, and one such ground for cancellation of bail would be where ignoring the material or evidence on record, a perverse order granting bail is passed in a heinous crime that too without giving any reasons. Such an order would be against the principle of law. The interest of justice would also require that such an order be set aside and bail be cancelled. In other words, it may be stated that the order granting bail without considering the material on record, perverse and arbitrary, may be cancelled.

9. The Hon'ble Apex Court in ***Dolat Ram*** (cited supra) has clarified the law and the principle to be borne in mind, considering the applications for cancellation of bail which has been granted to the accused. The Court has gone through the order granting bail and found that it has not ignored material evidence on record. Neither the order granting bail is arbitrary nor perverse. The order granting bail is reasoned. There are no grounds for cancellation of bail. The application is devoid of merit.

10. Hence, the application for cancellation of bail stands dismissed.

(S. G. MEHARE, J.)

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