IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.156 OF 2021

Aqsa d/o Anwar Rajkotwala … Applicant

Versus

1. Arif Iqbal Rajkotwala
2. Saira Habib Rajkotwala
3. The State of Maharashtra … Respondents

…

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.189 OF 2021

Aqsa d/o Anwar Rajkotwala … Applicant

Versus

1. Habib Ismail Rajkotwala
2. The State of Maharashtra … Respondents

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Mr. N. B. Narwade, Advocate for applicant in both the applications.
Talekar and Associates for respondent Nos.1 and 2 in ACB/156/2021 and for respondent No.1 in ACB/189/2021.
Mr. A. M. Phule, APP for the respondents – State in both the applications.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09.03.2022

ORDER :-

. Both the applications have been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent Nos.1 and 2 in ACB No.156/2021 and respondent No.1 in ACB/189/2021 by learned Additional Sessions Judge, Ahmednagar on 15.07.2021 and 13.10.2021 respectively. Both the applications came to be allowed, which were filed under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. B. Narwade for the applicant in both the applications, Talekar and Associates for respondent Nos.1 and 2 in ACB No.156/2021 and for respondent No.1 in ACB No.189/2021 and Mr. A. M. Phule for respondents – State in both the applications.

3. Learned Advocate for the applicant – informant after giving the entire story in the FIR submitted that the FIR as well as the investigation carried out would demonstrate how the accused persons had cheated by conspiring with each other and then misappropriated the property by preparing forged documents and also causing grievous hurt by abusing and insulting the informant. Perusal of the order passed by the learned Additional Sessions Judge in Criminal Miscellaneous Application No.912 of 2021 dated 15.07.2021 would reveal that he had not taken into consideration the allegations about the criminal breach of trust committed by respondent Nos.1 and 2. The informant and her sisters were cheated by selling out the landed property in Survey

No.38/1/A/3/2/1B (Old Survey No.34) to one Mohammad Mubin Mohammad Ibrahim Mulla and others for an amount of Rs.1,58,00,000/-. Further, the documentary evidence as well as other investigation would reveal that after the demise of the father of the informant, name of accused Aqsa and Amira were not recorded though they were having share in the property. The said property was sold for an amount of Rs.20,00,000/- from the account of one Afrin and Afsa and further amount of Rs.5,00,000/- was taken by respondent No.1 on 14.08.2013 from the account of Afrin. This withdrawal cannot be said to have been authorized by those persons and no account of that amount has been given at all. The gift deed on which the accused persons are relying can be seen to have been executed only for two sisters i.e. Afrin and Afsa. The mutation entries have been cancelled by the District Superintendent of Land Records, Ahmednagar and the name of the informant and her three sisters have been recorded. This has been done now. It indicates that the accused persons had the plan to cheat the informant and her sisters with the help of forged documents. When the documents were very much clear then the seriousness of the offence ought to have been considered and when there is evidence, the discretionary relief ought not to have been granted.

4. Per contra, the learned Advocate appearing for respondent Nos.1 and 2 in ACB No.156/2021 and respondent No.1 in ACB No.189/2021 supported the reasons given by the learned Additional Sessions Judge and also relied on the affidavit in reply filed by the respective respondents.

5. At the outset, it is to be noted from the contents of the FIR that the occurrence of the offence is stated to have been since 01.01.2009 to 19.03.2021. The informant Aqsa Anwar Rajkotwala has given her age as 22 years when she lodged the report. She would have attended the majority four years earlier to the date of the FIR i.e. 28.03.2021, still she was taken at-least four years to lodge the report. In other words, there is clear delay of four years in lodging the report, though it appears that she was having every knowledge about the transaction. Since she was minor prior to that she might not have lodged the report but at-least after becoming major, she could have lodged the report. Therefore, there is clear delay in lodging the report. Further, she states about cheating of her elder sisters also, but the age of elder sisters is not before this Court at this stage. Why they could not have lodged the report is also a question. The applicant appears to have lodged the FIR as a result of the order passed by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. It is alleged that when her

parents died, she as well as her sister Amira were minor, but their two sisters Afrin and Aqsa were major. Their paternal uncle who is accused No.1 had taken the responsibility of the upbringing of the daughters. It is then stated that he along with co-accused took disadvantage of the minority of the informant and disposed of the immovable property by way of gift deed and sale-deed. It is sufficient to indicate that in fact the remedy appears to be before the Civil Court. Even if for the sake of argument we take that certain forged documents have been created, but it is to be noted that there is considerable delay in lodging the report. Even the elder sisters of the informant, who are then married, have not challenged the acts. It can be seen that accused No.2 – Rehan Habib Rajkotwala i.e. the cousin brother of the informant came to be arrested on 15.06.2021 and it appears that investigation has been carried out by taking him in custody. The main allegations appear to be against accused Nos.1 and 3, however, respondent No.2 in ACB No.156/2021 is the accused No.3, but her role in respect of preparation of forged documents has not been stated. The learned Additional Sessions Judge was right in coming to the conclusion that the custodial interrogation of the applicants is not required. Further, it is to be noted that now the investigation is over and charge-sheet has been filed. The investigating officer never made any application to the concerned judge explaining as to whether there is any hurdle in carrying out investigation. In each and every case arrest is not necessary. The investigation in this case was depended on the documents, its revelation as to whether it is genuine or fake and that has been done. Therefore, there is no question of setting aside the impugned orders. Both the applications stand rejected.

[SMT. VIBHA KANKANWADI, J.]

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