

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 182 OF 2021

Sayyed Jamaluddin Gaffar,
Age 31 years, Occu. Business,
R/o. H. No. 542/2, Pandharpur,
Tq. And Dist. Aurangabad.

.. Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Vedantnagar Police Station,
Aurangabad, Dist. Aurangabad.

2. Mohammad Rukhsana w/o. Mohammad Hinif
Age 55 years, Occu. Household,
R/o. A-5, Quadri Manjil
L.B.S. Road, Near Shital Cinema,
Kurla (W), Mumbai

3. Mohammad Rafik s/o. Mohammad Hinif,
Age 36 years, Occu. Business,
R/o. A-5, Quadri Manjil,
L.B.S. Road, Near Shital Cinema,
Kurla (W), Mumbai.

.. Respondents

Mr. Farooqui Mohammed Suhail, Advocate for Applicant;
Mr. V. M. Kagne, APP for Respondent No.1/State;
Respondents No. 2 and 3 served.

CORAM : S. G. MEHARE, J.

Date of reserving the order : 12-09-2022

Date of pronouncing the order : 22-09-2022

ORDER :-

1. The complainant approached this Court under Section 439(2)
for cancellation of anticipatory bail granted to respondents No. 2

and 3 by the learned Additional Sessions Judge, Aurangabad, vide order dated 06.10.2021 in Bail Application No. 1604 of 2021.

2. The applicant seeks cancellation of pre-arrest bail on the grounds that the learned Additional Sessions Judge did not consider the gravity, seriousness, and nature of the offence. The stage of investigation has also not been considered. The say of the prosecution and the evidence collected by the Investigation Officer was also not considered in proper context. The bail was granted arbitrarily, exercising the powers vested with the Court. The Additional Sessions Judge did not consider the aspect of recovery of the documents from the accused.

3. A crime has been registered against respondents No. 2 and 3 for the offence punishable under Sections 406 and 420, read with Section 34 of the Indian Penal Code.

4. The applicant has lodged the report against respondents Nos. 2 and 3, alleging that the present applicant paid Rs.35,50,000/- to the accused in advance to purchase the lands situated at village Waluj (Budruk). He agreed to purchase the land of respondents Nos. 2 and 3 for Rs.2,00,20,000/-. The present applicant again paid Rs.14,50,000/- to respondents No. 2 and 3 in 2017. Respondents No. 2 and 3 told him that as he was purchasing their land, he should pay them the scrap instead of money. Hence, he gave him a scrap worth Rs.78,00,000/-. In such

a way, he has paid them Rs.1,28,00,000/-. Thereafter, the father of respondents No. 2 and 3 died in 2018. The applicant asked them what to do about the transaction of the field. Respondents Nos. 2 and 3 told him that they were ready to continue with the agreement of selling the land their father executed. Therefore, a registered agreement for the sale of the land was executed on 24.10.2019. It was specifically mentioned in the agreement to sell that the amount of Rs.1,28,00,000/- had been received. The possession of the land was also delivered to the applicant. However, without his knowledge, respondents No. 2 and 3 sold the said land to another person. Hence, respondents No.2 and 3 have cheated him.

5. Heard Mr. S. M. Farooqui, the learned counsel for the applicant and Mr. V. M. Kagne, the learned A.P.P. for the respondent/State, at length.

6. Respondents No. 2 and 3 were served, but they preferred not to appear. Hence, in their absence, the case is heard.

7. The learned counsel for the applicant has vehemently argued that respondents Nos. 2 and 3 have no respect and regard to the notice of this Court. The crime registered against them is serious and grievous. They were not cooperating with the Investigating Officer after granting anticipatory bail. The learned Additional Sessions Judge did not consider the settled principles of

granting anticipatory bail and the material produced by the Investigating Officer. The learned Additional Sessions Judge also did not consider that the custodial interrogation of respondents No. 2 and 3 was essential to seize the documents bearing their natural signatures and for a thorough investigation of the crime. Respondents No.2 and 3 have secured a vague certificate from the Village Panchayat, Pandharpur, though neither they are residents of village Pandharpur nor they have the property within the jurisdiction of Village Panchayat, Pandharpur. To bolster his argument, the learned counsel for the applicant relied on the following case laws:-

- (i) Sudhir Versus the State of Maharashtra and another (Criminal Appeal Nos. 1286-1287 of 2015), wherein other criminal appeals in Criminal Appeal No. 1286-1287 of 2015 (Arising out of S.L.P. (Crl.) Nos. 1753-1754 of 2015 decided by the Honourable Supreme Court on 1st October 2015);
- (ii) State through C.B.I. Versus Amarmani Tripathi, Appeal (Cri) No.1248 of 2005 decided by the Honourable Supreme Court on 26th September 2005;
- (iii) Dr. Tirupati Panigrahi Versus State of Orissa, BLAPL No.16100 of 2013, decided by the High Court of Orissa, on 30th July 2013; and,
- (iv) Hemal Kishanbhai Parmar Versus State of Gujrat at Ahmedabad, R/Criminal Misc. Application No. 2931 of 2020 decided by the Gujrat High Court on 19th March 2020.

Relying upon these cases, he has vehemently argued that the principle of granting anticipatory bail has been ignored by the learned Additional Sessions Judge while granting bail to respondents No. 2 and 3.

8. The Honourable Apex Court, in the case of ***Sudhir*** (*supra*), in paragraph no. 12, has referred to the case of ***Bhadresh Bipinbhai Sheth Versus State of Gujarat and another, 2015(9) SCALE 403***. In sub paras (vi) and (ix) of paragraph no. 23 of the said case, it has been observed as under:-

“(vi) It is a settled legal position that the Court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant on finding new material or circumstances at any point of time.

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(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with legislative intention, grant or refusal of anticipatory bail should necessarily depend upon the facts and circumstances of each case.”

9. It is clear from the above observations that the Court granting anticipatory bail should consider the facts and circumstances of each case.

10. The Hon'ble Supreme Court, in the case of ***Dolat Ram and others Vs. State of Haryana, 1995 (1) SCC 349***, has 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 the 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 of the concession granted to the accused in any manner. It was, however, clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on recording a perverse order granting bail is passed in the heinous crime and that too without giving any reasons. Such an order would be against the principles of law. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. The Honourable Supreme Court, in the case of ***Gurcharan Singh and others Vs. State (Delhi Administration), A.I.R.***

1978 SC 179, observed that if, however, a Court of Sessions had admitted an accused person to bail, the State has two options; it may move the Sessions Judge, if certain new circumstances have arisen which were not earlier known to the State. When, however, the State is aggrieved by the order of the Sessions Judge granting bail, and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again, and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Sessions *vis-a-vis* the High Court.

12. The ratio laid down by the Honourable Apex Court in the case of **Gurcharan Singh** (*supra*) indicates that the person aggrieved by granting anticipatory bail to the accused may approach the High Court under Section 439(2) of the Cr.P.C. where the learned Sessions Court passed perverse order; that too, ignoring the material and evidence on record.

13. Bearing in mind the above principle of cancelling bail, the Court now proceed to consider the case of the applicant.

14. The burden is on the applicant to prove that the order granting anticipatory bail impugned before this Court is perverse and that too, ignoring the material and evidence on record.

15. The learned APP and the counsel for the applicant/informant argued on the same lines.

16. The learned Additional Sessions Judge has considered the case laws relied upon by the complainant and the documents available on record. The learned Additional Sessions Judge has observed that the notarized agreement to sell was placed on record. The first informant/complainant has filed a civil suit bearing Special Civil Suit No. 35 of 2021 against respondents No.2 and 3 on the basis of the agreement to sell, along with an application for grant of temporary injunction restraining respondents No. 2 and 3 from obstructing and interfering with the peaceful possession of the complainant. The crux of the complaint/F.I.R. is that the applicants have committed a breach of the agreement to sell executed in favour of the complainant, for which he has already approached the Civil Court. The nature of the dispute is primarily of civil nature. Obtaining a certificate from the Sarpanch of Gramapanchayat, instead of applying to a Civil Court of the competent jurisdiction, is not sufficient to deny anticipatory bail in the particular facts and circumstances. Considering the facts and circumstances of the case, custodial interrogation of respondents No.2 and 3 was not necessary. With these observations, anticipatory bail was granted.

17. In the case of **Sudheer** (*supra*), the Honourable Apex Court, based on the facts of the case, has confirmed the order of the High Court of Bombay, cancelling the anticipatory bail. The remaining case laws relied on by the applicants pertain to the principle of granting anticipatory bail. The case laws relied on by the applicant are distinguishable on the facts, therefore, not helpful to the present applicant.

18. Considering the ratio laid down by the Honourable Apex Court in the case of **Gurcharan Singh** and **Dolat Ram** (*supra*) and the facts of the case, the Court is of the view that the applicant could not satisfy the Court that the order granting anticipatory bail is perverse and arbitrary. Hence, the application stands dismissed. No order as to the costs.

(**S. G. MEHARE**)
JUDGE

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