

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.201 OF 2021

SATISH S/O BABURAO HIWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Applicant : Mr. R. M. Deshmukh
APP for Respondents No.1 to 3-State : Mr. A. M. Phule
Advocate for Respondents No.4 & 5 : Mr. S. J. Salunke

.....

**WITH
APPLICATION FOR CANCELLATION OF BAIL NO.130 OF 2021**

SATISH BABURAO HIWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Applicant : Mr. R. M. Deshmukh
APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondents No.2 to 7 : Mr. S. J. Salunke

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
26-02-2022**

**Date of Pronouncing The Order :
09-06-2022**

ORDER :

1. Both the applications have been filed by the informant to challenge the order of bail granted to respondents No.4 and 5 in Criminal Bail Application No.692 of 2021 dated 20-09-2021 by learned

Additional Sessions Judge-1, Jalna, and bail granted by learned Additional Sessions Judge-5, Jalna to respondents No.2 to 7 in Criminal Bail Application No.361 of 2021, No.637 of 2021, No.638 of 2021 and No.643 of 2021, in connection with Crime No.113 of 2021 dated 08-06-2021, registered with Police Station Jafrabad, District Jalna, for the offence punishable under Section 166, 167, 193, 406, 409, 420, 434, 464, 468, 471, 474 r.w.34 of IPC.

2. Heard learned Advocate Mr. R. M. Deshmukh for applicant, learned APP Mr. A. M. Phule for respondent-State, and learned Advocate Mr. S. J. Salunke for respondents No.4 and 5 in ACB No.201 of 2021 and respondents No.2 to 7 in ACB No.130 of 2021.

3. It has been vehemently submitted on behalf of the informant that the learned Additional Sessions Judge erred in observing that the role of the applicants i.e. present respondents No.4 and 5 in ACB No.201 of 2021 is similar to the role alleged to the Talathi and Circle Officer to whom already anticipatory bail has been granted. Ground of parity has been wrongly applied. Preparing false entries cannot be done as a part of official duty. A government officer has to be honest and should discharge his duties as per the law and rules. Merely because those persons are government servants and there is

no question of their fleeing away, cannot be the ground to grant them anticipatory bail. The learned Additional Sessions Judge failed to consider that the offence has been committed in a designed manner and the mutation has been effected in respect of one Sunil Damu Hiwale and others. About 2 H 28 R land has been shown to be transferred in their names, and thereafter, they have raised either loan or disposed of the property. The respondents No.2 to 4 in ACB No.130 of 2021 were the then revenue officers who had taken part in the crime and respondents No.5 to 7 are those persons in whose name the land has been thereafter mutated. When such huge fraud has taken place, the bail ought not to have been granted to the respondents.

4. The learned Advocate appearing for the applicant has relied on *Nathu Singh Vs. State of Uttar Pradesh*, reported in (2021) 6 Supreme Court Cases 64, on the point as to what are the considerations for considering an application under Section 438 of Cr.P.C.

He further relied on *Kirender Sarkar and Others Vs. State of Assam*, reported in (2009) 12 Supreme Court Cases 342, wherein it was held that, "the FIR is not supposed to be an encyclopaedia of

the entire events and non-naming of one of few of the accused persons cannot amount to disbelieving the informant.”

Further reliance has been placed on *Jai Prakash Singh Vs. The State of Bihar and Anr.Etc., Criminal Appeal No.525-526 of 2012 (Arising Out of SLP (Cri.) Nos.304-305 of 2012)*, on the point of considerations of for the application under Section 438 of Cr.P.C.

Further, in *Sudhir Vs. The State of Maharashtra and another, Criminal Appeal Nos.1286-1287 of 2015 and other matters (Arising out of SLP (Cri.) Nos.1753-54 of 2015)*, it has been held that, “the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon.”

Further reliance has been placed on *Centrum Financial Services Limited Vs. State of NCT of Delhi and Anr., (Criminal Appeal No.94 of 2022, decided on 28 January 2022)*, wherein it has been held that, “the Court should be slow in grant of bail in

economic offence,” and also reiterated the requirements for cancellation of bail explained in *Mahipal Vs. Rajesh Kumar alias Polia and Another*, (2020) 2 SCC 118.

Further reliance has been placed on *Shambhoo Nath Misra Vs. State of U.P. and Ors.*, reported in AIR 1997 SC 2102, wherein it has been held that, “it is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duty, and therefore there is no need to obtain sanction under Section 197 (1) of Cr.P.C.” Similar view was taken in *Punjab State Warehousing Corporation Vs. Bhushan Chander and Ors.*, reported in 2016 (2) ACR 2288 and in *Om Prakash and Others Vs. State of Jharkhand*, reported in (2012) 2 SCC 72.

5. The learned Advocate appearing for the respondents in both the cases has supported the reasons given by the learned Additional Sessions Judge while granting anticipatory bail. He pointed out that as per the informant himself the occurrence of offence is from 01-08-2004 and it is stated that it was till 06-05-2021. It is hard to believe that the person in possession of the land would keep quiet for such a long period. There is inordinate delay in lodging the FIR.

The mutation entries had taken place long back and they were never challenged within limitation. The nature of the dispute was civil and civil litigation was going on between the various family members. In spite of that, if the FIR could be lodged only on 22-05-2021, then there ought to have been some cogent explanation for the same. The learned Advocate for the respondent relied on *Bhagirathsinh Judeja Vs. State of Gujrat*, reported in AIR 1987 SC 372, wherein it has been held that, "very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail." Similar view was taken in *Dolat Ram Vs. State of Haryana*, reported in AIR Online 1994 SC 368.

Further reliance has been placed on the *State of Maharashtra Vs. Abdulkha @ Babajani*, Criminal W.P.No.1490 of 2015, dated 16-07-2016, wherein it was observed that, "after submission of charge-sheet, question of unjustified, perverse or illegal order becomes an academic question."

Further reliance has also been placed on *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, reported in (2011) 1 Supreme Court Cases 694, to demonstrate as to what are the considerations those are required to be considered while dealing with an application under Section 438 of Cr.P.C.

6. At the outset, it is to be noted that the FIR has been lodged by the present applicant on 22-05-2021 and the occurrence of offence is stated to be between 01-08-2004 to 06-05-2021. The learned Advocate Mr. S. J. Salunke has rightly questioned the inordinate delay. The informant has given as to how the events had taken place after 1970 after death of his grandfather Santuji Punaji Hiwale. Even after so many events that had taken place about execution of gift deed, sale deeds, yet how neither informant nor the concern persons had noted any such fabrication of the mutation entries, is a question. Further, in the FIR itself it is stated that a complaint application was filed in the year 2015 with Tahsil Office, Jafrabad, however, cognizance of the same was not taken by the Talathi and Circle Officer. Circle Officer then deleted name of the mother of the informant in the year 2017 for which also the mother of the informant had lodged the complaint application with the said office on 15-05-2017 and then it is stated that area was collected by Talathi. But then again he says that after death of his father, certain other events had taken place, civil suit came to be filed in the year 2002. It came to be decided on 12-07-2004. The decree was required to be effected by the revenue authorities but it would be

the job of the Decree Holder to get it executed. In the nut shell it can be said that the events were happening periodically and the informant was having knowledge about the some shortcomings or something that was happening in the revenue department, yet he has kept quiet and now he has come with a case that all those persons have committed offence in respect of the government record and also cheated him.

7. Taking into consideration the facts of the case by a detailed common order, the bail application of the respondents No.2 to 7 in ACB No.130 of 2021 came to be allowed by the learned Additional Sessions Judge-5, Jalna on 08-06-2021, and thereafter, it appears that the informant had filed Criminal Writ petition No.757 of 2021 before this Court. In that writ petition he had challenged the order granting anticipatory bail to other accused and it came to be disposed of by this Court when statement was made that the investigation of the crime has been handed over to the Economic Offence Wing, Jalna. It was noted by the learned Additional Sessions Judge-1, Jalna while deciding the bail application of the respondents in ACB No.201 of 2021 that the anticipatory bail granted to the respondents No.2 to 4 in ACB No.130 of 2021 has not

been cancelled and the role of these respondents were same. That application was also granted on 20-09-2021. There is absolutely no error or illegality committed by both the learned Additional Sessions Judges.

8. The ratio laid down in the decisions cited by the learned Advocate for the applicant cannot be disputed. Rather it can be said that by considering the ratio laid down in those authorities and the impugned orders in these applications have been passed by the learned Additional Sessions Judges. Therefore, no case is made out to use extraordinary exceptional power under Section 439 (2) of Cr.P.C. to cancel the bail granted to the respective respondents. Hence, applications stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.