

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

APPLICATION FOR CANCELLATION OF BAIL NO.220 OF 2021

Badal S/o Bandu Kamble

...APPLICANT

VERSUS

- 1) Shri Nagnath S/o Sadanand Mahajan,
- 2) The State of Maharashtra

...RESPONDENTS

...
Mr.Shirish M. Kamble Advocate for Applicant.
Mr.Aashish T. Jadhavar Advocate for Respondent No.1.
Mr.V.M. Kagne, A.P.P. for Respondent No.2 - State.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 7th MARCH, 2022

ORDER :

1. Present Application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of pre-arrest bail granted by the learned Additional Sessions Judge, Parbhani in Criminal Misc. Application (Bail) No.874 of 2021 on 26th November 2021 in favour of respondent No.1.

2. Heard learned Advocate Mr. Kamble for the applicant, learned Advocate Mr. Jadhavar for respondent No.1 and learned APP Mr. Kagne for respondent No.2 – State.

3. Present applicant – informant had lodged the said report vide Crime No.441 of 2021 with Nava Mondha Police Station, Parbhani, District-Parbhani for the offence punishable under Sections 7, 12 of the Prevention of Corruption Act. It is not in dispute that present respondent No.1 is employed in R.T.O. Office. In the First Information Report, the informant states that his complaint was heard by Superintendent of Police, Anti Corruption Bureau, Nanded on phone on 17th November 2021 and then he was told that Deputy Superintendent of Police, Mr. Rajendra Patil of Anti Corruption Bureau, Nanded would be sent to Parbhani. Accordingly, even Mr. Rajendra Patil heard the complaint of informant on phone and then he and his team reached near Parbhani around 2.00 p.m. Informant met them there. Two panchas were already accompanying the Police. Again the complaint of the informant was heard by all of them personally and it was told to them by the informant that he is having a business of transportation. He takes ash from thermal station, Parali Vaijnath and supplies it to those persons who

prepare bricks from the same. He is the owner of two Hyva Trucks and respondent No.1 was asking an amount of Rs.3,000/- per Hyva Truck as hafta. Thereafter, the pre-trap panchnama was arranged and the informant and Panch No.1 were asked to meet respondent No.1 in R.T.O. office, Parbhani. It has been mentioned in the First Information Report itself that informant disclosed his name as Badal Kamble and told that he is owner of two vehicles. Respondent No.1 then asked the Panch to go outside and then told to informant that he should meet one Anis. Thereafter, informant went to meet Anis who told that respondent No.1 has asked bribe of Rs.6000/- i.e. Rs.3,000/- per Hyva Truck and informant told that he would pay the same. Thereafter, arrangement was made for the trap and it was then successful. Amount of Rs.6,000/- was paid to said Anis and he was arrested at the spot by the raiding party.

4. Respondent No.1 had filed an application under Section 438 of the Code of Criminal Procedure and the learned Additional Sessions Judge / Special Judge, Parbhani allowed the said application on 26th November 2021. The applicant – informant now want cancellation of this order on the ground that the learned Additional Sessions Judge has not considered all the

facts and circumstances properly. Seriousness of the offence has not been considered and when the trap was successful and the said person by name Anis was caught red handed while accepting the bribe amount for respondent No.1, then the discretionary powers under Section 438 of the Code of Criminal Procedure ought not to have been exercised in favour of such person.

5. At the outset it is to be noted that the informant has not given details as to when any earlier demand was made, with specific date. Though he has stated that on 17th November 2021 he disclosed the complaint to Superintendent of Police as well as Deputy Superintendent of Police, Anti Corruption Bureau, Nanded, as well as before the two Panchas, yet he has not disclosed as to when exactly the demand was earlier made to him. If that demand would have been made to him personally, then after he had allegedly met respondent No.1 with Panch No.1, on the said date informant would not have disclosed his identity. Even if we consider the facts as alleged, respondent No.1 has not accepted the tainted amount but according to the informant himself, on the say of respondent No.1, co-accused Anis was given the tainted amount and he has accepted the

same. Nothing was required to be recovered from respondent No.1. Learned Additional Sessions Judge has taken care of the fact that the voice sample of the accused i.e. respondent No.1 will have to be taken and therefore attendance was then granted. By the act of releasing respondent No.1 – accused on anticipatory bail, the investigation has not hampered. The Investigating Officer has not filed any application stating that there is any hurdle in his investigation. Under such circumstance, merely the informant wants, who is now interested in seeing respondent No.1 behind the bar or arrested, he cannot seek cancellation of the bail granted by competent Court to respondent No.1.

6. Accordingly, for the reasons above-stated, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]