

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

APPLICATION FOR CANCELLATION OF BAIL NO.224 OF 2021

SANTOSH SHAHAJI RAKSHE

VERSUS

KUNDLIK DADABHAU PAWAR AND OTHERS

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Mr. N.B. Narwade, Advocate for the applicant

Mr. R.R. Karpe, Advocate for respondent Nos.1 and 2

Mr. N.T. Bhagat, APP for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 01st FEBRUARY, 2022

PRONOUNCED ON : 26th FEBRUARY, 2022

ORDER :

1 Present application has been filed for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, 1973, granted to the respondent Nos.1 and 2 by learned Additional Sessions Judge, Shrigonda, in Criminal Miscellaneous Application No.761/2021 on 16.12.2021, which was granted under Section 438 of the Code of Criminal Procedure.

2 Heard learned Advocate Mr. N.B. Narwade for the applicant,

learned Advocate Mr. R.R. Karpe for respondent Nos.1 and 2 and learned APP Mr. N.T. Bhagat for the respondent No.3.

3 The applicant is the original informant, who had lodged the First Information Report vide Crime No.453/2021 dated 08.11.2021 registered with Belwandi Police Station, Dist. Ahmednagar, for the offence punishable under Section 379 of the Indian Penal Code, 1860. The informant is in the business of hotel as well as the petrol. His petrol pump is situated on Pune-Nagar road. He states that his family is having enmity with one Kundlik Dadabhau Pawar since last many years. He could not know that on 08.11.2021 said Kundlik Pawar i.e. present respondent No.1 was following the informant, but then after the informant collected the amount from the sale of petrol and diesel from his petrol pump amounting to Rs.1,70,000/-, he along with his Manager Akshay Walunj were proceeding in his Toyota Fortuner car around 3.30 p.m.. Akshay Walunj was occupying the seat beside driver and the informant himself was driving the vehicle. It is stated that the bag was kept on the dash board of the car and the glass of the window by the side of Akshay was open. When they were near the bridge going towards Shirur, there was heavy traffic and, therefore, informant stopped his car. At that time, five persons came on two motorcycles. Two persons occupying the first motorcycle stopped the motorcycle near his car and by putting hand

from the window, which was open, they took away the bag containing cash. Those two persons had not covered their face and, therefore, he could identify them as Kundlik Pawar and Dilip Jambhalkar. The persons on the other motorcycle had covered their faces and, therefore, he would not be able to identify them. The report came to be lodged around 21.17 hours and the information of the same was received to the same Police Station at 20.59 hours.

4 In the order the learned Additional Sessions Judge has observed that the story narrated in the First Information Report appears to be improbable, there is delay of approximate six hours to create the doubt about the genuineness of the First Information Report. As regards the criminal antecedents are concerned, it is stated that two criminal cases against them were disposed of prior to more than four years and the pendency of cases under Section 101 of Maharashtra Co-operative Societies Act cannot be taken as criminal antecedents and, therefore, the interim protection that was granted against the respondent Nos.1 and 2 was confirmed on 16.12.2021, which is the order under challenge, in this application. No doubt, the learned Advocate for the applicant-informant submits that the learned Additional Sessions Judge ought not to have come to the conclusion that the story itself is improbable, when the matter was at very preliminary stage. It is also

stated that the fact can be revealed from the CCTV footage of the Bank that the person was following the informant. In fact, on that day the applicant had deposited the cash twice or thrice in the Bank. The CCTV footage ought to have been called by the learned Additional Sessions Judge. The conclusion drawn by the learned Additional Sessions Judge is on the basis of his own assumption. The custodial interrogation was necessary when it is the case of theft and recovery is contemplated.

5 Learned Advocate for the respondent Nos.1 and 2 has supported the order. It is to be noted that the informant himself has not stated in the First Information Report that he had gone twice to the Bank on that day. Now, he is producing two receipts for the deposit of amount of Rs.1,57,000/- and Rs.3,29,400/-. From those receipts, it cannot be considered as to what was the time when he had gone to the Bank. He ought to have given the details to the police. The police papers do not show that any supplementary statement of the informant has been recorded. It is not the job of the Additional Sessions Judge to collect the evidence and, therefore, he could not have called the CCTV footage of the Bank. It was for the informant to disclose and/or Investigating Officer should act in respect of the information that would be received to him.

6 When the bail was granted on 16.12.2021, it can be seen that the statements of certain witnesses were recorded. Except the informant and his Manager Akshay, the others could not be said to be the proper persons to have first hand information. Informant and Akshay corroborate each other, but Akshay is not disclosing (though he is stated to be the Manager) as to how many times he and the informant had gone to the Bank prior to their alleged visit at 3.30 p.m. There is a probability that CCTV would be installed in the petrol pump and the CCTV footage of the petrol pump could have been provided by the informant or the witness Akshay to support their contention that they had left the petrol pump along with the cash around 3.30 p.m. Whatever was in their possession appears to have not been given by them to the police. But then now they are giving advice or they are expecting from the Additional Sessions Judge that he ought to have called CCTV footage of the Bank. The improbability in the story can be considered by any Court of law, however, before expressing such improbability, the Judge should be cautious and should take into consideration all the probabilities. Here, the case of the informant is that the money bag was kept on the dash board. Of course, at this stage, there is no panchnama of the vehicle of the informant as to what was the width and length of the dash board of Toyota Fortuner, where exactly the bag was kept. Statement of Akshay is almost replica of First Information Report and nothing more than that. How he could not have

realized that a hand is coming inside the car or even prior to that a vehicle has come so near to their vehicle, then they should be cautious about the intention of that person. It is not the case of the informant and the said witness that they were chitchatting and they were not paying attention as to who had come so near. Then, both of them are saying that by putting hand inside the vehicle, that too, when both of them were present in the car itself, the bag was stolen. Therefore, taking into consideration this aspect the learned Judge appears to have stated that the story is improbable. In the normal course, for recovery of the muddemal the application could have been rejected, but here, in this case, interim protection was granted by the learned Additional Sessions Judge, Shrigonda on 09.12.2021. One of the conditions was that – “Applicants shall attend the concern police station as and when called by the Investigating Officer for the purpose of investigation and to co-operate with the investigating agency in conducting further investigation.” Thereafter, when the matter was finally heard, the Investigating Officer had not come with a case that though he had called the applicants for investigation, they had not appeared. Therefore, when the opportunity to investigate was made available; it appears that the Investigating Officer has not utilized that opportunity. Therefore, taking into consideration these aspects the order of granting anticipatory bail to the respondent Nos.1 and 2 cannot be cancelled, as taking back the liberty that was granted to a person is

a serious thing. Unless those exceptional circumstances are shown, the special powers cannot be exercised. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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