

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 APPLICATION FOR CANCELLATION OF BAIL NO.225 OF 2021

VINODKUMAR RAMGOPALJI GILDA

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A.N. Irpatgire, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent No.1

Mr. S.S. Rathi, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th MARCH, 2022

ORDER :

1 Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure, 1973 to challenge order dated 10.12.2021 in Criminal Bail Application No.696/2021 passed by learned Additional Sessions Judge, Latur, thereby granting bail under Section 438 of the Code of Criminal Procedure to respondent No.2.

2 Heard learned Advocate Mr. A.N. Irpatgire for the applicant, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate

Mr. S.S. Rathi for the respondent No.2.

3 The learned Advocate for the applicant, after taking this Court through the contents of the First Information Report, submitted that the learned Additional Sessions Judge, Latur failed to consider the vital points. The said Court failed to consider that the applicant was neither borrower, nor guarantor or not even mortgagor to the loan of Oasis Alcohol Private Limited Company to which loan was granted by Janta Sahakari Bank Ltd., Pune. The documents which were submitted to the Bank are false and fabricated. The applicant-informant had never signed those applications or documents. In fact, the Bank had not clarified as to whether it was a Term Loan or Cash Credit Loan, but then, it appears that the respondent No.2 in conspiracy with Janta Sahakari Bank Ltd., Pune had siphoned near about 100 crores rupees which is public money having socio-economic impact. The learned Additional Sessions Judge failed to consider the affidavit of one Suresh Jitani, who had deposed that he had handed over the sub lease deed of plot No.90 belonging to the applicant-informant to the respondent No.2. The said original sub lease deed has been misused by respondent No.2 being the Director of Oasis Alcohol Private Company Limited as well as M/s. Rajlaxmi Petro Chem Private Limited, Latur in securing the loan of siphoning of the money. The said Suresh Jitani is the employee of Oasis Alcohol Private

Limited Company. That sub lease deed has been procured from Small Industrial Development Bank of India, Mumbai (for short, 'SIDBI'). When it was the economic offence the Court ought to have been slow in granting any discretionary relief. The working of Janta Sahakari Bank Limited, Pune in this transaction is questionable and, therefore, thorough investigation is required. For that purpose the custodial interrogation of the respondent No.2 was necessary. The lower Court wrongly relied on the contentions raised in Criminal Revision No.29/2021 filed by co-accused Janta Sahakari Bank Limited, Pune and then granted the anticipatory bail to the present respondent No.2. The order being illegal deserves to be set aside.

4 The learned Advocate appearing for the applicant relied on **Centrum Financial Services Limited vs. State of NCT of Delhi and another (Criminal Appeal No.94 of 2022)** decided by Hon'ble Apex Court on 28.01.2022, wherein it has been observed that -

“Thus, as per the law laid down by this Court where a Court while considering an application for bail fails to consider the relevant factors, an Appellate Court may justifiably set aside the order granting bail. Appellate Court is thus required to consider whether the order granting bail suffers from a non-application of mind or a prima facie view from the evidence available on record.”

The parameters those were considered for grant of bail were

under **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another** [(2010) 14 SCC 496], **Neeru Yadav vs. State of UP and another** [(2016) 15 SCC 422], **Anil Kumar vs. State (NCT of Delhi)** [(2018) 12 SCC 129] and **Pralhad Singh Bhati vs. NCT of Delhi and others** [(2001) 4 SCC 280]. After pointing out these authorities even independently the learned Advocate appearing for the applicant submitted that those parameters have not been considered by the learned Additional Sessions Judge and, therefore, the application suffers from legality.

5 Per contra, the learned Advocate appearing for the respondent No.2 supported the reasons given by the learned Additional Sessions Judge, Latur and also relied on the affidavit-in-reply filed by the respondent No.2 giving all the details and also the annexures thereto. It was submitted that it is in fact the applicant who has started all the illegal activities. Initially the plot No.90, which was a lease hold property of the applicant-informant, was put to mortgage with SIDBI against loan which was obtained by one M/s. Rajlaxmi Petro Chem Private Limited, Latur. In the said company i.e. M/s Rajlaxmi the respondent No.2 is one of the Directors and the real brother of the applicant viz. Vijaykumar Ramgopal Gilda is also the Director. There was loan outstanding in the name of M/s Rajlaxmi and it was cleared in the year 2014. Thereafter, the applicant had deputed one Suresh Jitani to bring the

original title deeds of property situated at plot No.90, Latur Industrial Estate Co-operative Society Limited, from SIDBI office at Mumbai. Those documents were handed over to Mr. Suresh Jitani on 05.04.2014. The original agreement of sub lease dated 03.09.2004 was executed between Latur Industrial Estate Co-operative Society and the informant. On the same property equitable mortgage was created by the applicant by taking loan from Janta Sahakari Bank Limited, Pune. The real brother of the applicant-informant was also the Director/Chairman of Oasis Alcohol Private Limited Company along with respondent No.2. Said Oasis Alcohol Private Limited Company decided to raise funds for the purpose of business. Resolution was passed securing loan from Janta Sahakari Bank Limited Pune. It was agreed that in case of individual Director did not fulfill necessary requirements of mortgage, then, immovable property of their relatives can be given as collateral security for the mortgage. Accordingly, the property of one Jaiprakash Chitkote, Ramniwas Vishnudas Agrawal, Dineshkumar Murlidhar Inani i.e. present respondent No.2 and Vinodkumar Ramgopal Gilda were mortgaged. The property of their close relative was also mortgaged, in which said Vijaykumar had mortgaged plot No.90 to Janta Sahakari Bank Limited, Pune. Documents to that effect have been executed. However, later on the Oasis Alcohol Private Limited Company could not earn necessary profits and the loan account become Non Performing Account. The Janta Sahakari Bank

Limited, Pune and other Bank for consortium approached Arbitrator for settlement of dispute for recovery of outstanding amount. Thereafter the parties arrived at compromise and consent terms were recorded. Real brother of the present informant was one of the parties to the consent. Clause No.3 of the consent term was signed in respect of accepting the liability being guarantor and mortgagor of the industrial plot No.90 i.e. the liability of the applicant shall be limited to the extent of market value of the property accruable on sale thereof. So, nothing behind the back of the applicant had occurred. It was by his real brother, who was the Chairman of the Oasis Alcohol Private Limited Company. Now, the applicant cannot blame the respondent No.2. He has conveniently not made his brother as accused. All these things were pointed out to the learned Additional Sessions Judge, Latur also and he has, therefore, used the discretion. A detailed order has been passed, which requires no interference at all.

6 Almost all the contentions have been reproduced in the earlier paragraphs and, therefore, they are not repeated. In the nutshell though the informant is saying that he was kept in dark; yet, it is to be noted that he has conveniently suppressed the fact that his brother is the Chairman of Oasis Alcohol Private Limited Company. Documents to support the contention that his brother was the Chairman have been produced on record. Further, it is

also to be noted that the loan account was opened with Janta Sahakari Bank Limited, Pune and at that time, definitely, all the necessary documents regarding who are the Directors, Chairman, Secretary etc. would have been produced. Even the Janta Sahakari Bank Limited, Pune and other companion Banks, from whom the loan was taken, appears to have approached the Arbitrator. The settlement was arrived at, to which the brother of the informant is a signatory. Unless there would have been the consent and documents, that settlement could not have been entered into.

7 Perusal of the impugned Judgment would show that it is a detailed order, considering all the parameters of the above said decisions. The police papers were considered. Prima facie case of each and every component before the Court was considered. Even the criminal writ petition that was filed by the informant before this Court was considered, which was later on withdrawn with liberty to file complaint before the concerned Judicial Magistrate First Class. Another fact that was specifically noted was that the Arbitrator declared the Arbitration Award on 23.03.2017 and the informant had not challenged the said consent terms till date. The applicant-informant has not explained as to why he has not made his real brother as accused, who is admittedly the Chairman of the Oasis Alcohol Private Limited Company. He cannot pick and choose the persons and if he wants to pick and

choose, then, he will have to elaborate the reason for the same. No such reason is forthcoming. Ratio laid down in **Centrum Financial Services Limited** (supra) cannot be disputed, however, no circumstances have been shown which will prompt this Court being the Appellate Court to consider the other aspects, because no point was left out by the learned Additional Sessions Judge, Latur from consideration. Opportunity was given to the present applicant also to oppose the application. Under such circumstance, when there is no illegality or error committed by the concerned Judge, the order need not be set aside. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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