

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

APPLICATION FOR CANCELLATION OF BAIL NO.186 OF 2019

SAKHARAM S/O SABAJI THUBE
VERSUS
AZAD PRABHAKAR THUBE AND OTHERS

.....
Advocate for Applicant : Mr. S. A. Deshmukh
Advocate for Respondent No.1 : Mr. R. K. Temkar
APP for Respondents No.2 and 3 : Ms. Vaishali Patil Jadhav
.....

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.187 OF 2019

SAKHARAM S/O SABAJI THUBE
VERSUS
BHASKAR PARASRAM @ PARSHURAM KALAPAHAD AND OTHERS

.....
Advocate for Applicant : Mr. A. G. Ambetkar
Advocate for Respondent No.1 : Mr. R. K. Temkar
APP for Respondents No.2 and 3 : Ms. Vaishali Patil Jadhav
.....

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.188 OF 2019

SAKHARAM S/O SABAJI THUBE
VERSUS
KAMAL LAXMAN SHELKE AND OTHERS

.....
Advocate for Applicant : Mr. A. G. Ambetkar
Advocate for Respondent No.1 : Mr. R. K. Temkar
APP for Respondents No.2 and 3 : Ms. Vaishali Patil Jadhav
.....

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.189 OF 2019

SAKHARAM S/O SABAJI THUBE
VERSUS
ALANKAR AHILAJI KAKADE AND OTHERS

.....
Advocate for Applicant : Mr. A. G. Ambetkar
Advocate for Respondent No.1 : Mr. R. K. Temkar
APP for Respondents No.2 and 3 : Ms. Vaishali Patil Jadhav
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
24-01-2022**

**Date of Pronouncing the Order :
08-06-2022**

ORDER :

1. All the applications have been filed for cancellation of bail granted to the respective respondents/accused persons by learned Additional Sessions Judge, Ahmednagar, in connection with Crime No.175 of 2018, registered with Parner Police Station, District Ahmednagar, for the offence punishable under Section 408, 409 r.w.34 of IPC.

2. The applicant is the original complainant who had filed the complaint application/representation to the Chief Executive Officer, Zilla Parishad, Ahmednagar, on 01-04-2015 mentioning that as per the audit for the year 1998-1999 to 2011-2012 serious financial irregularities and defalcations have been made at Grampanchayat Kanhur Pathar, Taluka Parner. Thereafter, the Divisional Commissioner, Nashik Region, Nashik, was also approached by the applicant with the same complaint application and thereupon the Divisional Commissioner had directed the chief Executive Officer to take legal action against the responsible persons. Thereafter, the Block Development Officer, Panchayat Samiti, Parner had issued notices on 30-01-2017 to all the responsible persons under Section 140 (5) of the Maharashtra Village Panchayat Act, 1958, for the said financial irregularities and defalcation to file their explanation within seven days. When the Government authorities were not taking proper steps, the applicant had filed PIL No.118 of 2015 before this Court seeking direction to hold inquiry on the basis of audit report. Thereafter, the chief Executive Officer had also issued show cause notices to the Ex-Sarpanch of the village Panchayat for the recovery of misappropriated amount on 06-12-2017. In fact, the entire

procedure has been laid down in Government Resolution dated 12-06-2013 and Circular dated 04-01-2017 as to how the action should be taken against Sarpanch, Up-Sarpanch, Member and employees of Panchayat who committed misappropriation and irregularities in the Grampanchayat. The applicant says that ultimately the chief Executive Officer issued order on 22-01-2018 to Extension Officer (Panchayat) Mr. Ravindra Abasaheb Mali to register the offence against the erring officers. However, in the meantime accused Kamal Shelke, Alankar Ahilaji Kakade and Azad Thube had filed Criminal Writ Petition No.289 of 2018 to challenge the order dated 22-01-2018 passed by the Chief Executive Officer. In the said writ petition notices were issued to the respondents and an interim order was passed that no coercive action should be taken. However, later on on 28-03-2019 this Court allowed the petitioners to withdraw their petition and then the interim relief stood vacated. Thereafter, on 04-06-2018 said Ravindra Mali lodged the FIR vide Crime No.175 of 2018 for the offence punishable under Section 408 of IPC. Thereafter, a supplementary statement was given by Ravindra Mali on 20-08-2019 stating that in all misappropriated amount is to the tune of Rs.64,50,182/- from Gramnidhi of village Kanhur Pathar, Taluka Parner.

3. All the respective respondents/accused approached the learned Additional Sessions Judge, Ahmednagar, for grant of anticipatory bail under Section 438 of Cr.P.C. and by respective orders, their applications have been allowed which are now under challenge.

4. Heard learned Advocate Mr. S. A. Deshmukh and learned Advocate Mr. A. G. Ambetkar for applicant, learned Advocate Mr. R. K. Temkar for respondent No.1 in all the applications and learned APP Ms. Vaishali Patil Jadhav for respondents No.2 and 3-State.

5. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge had failed to consider that huge public money was misappropriated by the respective respondents and they have utilized that amount for their own benefits. It is the cardinal principle that the Courts should be slow in grant of anticipatory bail to those accused persons against whom there are allegations of economic offence. However, on the basis of some misrepresenting facts, the order appears to have been passed. The offence that has been committed by the respective respondents is serious in nature and unless they are taken in custody, the necessary documents could not be collected. The learned Additional

Sessions Judge, Ahmednagar has wrongly considered and accepted documents dated 12-11-2011 for grant of the bail. The said Court had not considered order dated 22-01-2018 passed by the Chief Executive Officer who had come to the conclusion that there is fraud and misappropriation of the public funds. The recovery of huge amount is also involved which has not been considered. The possibility of tampering of the witnesses and evidence by the respondents taking into consideration their status and connection with the political and influential persons, cannot be ruled out, and therefore, those orders deserve to be set aside.

6. The learned Advocate for the applicant has relied on *Puran Vs. Rambilas, reported in 2001 DGLS (SC) 803*, wherein circumstances showing what are the considerations those are required to be seen for grant of bail as well as cancellation of bail have been considered. Though the facts were different, yet the principle would be applicable.

Further reliance has been placed on *Gajanand Agarwal Vs. State of Orissa, reported in 2006 DGLS (SC) 777*, wherein the High Court had granted bail by saying "in the peculiar facts and circumstances of the case" the bail was granted – these reasons

were not considered as appropriate reasons. It was observed that the Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

Further in *Gulabrao Baburao Deokar Vs. State of Maharashtra and Ors.*, reported in 2013 DGLS (SC) 1024, it has been observed by the Hon'ble Apex Court that, "nature and seriousness of an economic offence and its impact on the society are always important considerations and they must squarely be dealt with by the Court while passing an order on bail applications."

Further in *Hariram Bhambhi Vs. Satyanarayan and Another*, reported in 2021 DGLS (SC) 700, it has been observed that, "(1) the facts of the case; (2) the nature of allegations; (3) gravity of offences; and (4) role attributed to the accused, will have to be considered by a Court dealing with the bail applications."

It has been then submitted by the learned Advocate for the applicant that since the orders are identical and have been passed without considering the material on record as well as the seriousness of the offence, question of recovery and that the economic offence in respect of the public funds have been committed, those orders deserve to be set aside.

7. Per contra, the learned Advocate appearing for the respondents/original accused persons supported the reasons given by the learned Additional Sessions Judge while granting respective respondents and submitted that initially when the FIR was lodged, it was alleged that the misappropriated amount is Rs.2,61,934/-. When the audit had already taken place, yet it appears that the appropriate FIR was passed and there was no question for having a supplementary statement after such a long period that is almost one year and two months when it was recorded on 20-08-2019, then it is stated that amount that has been misappropriated is Rs.64,50,182/-. Thereafter, he has annexed the list of the persons who were responsible for the misappropriation of the ultimate figure of Rs.64,50,182/-. In fact, in his supplementary statement he has stated that amount of Rs.6,28,563/- has been deposited after the audit report by the accused persons, still he says that the amount is outstanding and then he gives list. Such approach on the part of the government officer is absolutely not appropriate. The learned Additional Sessions Judge has taken a note of document dated 12-11-2011 wherein it is stated that the audit objections from 1998-1999 to 2006-2007 and 2010-2011 to 2011-2012 are complied and accepted. Under such circumstance, the discretion has been

properly utilized by the concerned Judge which requires no interference at all.

8. At the outset, it is to be noted that the present applicant had taken objection to the bail applications filed by the respective respondents before the learned Additional Sessions Judge. At that time it appears that he has not pointed out those facts which he want to point out now before this Court. That means, when the opportunity was available to him and he has utilized, yet taking into consideration those documents on record the concerned Court has given its decision. It cannot be then stated that he has not considered certain aspects. The learned Judge was aware about the allegations about commission of economic offence, but then he considered the record. At the outset it is to be noted that whether the audit that had taken place for the year 1998-1999 to 2011-2012 could have given rise after so much of delay to lodge a report. The concerned authorities had not considered the audit objections or intentionally those concerned responsible officials had not taken any action. The audit report is not produced for the perusal of this Court. It would have been gathered as to when exactly that audit report was submitted to the concerned authorities. The complaint

application which was filed by the applicant was on 01-04-2015 to the Chief Executive Officer of Zilla Parishad, Ahmednagar. Thereafter also it appears that the Zilla Parishad authorities were slow in taking steps. Applicant was required to approach this Court under PIL and also the Chief officer has ultimately passed an order directing his subordinate to register the FIR on 22-01-2018. No doubt there appear to be prima facie lapses on the part of Zilla Parishad authorities as well as the Government in taking action as per the Government Resolution against erring officers, but then if action is taken belatedly then whether those persons against whom such action is taken belatedly would still be not required to agitate their rights, is a question. The actions either by the State or any persons cannot be stretched too long. Further, in this case as per the FIR the figure of misappropriation was of Rs.2,61,934/- and it was against one G. K. Dhumal. Though the FIR is not an encyclopedia but then when entire material was available in the form of the audit report, how there can be the FIR against only one person. Said G. K. Dhumal is not before this Court as he has not been made as a respondent in any of the case. If we consider the supplementary statement, it refers to the events those had taken place till PIL and then again refers to the same audit report in which

about 343 objections were raised. It further states that out of those 343 objections, 310 have been complied with. 33 audit objections have not been complied till 20-08-2019 by the Grampanchayat and then it is stated that the present respondent No.1 in all the matters are responsible for the misappropriation of Rs.64,51,182/- and then the list has been given. At the cost of repetition it can be said that when that list was already there as a part of the audit report, why in the initial FIR that was lodged on 04-06-2018, there is absolutely no mention about even the name of respondent No.1 in each application, is a question, which has not been answered on behalf of the prosecution. After the supplementary statement, Section 409 r.w.34 of IPC have been added. In the said supplementary statement itself it is accepted that the respondents have deposited amount of Rs.6,28,563/- towards the said audit objection, but then the informant says that those accused persons, in view of the deposit of the amount, have indirectly accept the guilt. This Court cannot draw such kind of inference at this stage because every action can be explained by the accused and they might have also deposited the amount without prejudice their rights. But then the supplementary statement is absolutely silent as to why on the basis of the list that was appended to it, the informant had not included it

in his FIR. Definitely, there is delay which has not been explained at all and that could have been definitely considered by the Court below.

9. The applicant is not the informant. Police or Investigating Officer has not approached either the same Court or this Court for cancellation of bail on the ground that the investigation is hampered because of the non-cooperation of the respondents in the investigation or they are unable to get any document. No doubt, the Courts should be slow when it comes to misappropriation of public funds, but at the same time we are required to consider the facts of the each case. The ratio laid down in all the four authorities relied by the learned Advocate for the applicant cannot be disputed, but taking into consideration the facts of the case that where the FIR itself suffers from delay, and there is some action on the part of the respondents to deposit the amount, and later on after about one year and two months of the lodging of the FIR, the informant is coming with a different story, though he was armed with the audit report which was also agitated before this Court in PIL. Under such circumstances, definitely the learned Additional Sessions Judge was justified in exercising discretion to grant anticipatory bail to the

respondents. No illegality or irregularity can be said to have been committed by the learned Additional Sessions Judge, Ahmednagar while passing the impugned orders. Hence the applications therefore deserve to be rejected, according they are rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.