

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3904 OF 2022

Anil Shivchandra Pandey	... Petitioner
V/s.	
The State of Maharashtra	... Respondent

Mr. A.H.H. Ponda, Senior Advocate with Mr. Karma Vivan for the petitioner.

Mr. R.M. Patne, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 11, 2022

PC.:

1. The challenge in this petition is to the order dated 18th October 2022 passed by the learned Sessions Judge in Miscellaneous Application No.97 of 2022 in Anticipatory Bail Application No.1610 of 2021. The petitioner is an accused in a crime bearing C.R. No.349 of 2021 registered with the Sahar Police Station, Andheri, Mumbai for offence under sections 409, 420, 477(A) read with 120B of the Indian Penal Code.

2. The petitioner initially applied for bail under section 437 of the IPC. The learned Sessions Judge by order dated 31st December 2021 allowed the said application granting pre-arrest protection to the petitioner. While allowing the application, the learned Sessions Judge imposed following conditions on the petitioner:

- “a) He shall not tamper with prosecution witnesses in any way.
- b) He shall produce his respective Identity Card, address proof and furnish his mobile number with bail papers.
- c) He shall attend concerned Police Station from 01.01.2022 till 20.01.2022 on every Tuesday and Thursday between 11.00 a.m. - 1.00 p.m. and shall co-operate in the investigation and thereafter if the investigating officer calls for till the end of February, 2022 or till filing of the charge-sheet whichever is earlier.
- d) He shall maintain the diary of attendance.
- e) He shall attend the trial regularly.
- f) He shall not commit similar offence during on bail period.”

3. On 19th March 2022, the investigating officer moved the learned Sessions Judge for cancellation of anticipatory bail on the ground that the petitioner failed to cooperate with the investigation by refusing to submit the documents. The petitioner filed reply before the learned Sessions Judge and submitted details of the documents by him. In paragraph 6 of the reply, the petitioner stated thus:

“6. With reference to Para No. 2 of say of I.O. dated 30.09.2022, it is submitted that he has admitted that the accused has provided only GST Certificate of both Companies but the accused has not provided GSTR 9 & GSTR 9(c), during investigation documents from GST Department was taken i.e. GSTR 3(A) and 2(B) which shows that the Super Logistics which shows his involvement. The Accused has already replied by notice dated 13.01.2021 sent by I.O. on page no. 67 of my reply that it is available on government portal which can be easily obtained, apart from that the accused is submitting it today. Hereto annexed and marked as **Exhibit - “A”** are copies of GSTR 9 & GSTR 9(c).”

4. The learned Sessions Judge by the impugned order dated 18th October 2022 canceled the anticipatory bail, mainly on the ground that the petitioner has not provided GSTR 9 and GSTR 9(c). The petitioner has, therefore, filed present writ petition challenging the order of cancellation of anticipatory bail.

5. Mr. Ponda, learned senior advocate on behalf of the petitioner submitted that the petitioner has submitted all the documents in his possession and has cooperated with the investigation and, therefore, the findings recorded by the learned Sessions Judge that the petitioner has failed to cooperate with the investigation is not borne out of the record. He submitted that in relation to the findings that GSTR 9 and GSTR 9(c) have not been submitted, he invited my attention to paragraph 6 of the reply which shows that the petitioner has submitted the documents before the learned Sessions Judge. According to him, the said documents were not in possession of the petitioner at the relevant time and thereafter he submitted the same before the Court.

6. Mr. Patne, learned APP opposed the writ petition on the ground that the petitioner has committed breach of conditions and has not cooperated with the investigation. He invited my attention to the notice issued by the investigating officer calling upon the petitioner to submit the documents. According to him, the petitioner has failed to cooperate with the investigating agency and, therefore, the learned Sessions Judge is justified in canceling the anticipatory bail granted earlier. He submitted that the documents which are sought for are not incriminatory in nature and, therefore, Article 20(3) of the Constitution of India is

inapplicable.

7. Mr. Ponda, learned senior advocate in addition to his submissions placed reliance on the judgment of the Apex Court in **State of Gujarat v. Shyamlal Mohanlal Choksi** reported in AIR 1965 SC 1251 to urge that the Apex Court in the said judgment has held that the accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. According to him, section 94 interpreted in the said judgment is *pari materia* with section 91 of the Criminal Procedure Code and, therefore, the said judgment applies in full force. He also invited my attention to the judgment of the learned Single Judge of this Court in the case of **Natubhai Joshi v. Narendra Dhoot & Ors.** reported in 1989 Cur. Cr. C. 25 to urge that non-answering to certain questions by the accused during the course of investigation cannot be construed as lack of cooperation by the accused.

8. Having considered the submissions made on behalf of the both sides, in my opinion, it is well settled law that the criteria for grant of anticipatory bail and cancellation of bail are totally different. Unless there are compelling circumstances and exceptional reasons or new circumstances occurred after the grant of order of bail, the liberty granted in favour of the accused cannot be taken away. The sum and substance of the reasons in the impugned order is to the effect that the petitioner has failed to submit documents in the form of GSTR 9 and GSTR 9(c). The explanation of the petitioner that on the relevant date, it was not available and thereafter during the proceedings before the learned

Sessions Court, the petitioner has submitted the documents.

9. Having taken overall view of the matter, in my opinion, the test laid down by the Apex Court for cancellation of the anticipatory bail in the facts of the case cannot be said to be fulfilled. In my opinion, the explanation that at the relevant time the petitioner was not having the documents in his custody and thereafter he has produced those documents before the learned Sessions Court is sufficient compliance with the obligation caste on the petitioner by the order of granting anticipatory bail.

10. On overall view of the matter, in my opinion, the order of cancellation of anticipatory bail, tested on the touchstone of the parameters laid down by the Apex Court, cannot be sustained. Hence, following order:

The impugned order dated 18th October 2022 passed by the learned Additional Sessions Judge in Miscellaneous Application No. 97 of 2022 in Anticipatory Bail Application No.1610 of 2021 is quashed and set aside.

It is made clear that the petitioner shall cooperate with the investigation and in case of failure on the part of the petitioner to cooperate with the investigation, the investigating officer is at liberty to apply for cancellation of anticipatory bail granted earlier.

11. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)