

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.38 OF 2021

Satpalsingh s/o Gurubaksingh Padan Vs. State of Maharashtra through P.S.O. P.S. Sadar, Dist. Nagpur
and another

WITH
CRIMINAL APPLICATION (APPLN) NO.39 OF 2021

Satpalsingh s/o Gurubaksingh Padan Vs. State of Maharashtra through P.S.O. P.S. Sadar, Dist. Nagpur
and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Sohani, Advocate h/f Shri P.S.Jaiswal, Advocate for
applicant.

Shri I.J Damle, A.P.P. for non-applicant/State.

Shri Rahul Shukla, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI, J.
RESERVED ON : 01/12/2021
PRONOUNCED ON : 04/01/2022

Heard.

2. Both application arises out of Crime No.143 of 2020 registered with Police Station Sadar, District Nagpur seeking cancellation of bail. To be specific, Criminal Application No.38 of 2021 is for cancellation of bail of accused Manpreet Singh released on bail by the Additional Sessions Judge, Nagpur in Criminal Bail Application No.1033 of 2020 vide order dated 15/05/2020, whilst Criminal Application No.39 of 2021 is for cancellation of bail of accused Harpreet Singh released by the Additional Sessions Judge in Criminal Bail Application No.1051 of 2020 vide order dated 14/05/2021.

3. Initially, the applicant has approached to the Sessions Court for cancellation of bail of accused Manpreet Singh vide application No.2328 of 2020 however it was rejected vide order dated 07/01/2021. Likewise applicant had applied to the Sessions Court for cancellation of bail of Harpreet Singh vide application No.2333 of 2020 however it was similarly rejected vide order dated 09/12/2020. Precisely, the applicant i.e. aggrieved person seeks for cancellation of orders of grant of bail.

4. Heard both sides and gone through cited judgments. The bail is sought to be cancelled primly on the ground of merits and also on account of tampering the prosecution witnesses. The main thrust is that the Trial Court without considering the gravity and merits of case has granted bail in casual manner. The Trial Court has not dealt with the material aspect like prima facie case, nature and gravity of accusation, severity of punishment, reasonable apprehension etc. In support of said contention, he placed reliance on various decisions of the Hon'ble Supreme Court. Moreover, it is argued that while releasing applicant Manpreet Singh on bail, the Trial Court without defining his role has blindly invoked the principle of parity which is wholly unjustifiable.

5. On the other hand, the learned counsel appearing for accused resisted both applications by

contending that the Trial Court while releasing accused on bail has considered entire material on record. The case relates to refund of deposit of amount. Already investigation is complete and charge-sheet has been filed. The Trial Court heard both sides and on merits passed the impugned orders which are in-consonance with the approved principles for grant of bail. Moreover, it is contended that when once bail is granted unless strong grounds or supervening circumstances are made out, it cannot be cancelled.

6. At the instance of report lodged by one Harvindar Singh, crime was registered for the offence punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. It is the grievance that the accused Harpreet Singh has floated a virtual contribution scheme whereby informant was induced to invest amount of Rs.25,000/- per month for the period of twenty months. It was the scheme that total twenty members would invest similar monthly amount in the scheme. The depositors were entitled to withdraw the amount by bidding in auction. The needy investors would waive certain amount while taking auction on which the balance would be equally distributed amongst the remaining members.

7. It is the informant's case that as per the scheme, he has invested Rs.5 Lakhs per months and after twenty months, he asked for the refund. The accused Harpreet Singh and his brother Manpreet Singh who were running the scheme have avoided to return the money. Instead of that, they have again lured the informant to invest accumulated amount in another lucky draw scheme with promise of high return. After few months, the accused have flatly denied for refund by stating that the lucky draw scheme has been closed. As such, the informant was duped for Rs.8,20,200/-. It is the prosecution case that like informant there are several investors who have been duped and the defrauded amount comes to the tune of near about Rs.85 Lakhs. Since, the applicants have floated the scheme and under promise of high returns accepted deposits, their role is definite.

8. Perused both bail orders which were passed by the Trial Court in quick succession. The initial order dated 14/05/2020 in Bail Application No.1051 of 2020 pertains to Harpreet Singh. The said order did not spell in detail about the allegations leveled by prosecution against Harpreet Singh. The order bears reference that earlier bail application was rejected on which the accused Harpreet Singh approached to this Court however, the said application was allowed to be withdrawn with liberty to file afresh after charge-sheet. The same is the case of co-accused Manpreet

Singh. The order pertaining to Harpreet Singh bears a reference that the prosecution has resisted the application by filing reply. The Trial Court has mentioned that the applicant (Harpreet Singh) has annexed the papers showing his heart ailment as well as suffering from neurological problem. It is expressed that no purpose would be served by keeping the applicant behind bars in such Pandemic situation. It is stated that the prosecution has not filed charge-sheet under Section 409 of the Indian Penal Code. Moreover, it is stated that the aspects of tampering would be taken care of by imposing certain conditions and accordingly bail was granted.

9. The record indicates that on the following day, the Trial Court has granted bail to Manpreet Singh. This time without referring to the facts merely it is stated that since co-accused is released on bail, the application was allowed. Concededly, while granting bail, the Trial Court has not referred the factual aspects nor stated about the gravity of the accusation.

10. The applicant's learned Counsel by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Ramesh Bhavan Rathod Vs. Vishanbhai Harabhai Makwana (Koli) and another reported in (2021) 6 Supreme Court Cases 230*** submitted that the bail application dealt in casual manner without

referring to the fact is unsustainable. There is no discussion or analysis of circumstances at all. The order does not disclose any reasons hence liable to be set aside.

11. On the similar line my attention is invited to the decision of the Supreme Court in case of ***Hariram Bhambhi Vs. Satyanarayan and another reported in 2021 SCC OnLine SC 1010*** wherein it is ruled that the Court is duty bound to record reasons while deciding the bail application. Then reliance is placed on the decision of the Supreme Court in case of ***Harjit Singh Vs. Inderpreet Singh alias Inder and another reported in 2021 SCC OnLine SC 633*** to impress that the Court has to consider the various factors like nature of accusation, reasonable apprehension, prima facie case while dealing with bail application.

12. Besides that the applicant's learned Counsel by placing reliance on the decision of ***State of Gujarat Vs. Mohanlal Jitamalji Porwal reported in (1987) 2 Supreme Court Cases 364*** and ***State of Bihar and another Vs. Amit Kumar alias Bachcha Rai reported in (2017) 13 Supreme Court Cases 751*** expressed that while dealing with a bail relating to economic offences, the Court must take different approach by considering all relevant factors.

13. In view of above submissions impugned bail

orders dated 14/05/2021 in case of Harpreet Singh and dated 15/05/2020 in case of Manpreet Singh were gone into. Undisputedly, bail was granted to Manpreet Singh by applying rule of parity. Therefore, essentially bail order of Harpreet Singh needs scrutiny. It is the main grievance that without assigning reasons the Trial Court has granted bail. According to the applicant, the Trial Court has not considered the gravity of offence nor dealt minutely on the allegations leveled against the accused. It is submitted that the Trial Court has also not heard the prosecution side while granting bail. Careful examination of bail order do indicate that the Trial Court has not dealt factual aspect in detail, which in fact ought to have been. The impugned order dated 14/05/2020 indicates that the Trial Court has considered the reply of learned prosecutor opposing bail applications. Therefore, there is no substance in the contention that without hearing prosecution, bail was granted. It appears from the tenor of the order that the Trial Court was influenced by the medical ground canvassed by accused. Having regard to the then prevailing Pandemic situation, the Trial Court weighed the same as one of the major factor for granting bail. Besides that the Trial Court has noted that at the time of filing charge-sheet, the prosecution has deleted the provisions of Section 409 of the Indian Penal Code against the accused and as such the rest of the

offences does not attract punishment which may extent to life imprisonment. It is stated that the investigation is complete and there is no purpose in keeping the accused behind bar for uncertain period. According to the Trial Court, the aspects of tampering prosecution witnesses would be taken care of by imposing certain restrictions.

14. Though, the Trial Court has not elaborately dealt the material available on record however the order does not give impression that there is total non application of mind. Detail evaluation of the evidence and elaborate consideration on merit, has to be avoided at this stage, however, the order must express satisfaction of a Court as to whether there is a prima facie case. Undoubtedly, the Court is duty bound to record reasons to ensure that the discretion is exercised in judicious manner. The impugned order is cryptic however it do indicate that the material is not considered. Since the another order of Manpreet Singh was on the ground of parity, it is interdependent on the order of accused Harpreet Singh.

15. Since, the Trial Court has not assigned the reasons in so many words, I have examined the matter on merits to verify whether the exercise of discretion is proper. Grant of a bail is a matter involving the exercise of judicial discretion. The correctness of an

order granting bail is to be decided on the anvil of whether there was an improper or arbitrary exercise of the discretion. Neither applicant nor prosecution is able to make out a ground to term the impugned order as a perverse, illegal or unjustified. The Trial Court ought to have dealt with the factual aspects but absence of that does not mean that the final outcome is incorrect or illegal.

16. On examination, it reveals that after investigation, police have filed charge-sheet under Sections 406, 420 read with Section 34 of the Indian Penal Code and Section 3 of the MPID Act. It reveals that the police did not find any material to invoke the provisions of Section 409 of the Indian Penal Code which would attract punishment with imprisonment for life. It is argued that the police have wrongly deleted Section 409 of the Indian Penal Code. Needless to say, that cannot be a ground for consideration at this stage. The investigating agency has a complete freedom to investigate the matter and invoke the penal provisions which emerge from the allegations. The alleged offences would attract punishment which may extend to the seven years of imprisonment.

17. The learned counsel for the accused has attracted my attention to some statements of witnesses who stated about monetary transactions for

purchase of flat. It is submitted that the accused have issued cheque however they were not deposited for encashment. True, in cases of economic offences, the Court needs to take different approach however, it is a matter of judicial discretion. In some of the above reported cases, the bail was refused however that decision relates to the then facts of the case. There is no straight jacket formula for consideration of granting bail to an accused.

18. It is argued that though the statute provides ninety days period for filing of the chargesheet however it was filed in hasty manner much prior to the schedule time. To my mind that cannot be a ground to hold that the investigation was carried with ulterior motive. The Trial Court has not assigned the reasons in so many words however there is no material justifying cancellation of bail that too after lapse of time. Notably the prosecution has not sought for cancellation of bail on earlier point of time. It reveals from record that faint attempt has been made to state that the accused tried to pressurise the witnesses. However, the Trial Court has expressed that no material is produced to substantiate said contention. Admittedly, there are no criminal antecedents against the applicants nor it is shown that the accused if released on bail would flee from justice. It is not disputed that the accused have attended police station. Seriousness of the charge is no doubt

one of the relevant consideration however the other factors need to be noted while granting bail. The very object of bail is to secure appearance of the accused at the time of trial. Deprivation of liberty must be considered seriously since the accused is deemed to be innocent until duly tried and found guilty.

19. Apart from above circumstances, it needs to be noted that after charge-sheet the accused were enlarged on bail by the Trial Court prior to 17 months. During meantime no serious crime has been reported against them. Learned A.P.P. has not disputed that accused are regularly attending Trial Court. After lapse of 10 months, there is no propriety in curtailing liberty of accused that too in absence of compelling reasons. In case of *X vs. State of Telangana (2018) 16 Supreme Court Cases 511* the Supreme Court has emphasized that unless there are supervening events, the bail once granted cannot be cancelled. Improper, wrong or incorrect reasoning always cannot be a ground for rejection of bail unless some overwhelming or supervening circumstances are made out.

20. The Law on cancellation of bail is well settled way-back in case of *Dolat Ram vs. State of Haryana (1995) 1 SCC 349* wherein it is observed that :

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on

different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

21. Taking overall view of the matter, no supervening circumstances emerge to cancel the bail which was granted prior to 17 months. Having regard to above facts, there is no merit hence, both application stands rejected.

JUDGE

R.S. Sahare