

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

Criminal Application No. 69 of 2021

Jayshree Ajaykumar Morayya

Versus

State of Maharashtra, through Police Station Officer, Police Station Vasant
Nagar, Pusad, Dist. Yavatmal and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.W.Mirza, Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the non-applicant
no.1/State

Shri R.S.Kalangiware, Advocate for the non-applicant
no.2.

CORAM : ANIL S. KILOR, J.

DATED : 22nd APRIL, 2022.

This is an application for cancellation of bail filed under Section 439(2) of the Code of Criminal Procedure on the ground that on irrelevant consideration, the learned Additional Sessions Judge, Yavatmal has granted anticipatory bail to the non-applicant no.2 vide order below Exhibit 1 dated 2nd August, 2021 in Criminal Bail Application No. 147 of 2021.

2. I have heard learned counsel for the respective parties.

3. Shri Mirza, learned counsel for the applicant submits that the only consideration while granting anticipatory bail to the non-applicant no.2, by the learned Sessions Judge was that, the non-applicant no.2 is a lady.

4. It is submitted that learned Sessions Court has failed to appreciate that huge amount which is in crore is involved in the alleged offence and there is incriminating material namely transcript of conversation of applicant and the non-applicant no.2 which clearly shows that the non-applicant no.2 has made signatures of the applicant on the cheques which has not been considered by the learned Sessions Judge while granting bail and on irrelevant consideration the bail was granted. Accordingly, he prays for cancellation of bail. For this purpose, he has placed reliance of the Hon'ble Supreme Court of India in *Criminal Appeal No. 632 of 2022 (arising out of Special Leave Petition (Cri) No. 2640 of 2022) in Jagjeet Singh and others Vs. Ashish Mishra @ Monu and another* dated 18th April, 2022.

5. On the other hand, Shri Sirpurkar, learned Additional Public Prosecutor fairly states that the State has not moved any application for cancellation of bail. He further states that there is no complaint against the non-applicant no.2 for breach of any condition of the bail.

6. Shri Kalangiware, learned counsel for the non-applicant no.2 submits that the accused nos. 1 and 3 are the real brother of the applicant and out of family dispute, the First Information Report came to be lodged, to harass the respondent no.2 and other family members.

7. He further submits that neither there are overwhelming circumstances available in this case nor any perversity is committed by the learned Sessions Judge, while granting bail and accordingly, he submits that present application may be rejected as no ground is available for cancellation of bail.

8. To consider the rival contentions of the parties, I have perused the record and also order passed by the learned Sessions Court, while granting bail to the non-applicant no.2.

9. Relevant paragraphs of the order dated 2nd August, 2021 are paragraphs 14 and 15 which read thus:

14. It is to be noted in this case that, the serious charges here are only against the applicants No.1 and 3 because they are the real younger brothers of the informant and they had manipulated the bank account of informant and had done misappropriation of the amount as alleged by the informant and had earned a huge amount without knowledge of the informant/complainant. It is also seen from the case diary that, there are some charges levelled against applicant No.2 Rashmi Jaiswal, who is the wife of applicant No.1 Nandkishor Jaiswal, but after perusing the case diary, I am of the view that, applicant No.2 is the 37 years old lady, who is wife of applicant No.1 Nandkishor and resides in the house with family and normally being a household lady, she does not move in the society and cannot be involved in the crime of misappropriation of such huge amount, which is alleged in the report lodged by the informant. Therefore custody of lady applicant No.2 is not found necessary. Moreover, applicant No.2 is the wife of the brother of informant namely Nandkishor. Hence, it should be seen that, the allegations levelled against the present lady i.e. applicant No.2 are not such serious like the other two accused persons, because it is prima facie seen that, she is having no direct concern with the selling of liquor shop and maintaining the liquor shop of the informant at Pusad. The informant herself stated in the report that, she had authorized to look-after her Wine Shop situated at Pusad to her brothers i.e. applicants No.1 and 3 and not authorized the applicant No.2 Sau.Rashmi.

15. Here in this case, it should be seen that, the major allegations are levelled by the informant only against her brothers. i.e. accused No.1 Nandkishor and accused No.3 Ravi, of cheating and criminal breach of trust so also fraudulent cancellation, destruction of documents and falsification of accounts and therefore it is necessary for the Police Officer/Investigating Officer to conduct a detailed investigation

as regards the above two accused persons as a huge amount is involved in the present crime and it is required to be recovered from them which is due to mis-management of the Wine Shop account belonging to the informant and hence more time is required for inquiry and investigation about such mis-management of the account so also misappropriation of the huge amount. Therefore the custodial interrogation of only two accused persons found justified and necessary, but being a middle aged household lady, the custodial interrogation of accused No.2 is not required. But it is required that, she should co-operate the investigation by visiting the Police Station twice in a week till filing of the chargesheet. Therefore, I am of the view that, being household lady of accused persons family, she is entitled for anticipatory bail in this crime. But as I earlier stated that, the offences levelled against the accused persons are very serious in nature and a huge amount of more than Rs.27 crores is involved in the present crime and the police may require more time for investigation about such mis-management of the account and misappropriation of the amount, hence I am of the view that, the custodial interrogation of the applicant No.1 and 3 is required for seizure of the relevant documents and amount and also for deep investigation of this crime. Hence, on above reasons, the applicants No.1 and 3 are not entitled for anticipatory bail. While the applicant No.2 lady is entitled for anticipatory bail.....”

10. From the above observations it is clear that the learned counsel for the applicant is not right in saying that while granting anticipatory bail to the non-applicant no.2 only consideration was that, the non-applicant no.2 is a lady. In fact, the above referred two paragraphs show that Court has considered the fact namely that the serious charges are made against the accused nos. 1 and 3, the custody of the non-applicant

no.2 is not necessary, the allegations against the non-applicant no.2 are not serious like the other two accused persons i.e. accused nos. 1 and 3, the informant observed in the report that she has authorised while shop situated at Pusad to her brothers accused nos. 1 and 3 and not authorised to the non-applicant no.2 and in addition to this factor, the Court has also considered that non-applicant no.2 is a lady.

11. In this case, the offence was registered against the non-applicant no.2 for the offence punishable under Sections 408, 420, 424, 465, 467, 468, 471, 477-A read with Section 34, 120B of the Indian Penal Code. This Court while granting anticipatory bail to the other accused person i.e. nos. 1 and 3, this Court has observed that there is a family dispute arising out of a liquor shop.

12. It is a settled law that even if some findings are not recorded properly by the learned Sessions Court while granting bail. However, if the ultimate conclusion of granting bail is sustainable in the eyes of law, such findings cannot be termed as perverse findings.

13. The Hon'ble Supreme Court of India in the case of *Puran Vs. Rambilas and another*¹ has observed thus:

“10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram vs. State of Haryana. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

Thus, some of the permissible grounds for cancellation of bail are perversity and overwhelming circumstances.

¹ (2001) 6 SCC 338

14. In this case there are no supervening circumstances or complete of breach of any condition. As far as perversity is concerned, the ultimate conclusion arrived by the learned Sessions Court, granting anticipatory bail to the non-applicant no.2 is sustainable in the eyes of law and therefore, even if some findings were recorded improperly that cannot be termed as perverse.

15. In the circumstances, the judgment cited by the learned counsel for the applicant in the case of Jagjeet Singh and others Vs. Ashish Mishra @ Monu and another (*supra*) is distinguishable on facts and therefore it would be of no help to the applicant in this case.

16. In the backdrop of above referred findings, I have arrived at a conclusion that there is no merit in the present application it needs to be rejected.

17. Accordingly, I pass the following order.

ORDER

i. Criminal application is rejected.

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[ANIL S. KILOR, J.]