

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

Criminal Application (APPLN) No. 90 of 2021

Dilip Shantilal Jain

Versus

State of Maharashtra, through Police Station Officer, PS Kalamna, Nagpur
and others

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

Court's or Judge's Order

Shri S.S.Sohoni, Advocate for the applicant.

Shri M.J.Khan, APP for the non-applicant nos. 1 and 2.

Shri Sailesh S. Sitani, Advocate for the non-applicant
nos. 3.

CORAM : ANIL S. KILOR, J.

DATED : 18th APRIL, 2022.

This is an application for cancellation of bail granted to the non-applicant no. 3 by the learned Additional Sessions Judge, Nagpur vide order dated 10th August, 2021 in Misc. Criminal Application No. 2449 of 2021 in Crime No. 525 of 2021 for the offences punishable under Sections 406, 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code.

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

3. Shri Sohoni, learned counsel for the applicant submits that he is seeking cancellation of bail granted to the learned counsel for the non-applicant no. 3 on the ground that while granting bail, the learned Sessions Court has not considered relevant factors which ought to have been considered by the learned Sessions Judge. He submits that learned trial Court has committed error in considering the matter as of civil nature.

4. Shri Sohoni, learned counsel for the applicant submits that there is perversity in recording reasons, while granting bail to the non-applicant no. 3. It is submitted that the amount involved is in crores in the alleged offence which has not been considered by the learned Sessions Judge while granting bail.

5. He submits that since beginning there was an intention of the non-applicant no. 3 to deceive the applicant and therefore though there was sufficient material available on record to show the involvement of the non-applicant no. 3 in the alleged offence, on irrelevant consideration the bail was granted to the non-applicant no. 3.

6. He has drawn attention to the reply filed by the State more particularly paragraph 5 of the reply

wherein it is mentioned that the accused persons are not giving necessary information about the lorries used for transportation of sugar. He further submits that in addition perversity in recording the findings, there are overwhelming circumstances. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of *State represented by the C.B.I. Vs. Anil Sharma*¹ for the purpose of why the custodial interrogation is necessary.

7. Similarly, he has placed reliance on a judgment of Hon'ble Supreme Court in the case of *Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation*² for the purpose to point out the factors to be considered by the courts while considering the prayers for grant of bail in economical offence.

8. On the other hand Shri Sitani, learned counsel appearing for the non-applicant no. 3 strongly opposed the application and submits that the learned trial Court while granting bail has considered the fact that the First Information Report in question is a counterblast to the civil suit filed by the non-applicant no. 3 for recovery of amount from the applicant.

1 (1997) 1 SCC 187

2 (2013) 7 SCC 439

9. It is submitted that no counter claim has been filed by the applicant in the civil suit filed by the non-applicant no. 3 which shows that there is no recoverable amount from the non-applicant no. 3 as alleged but to harass the non-applicant no. 3 and to avoid recovery by the non-applicant no. 3, the First Information Report came to be lodged by the applicant. He, therefore, submits that the complaint itself is false complaint and no ground is made out as permissible for cancellation of bail. He accordingly prays for rejection of the application for cancellation of bail.

10. Shri Khan, learned additional Public prosecutor submits that except against one accused namely Datta Shinde, the State has not filed any application for cancellation of bail against other accused persons. He submits that application for cancellation of bail against Datta Shinde is pending before the learned Sessions Judge, Nagpur.

11. He has reiterated the submission of the learned counsel for the applicant as regards providing information about the lorries.

12. To consider the rival contentions of the parties, I have perused the record.

13. The learned trial Court while granting bail to the non-applicant no. 3 has observed that, it appears to be counterblast to the suit for recovery filed by the non-applicant no. 3. Further the court has observed that the *prima facie* the dispute between the complainant and the accused persons is of civil nature. The Court has also considered the fact that the First Information Report was lodged belatedly. Thus, after considering the relevant factors, the bail was granted to the non-applicant no. 3.

14. Learned counsel for the applicant has fairly admitted the fact that there is no counter claim filed by the applicant in civil suit filed by the non-applicant no. 3 for recovery of alleged amount.

15. It is a well settled law that the factors to be considered while granting bail and for cancellation of bail granted, are different. For cancellation of bail some of the grounds which are available are supervening circumstances and perversity or wrong consideration.

16. In this case, though the period mentioned in the First Information Report for the alleged offence from 1st December, 2019 to 19th July, 2021, the complaint was lodged on 19th July, 2021 i.e. after more than one and half years.

17. Nature of dispute is commercial one though there are elements of cheating.

18. There is also no dispute that the suit for recovery of amount is pending which was filed by the accused persons against the applicant.

19. The Hon'ble Supreme Court of India in the case of **Puran Vs. Rambilas and another**³ 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

3 (2001) 6 SCC 338

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.”

20. In the teeth of above referred law, I revert back to the facts of the present case.

21. In the present case, though while considering the prayer for grant of bail, the learned Sessions Court has recorded some findings which may not have properly worded or recorded. However, the ultimate conclusion arrived at is sustainable in the eyes of law and therefore such findings cannot be termed as perverse.

22. In the circumstances, there is no ground available to the applicant in this case as regards perversity in recording findings by the learned trial Court.

23. As far as overwhelming circumstances are concerned, nothing has been pointed out by the learned counsel for the applicant.

24. Thus, in absence of any overwhelming circumstances or perversity in the present matter, I am not inclined to allow this application.

25. So far as the judgments in the case of *State represented by the C.B.I. Vs. Anil Sharma* (supra) and *Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation* (supra) cited by the learned counsel for the applicant, as I have observed that the factors while granting bail or for cancellation of bail granted are different. Thus, the judgments cited by the learned counsel for the applicant are of not help in this case. In the circumstances, I pass the following order:

- i. Application is rejected.

[ANIL S. KILOR, J.]

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