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

Criminal Application [APPLN] No.33 of 2023

Dr. Dipen Kailashchandra Agrawal vs. Ramawtar Shankarlalji Totla & another

with

Criminal Application [APPLN] No.20 of 2023

Dr. Dipen Kailashchandra Agrawal vs. Ashwin Prakash Mehadia & another

with

Criminal Application [APPLN] No.43 of 2023

State of Maharashtra, through Economic Offences Wing, Crime Branch, Nagpur
vs.
Ashwin Prakash Mehadia

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. Shashank Manohar with Mr. Shyam Dewani and Mr. Sahil Dewani, Advocates for the Applicant in Appln.No.33/2023 and Appln.No.20/2023.

Mr. S.M. Ghodeshwar, A.P.P. for Non-Applicant No.2 in Appln.No.33/2023 and Appln.No.20/2023 and for Applicant in Appln.No.43/2023.

Mr. Avinash Gupta, Senior Advocate assisted by Mr. A.A. Gupta and Mr. Vishwajeet Singh Uberai, Advocates for Non-Applicant No.1 in Appln.No.20/2023 and for the Non-Applicant in Appln.No.43/2023.

Mr. A.C. Jaltare, Advocate for Non-Applicant No.1 in Appln. No.33/2023.

CORAM : M.W. CHANDWANI, J.
DATE : 29th SEPTEMBER, 2023.

All these applications are arising out of the same order, therefore, they are being disposed of by this common order.

02] Criminal Application Nos.33 and 20 of 2023 are filed by the complainant, on whose complaint, the First Information Report came to be lodged against Mr. Ashwin Mehadia, non-applicant No.1 in

Criminal Application No.20/2023 and non-applicant in Criminal Application No.43/2023, and Mr. Ramawtar Totla, non-applicant No.1 in Criminal Application No.33/2023. Whereas, Criminal Application No.43/2023 has been filed by the State only against Mr. Mehadia. All the applications are filed under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted to Mr. Mehadia and Mr. Totla in Crime No.98/2023 registered with Sitabuldi Police Station, Nagpur for the offence punishable under Sections 409, 420, 465, 467, 468, 469, 470 and 471 read with Section 34 of the Indian Penal Code.

03] On 23/02/2023, complainant Dr. Dipen Agrawal (hereinafter referred to as “the applicant”), who is the Member of Nag Vidarbha Chamber of Commerce (hereinafter referred to as ‘NVCC’ for short), lodged a complaint with Sitabuldi Police Station alleging that Mr. Mehadia in connivance with Mr. Totla, who are the President and Secretary of NVCC respectively, without taking any consent of any other Directors and Members of NVCC, authorized Mr. Mehul Shah, resident of Mumbai, to issue Certificate of Origin at the rate of Rs.100/- instead of regular rate of Rs.300/- and prepared forged resolution of meeting dated 31/03/2020, which infact never took place. Likewise, Mr. Mehadia and Mr. Totla compromised the matter with landlord to vacate the premises worth Rs.100.00 crores, where NVCC was tenant, and surrendered the tenancy rights in land by accepting the other land worth Rs.2.00 crores and amount of Rs.2.50 crores by cheque for NVCC and also prepared forged minutes of meeting by showing resolution to that effect. Mr. Mehadia was the Director in Zeromile Clearing Agency, but due to non-compliance, his Director Identification Number (DIN) was suspended. Therefore, he was disqualified from being Director of any other company. Inspite of that, he became President of NVCC by suppressing this fact. On the complaint of the applicant, the aforesaid offence came to be registered against Mr. Mehadia and Mr. Totla.

04] Mr. Mehadia and Mr. Totla filed applications for anticipatory bail before the learned Additional Sessions Judge, Nagpur. After hearing the application, the learned Additional Sessions Judge granted bail to Mr. Mehadia and Mr. Totla vide orders dated 06/03/2023 and 27/04/2023, respectively. Feeling aggrieved with the impugned orders dated 06/03/2023 and 27/04/2023, the complainant as well as the State, through Economic Offence Wing, Nagpur, have filed these applications for cancellation of anticipatory bail granted to them.

05] Heard learned Counsel Mr. Shashank Manohar on behalf of the applicant and learned A.P.P. Mr. S.M. Ghodeshwar, appearing on behalf of the State as well as learned Senior Counsel Mr. Avinash Gupta and learned Counsel Mr. A.C. Jaltare, appearing on behalf of Mr. Mehadia and Mr. Totla, respectively.

06] Learned Counsel Mr. Shashank Manohar submitted that the affairs of NVCC were being run by Mr. Mehadia and Mr. Totla in absolutely high handed manner for earning personal benefits out of public funds. Since, the matter was related to fraud of amount, it was transferred to Economic Offence Wing, Crime Branch at Nagpur. It is contended that the Director General of Foreign Trade had given authority to NVCC to issue Certificate of Origin to the exporters. Mr. Mehadia and Mr. Totla gave the said authority to issue the Certificate of Origin to Mr. Mehul Shah and M/s. Harsh Enterprises on the charges of Rs.100/- as against Rs.300/-, which was being charged earlier, and the said decision has been made without any approval or sanction from the Board of Directors by preparing forged and fabricated minutes of meeting, which never took place. The said forged minutes were prepared by the Mr. Mehadia and Mr. Totla only in order to legitimize their legal action to the said fact. The meeting dated 31/03/2020 was not shown in the financial statement of NVCC filed before the Registrar of Companies (RoC). The alleged meeting is shown to be conducted on Zoom Mobile App. and infact it was downloaded by the office bearer for the first time on 06/04/2020. The Article of Association (AoA) was amended, in which the Board of Directors was limited to only ten members. Whereas, prior to 21/10/2020, the meeting of Board of Directors consisting of President, Senior Vice-President, Junior Vice-President and 31 members of the Executive Body was held. The minutes were signed by the Board of Directors, as mentioned in the AoA, dated 21/10/2020, which itself shows that the alleged minutes are forged and never prepared on 31/03/2020. Even, the learned Counsel for the applicant vehemently submits that Mr. Mehadia and Mr. Totla authorized Mr. Mehul Shah to issue Certificate of Origin in place of M/s. Harsh Enterprises on 03/11/2020, and infact there was no such topic kept in the agenda of the meeting.

07] The learned Counsel also vehemently submits that NVCC was the tenant of 40000 sq.ft. area of land. The landlord had filed suit for eviction against NVCC and had secured a decree for eviction against the NVCC in the year 2019. Despite of appeal and review application pending against the said decree, Mr. Mehadia managed to convince the Members for settling the dispute with the landlord. In the settlement, the entire land was surrendered and in return the NVCC was given Rs.2.51 crores and about 3000 sq.ft. of land, and this was done by Mr. Mehadia by taking financial benefits. Even the forged minutes of meeting dated 04/01/2020 were prepared on three separate occasions with the help of practicing Company Secretary of NVCC. On 04/01/2020, the number of Board of Directors was 34 as per the prevalent AoA . The AoA was amended on 21/10/2020 and meaning of Board of Directors was changed thereafter. However, the meaning, which is given in the amended AoA, is finding place in the minutes of meeting dated 04/01/2020, which were never in existence on 04/01/2020. Therefore, there is ample evidence to show that the resolutions of the meeting dated 31/03/2020 and 04/01/2020, which goes to show that there is a *prima facie* case against Mr. Mehadia and Mr. Totla.

08] Lastly, the learned Counsel for the applicant submitted that the DIN, which was granted to Mr. Mehadia in the capacity of Director of Zeromile Clearing Agency was discontinued due to non-submission of annual return of that company and as per the provisions of Section 164 of the Companies Act, he is disqualified from the Directorship of any other company including Zeromile Clearing Agency. But, this fact was suppressed by Mr. Mehadia and he was got elected as President of the company. The learned Counsel for the applicant further vehemently submits that this aspect has not been considered by the learned Additional Sessions Judge while granting anticipatory bail to Mr. Mehadia and Mr. Totla. The learned Additional Sessions Judge failed to appreciate the gravity of offence and the incriminating material available on record against the accused persons Mr. Mehadia and Mr. Totla and exercised his discretion erroneously based on absolute assumptions and presumptions.

09] It is also contended that the learned Sessions Judge has observed that Mr. Mehadia and other Directors were suspended from work, since an Administrator has been appointed. Therefore, they were having no control over the record of NVCC. Though the Administration is appointed, the other Directors, except Mr. Mehadia, are also functioning as Directors with the limited capacity, which does not rule out the possibility of forging further record to cope up from these cases. Therefore, it is prayed that erroneous orders granting anticipatory bail to the non-applicants be recalled and the anticipatory bail granted to the non-applicants be cancelled.

10] Learned Counsel Mr. Manohar relied on the decision of the Supreme Court in the case of *P. Chidambaram vs. Directorate of Enforcement – (2019) 9 SCC 24* wherein it has been held that power under Section 438 of the Code of Criminal Procedure, being extraordinary remedy, has to be exercised sparingly, more so, in cases of economic offences. A delicate balance is required to be established between safeguarding the personal liberty of an individual and the societal interest. He further relied on the case of *Kamla Devi vs. State of Rajasthan and another – (2022) 6 SCC 725.* The Supreme Court in paragraph 29 has observed thus :

> *"29. …………. The Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused."*

11] *Per contra,* learned Senior Counsel Mr. Avinash Gupta appearing on behalf of Mr. Mehadia submitted that the applications filed by the applicants are not maintainable. The Court has considered every aspect and after considering the material available on record, the Court thought it fit to exercise the discretion of extraordinary relief and has rightly granted anticipatory bail to Mr. Mehadia and Mr. Totla. He submits that ground for grant of bail and cancellation of bail are totally different. Just because, another view is possible, the bail granted should not be cancelled. If the order granting anticipatory bail is passed without considering the relevant material, in that eventuality the bail can be cancelled. According to him, since the amendment to Section 216 of the Companies Act came into operation in the year 2018, it has no retrospective effect and, therefore, disqualification provided under the Companies Act is not at all applicable to Mr. Mehadia. He further submits that Mr. Mehadia was never the Director of NVCC, but he was only President. Therefore, it cannot be said that he was the Director of NVCC. On this ground also, the disqualification will not attract. The lists of annexures filed before the Sessions Court, have not been filed here to show as to what material was present before the learned Additional Sessions Judge, which was considered by him.

12] It is also contended on behalf of Mr. Mehadia that the company was tenant of 2000 sq.ft. of structure out of 36000 sq.ft. of land. The decree of eviction was passed along with the mesne profit. Fair rent proceedings had also been filed by the landlord. Opinion of Senior Counsel Mr. Sunil Manohar was obtained, who suggested to settle the matter. It is the applicant, who approached Mr. Manohar and sought advice. It is also submitted that the learned Additional Sessions Judge saw the video clips of the meeting and observed that the applicant himself was canvassing for the proposal of compromise with the landlord. Therefore, he cannot agitate this ground. The matter is settled, wherein NVCC got 3000 sq.ft of land in ownership and Rs.2.50 crores as cash towards surrendering of tenancy. There is no material, whatsoever, to show that any underhand dealing has taken place. Therefore, the learned Additional Sessions Judge has rightly observed that there is no material on record to suggest that any other transaction took place. Rather, the settlement, which was done, is beneficial to NVCC, as it got the land in ownership and also an amount of Rs.2.51 crores.

13] The learned Senior Counsel vehemently submits that during COVID, the traders were facing difficulty, particularly in Mumbai, to get Certificate of Origin, whereas, at Nagpur, nobody was approaching to NVCC for issuance of the Certificate of Origin. Therefore, the authority was given to M/s. Harsh Enterprises to issue Certificate at the rate of Rs.100/- plus G.S.T. According to him, there is no material available on record that while showing less amount, excess amount has been charged and the excess amount has been kept by Mr. Mahadia and Mr. Totla. Rather, the rate was reduced from Rs.300/- to Rs.100/- for the benefits of the Members of the Company and other traders throughout Maharashtra to facilitate them during the period of COVID and to encourage them for business. Subsequently, the authority was given to Mr. Mehul Shah, who did not issue a single Certificate. Therefore, there is no question of alleged misappropriation. According to him, there is not a single material available with the prosecution agency or with the complainant, which goes to suggest that there is misappropriation of amount by Mr. Mehadia and Mr. Totla. Just because minutes of the meeting dated 31/03/2020 is not shown in the return, does not mean that the meeting has not taken place. The applications are without merits. For irregularities, the complaint was also sent to the Director General of Foreign Trade and an advisory was issued at Page 560 and thereafter, the authority to issue Certificate of Origin was not continued. He submits that the Administrator is appointed to manage the affairs of NVCC. Mr. Mehadia has been suspended from the Directorship, therefore, there is no question of having control over the record of NVCC with Mr. Mehadia. Therefore, he sought rejection of the application.

14] Learned Counsel Mr. A.C. Jaltare appearing on behalf of Mr. Totla submitted that the role assigned to Mr. Totla is the same, which is assigned to Mr. Mehadia, therefore, he adopted the argument advanced by learned Senior Counsel Mr. Gupta.

15] Before proceeding to deal with the submissions made on behalf of the respective parties, it will be appropriate to note the law relating to cancellation of bail, which has been considered in the following cases relied by the applicant and non-applicants:

- **i.** Dolat Ram and others vs. State of Haryana – (1995) 1 SCC 349.
- **ii.** Central Bureau of Investigation, Hyderabad vs. Subramani Gopalkrishnan and another – (2011) 5 SCC 296.
- **iii.** Hazari lal Das vs. State of West Bengal and another – (2009) 10 SCC 652.
- **iv.** Jaibunisha vs. Meharban and another – (2022) 5 SCC 465.
- **v.** Dr. Naresh Kumar Mangla vs. Anita Agrawal and others – (2021) 15 SCC 777.

16] The common threads running from all these authorities are as under :

Consideration of grounds for grant of bail are not the same for the purpose of cancellation of bail. 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. If the bail is granted without considering or ignores material or if a perverse order granting bail is passed in a heinous crime without furnishing reasons, the order be set aside and bail be cancelled. The correctness of an order granting bail is to be tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. Keeping these principles in mind, let us examine the merits of the applications.

17] The impugned orders dated 06/03/2023 and 27/04/2023 show that the learned Additional Sessions Judge was of the view that *prima facie* there is no material to substantiate allegations of misappropriation of funds of NVCC either while surrendering the tenancy or even in the case of authorizing Certificate of Origin either to Mr. Mehul Shah and it is nothing but figment of imagination of the complainant without any concrete base and without any foundation. On the contrary, NVCC has been benefited by surrendering the tenancy right and getting an ownership of a premise in the case, which NVCC had lost in the proceedings before the Small Causes Court. The learned Additional Sessions Judge was of the view that so far as the allegations regarding forgery in the minutes of meeting is concerned, all these are based on documentary evidence, which are available with NVCC and the Administrator has taken charge of the company. The learned Additional Sessions Judge, therefore, held that the custody of the applicants is not required for the same. With these reasons, the learned Additional Sessions Judge granted anticipatory bail to Mr. Mehadia and Mr. Totla. Thus, the case in hand is not a case of granting anticipatory bail without giving reasons.

18] It appears from orders dated 06/03/2023 and 27/04/2023, the learned Additional Sessions Judge has considered all the material placed before him. Now, what remains, to be considered whether granting order of anticipatory bail is perverse or discretion of bail is exercised arbitrarily.

19] I have perused the record. Neither in the case diary nor in the documents filed by the applicant, except guesswork or as one of the possibilities, there is no material to show that any amount or underhand dealing has been done either by Mr. Mehadia or Mr. Totla either on account of the settlement with the landlord or while granting authority either to Harsh Enterprises or to Mr. Mehul Shah. Therefore, the findings of the learned Additional Sessions Judge that *prima facie* there is no material as of now to substantiate the allegations of misappropriation of funds by Mr. Mehadia and Mr. Totla, do not appear to be erroneous. Rather, the material on record goes to show that it is the applicant, who was convincing the other Members of NVCC for settlement with landlord in the Zoom Meeting and was appreciating Mr. Mehadia for getting good settlement, which has also been recorded by the learned trial Court as one of the reasons for grant of bail.

20] Though, there is material, which *prima facie* suggests that the minutes dated 04/01/2020 were prepared not on the same day, but at the subsequent dates, above material demonstrates that meeting took place for discussing the issue of surrender of tenancy.

Bare perusal of the minutes goes to show that there exists signatures of the applicant as well as his brother Sanjay Agrawal on the minutes of meeting dated 04/01/2020. Even the minutes show that the complainant and his brother were given authority for procedure to be adopted in the settlement.

21] Now the question, whether minutes of meeting dated 03/01/2020, 31/03/2020 and 04/01/2020 were prepared with intent to put the company at loss or for any obvious reason or was a *bona fide* mistake or routine practice to prepare minutes after the meeting is over, is a matter of trial. All those records are available with the prosecution agency as well as with the applicant and with the company, and they are already produced on record by the applicant. Therefore, apprehension of the applicant that there may be tampering with the documents by Mr. Mehadia and Mr. Totla, is ruled out.

22] Record shows that for the above referred irregularities and lapses and for disqualificatin under Section 164(2) of the Companies Act, the Registrar of Companies has already initiated the proceedings against Mr. Mehadia under the Companies Act and 'show cause notices' have been issued after preliminary enquiry, which is pending for adjudication before the Registrar of Companies. Further, there is no dispute that Mr. Mehadia and Mr. Totla have roots in the society, they have fixed place of abode. Even, it is not the case of the applicant that Mr. Mehadia and Mr. Totla will flee away from justice. Further, from the date of order till the date, there is no allegations that Mr. Mehadia and Mr. Totla have threatened the prosecution witnesses or tampered the evidence.

23] Considering the aforesaid material, the learned Additional Sessions Judge has exercised the discretion of grant of bail. No overwhelming circumstances have been brought on record for cancellation of bail. Even, it cannot be said that the learned Additional Sessions Judge has acted arbitrarily, without considering the material available on record and ignoring the principles laid down in the cases of *P. Chidambaram* and *Kamla Devi*. Therefore, the orders of the learned Additional Sessions Judge of granting bail do not require interference.

24] In view of above, the following order is passed:

- Criminal Application [APPLN] Nos.33 of 2023, 20 of 2023 and 43 of 2023 are rejected.

JUDGE

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