



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

CRIMINAL APPLICATION (APPLN) NO. 107 OF 2022

State of Maharashtra through PSO, Police Station Jalamb, Tq. Shegaon,
Dist. Buldhana

..VS..

Shaikh Gulam Mohammad Abdul Razzaq

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

Court's or Judge's orders

Mr. A.M. Kadukar, Additional Public Prosecutor for applicant/State.
Mr. S.A. Mohta, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : AUGUST 19, 2023

Present application is under Section 439(2) of the Code of Criminal Procedure for seeking cancellation of bail.

2. The State has filed this application for cancellation of bail on the ground that crime bearing No.20/2022 was registered against the respondent for the offence punishable under Sections 461 and 380 of the Indian Penal Code. The respondent has filed an anticipatory bail bearing No.166/2022 before the Sessions Court, which was rejected, thereafter, the respondent approached to this Court by preferring an Application No.235/2022. Initially interim protection was granted to the respondent, which was confirmed on 22.04.2022. As per the order of this Court, the respondent was directed to attend the concerned Police Station as and when his presence is required. As per contention of the present

applicant, the respondent has not attended the Police Station as per the condition imposed by this Court and he has not co-operated with the Investigating Agency therefore, the bail granted to the respondent deserves to be cancelled.

3. Said application is strongly opposed by the learned counsel for the respondent that the respondent was protected by granting *ad interim* anticipatory bail, subsequently which was confirmed with direction that the respondent shall attend the Police Station as and when required. Accordingly, he has attended the Police Station however, with false and baseless allegations, this application is filed to cancel the bail. It is further contended by the respondent that the overwhelming circumstances are required for the cancellation of bail, merely because the allegations that the present respondent has not attended the Police Station is not sufficient to cancel the bail. In fact, the respondent has attended the Police Station and in support of the same, he has filed an affidavit along with copies of diary which shows that on 21.06.2023 he has attended the Police Station. He has also attended the Police Station on 22.06.2023 and prays for rejection of the application.

4. Heard Mr. A.M. Kadukar, learned APP for the applicant and Mr. S.A. Mohta, learned counsel for the respondent.

5. As per the prosecution case, the First Information Report (FIR) is lodged alleging therein that the informant is working with the Nisa Group of Company Megha Center Hadapsar, Pune having branch at Buldhana. He was patrolling on 07.01.2022, at the relevant time, he was inspecting whether the alarm of the tower are in working condition or not. On 20.01.2022 at around 07.00 am. in the morning, his technician Shrikrushna Dhage informed that at Amboda Tower No.ID1091862 theft is committed from the shelter room and 48 Batteries were stolen approximately amounting to Rs.60,000/- during 20.01.2022 to 21.01.2022. The informant immediately rushed to the spot and found that 48 Batteries are stolen by the unknown person. During investigation, the involvement of the present respondent is revealed and therefore, offence is registered against the present respondent. As the present respondent apprehending arrest on the hands of police, he approached to this Court for grant of anticipatory bail. While passing the order, this Court has observed that the offence was registered in the month of January-2022 however, till date no material has been collected by the prosecution to show the involvement of the present respondent in the alleged offence. Thus, in absence of *prima facie* incriminating material available to show the involvement of the present respondent in the alleged offence, the respondent released on bail. From these observations, it reveals that except statement of co-accused, no other material was before the Court to

show the involvement of the respondent in the alleged offence. So far as, the investigation part is concerned, initially the respondent has not attended the Police Station therefore, this Court directed by order dated 05.06.2023 to attend the Police Station and co-operate the Investigating Agency. Accordingly, the respondent attended the Police Station. To support the said contention, he has filed an affidavit on record contending that he has attended the Police Station on 06.06.2023, 07.06.2023, 09.06.2023 and so on. He has also placed on record the copies of entries of the diary signed by the Police Officer, which shows that the respondent has attended the Police Station as per the order of this Court. It is well settled that while considering the application for cancellation of bail, the applicant has to show the overwhelming circumstances to show that the respondent has misused the liberty granted to him. No such material before this Court to show that after releasing the present respondent on anticipatory bail, he either misused said liberty or not co-operated with the Investigating Agency, in fact, an affidavit along with documents filed by the respondent shows that he has co-operated with the Investigating Agency.

6. Considering the observations of this Court while passing the order, it reveals that except the statement of the co-accused, no other material to show the *prima facie* case against the present respondent and therefore, his application for pre-arrest bail is considered by this Court.

I have gone through the recitals of the FIR, where the name of the present respondent is not mentioned. Considering all these facts, as there are no overwhelming circumstances to show that the bail granted to the respondent deserves to be cancelled, the application is devoid on merit and liable to be dismissed.

7. Accordingly, I proceed to pass the following order :-

The Criminal Application (APPLN) No. 107/2022 is dismissed.

(URMILA JOSHI-PHALKE, J.)

Kirtak