

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

CRIMINAL APPLICATION (APPLN) NO.139 OF 2022

State of Maharashtra, through Police Station Officer, Police Station, Katol, District
Nagpur

Vs.

Laxminarayan Rameshwarlal Sarda

AND

CRIMINAL APPLICATION (APPLN) NO.140 OF 2022

State of Maharashtra, through Police Station Officer, Police Station, Katol, District
Nagpur

Vs.

Rajesh Ramaswarup Sarda

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

Court's or Judge's orders

Mr. S. M. Ghodeswar, APP for applicants.

Mr. S. V. Manohar, Senior Counsel a/b Mr. S. S. Sohoni, Counsel for respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/07/2023

Common order.

1. These applications are filed under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted to the present respondents.

2. The Criminal Application (APPLN) No.139/2022 is filed against the order passed by the Additional Sessions Judge, Nagpur in Criminal Bail Application No. 2214/2022 and the Criminal Application (APPLN) No.140/2022 is filed against the order passed

by the Additional Sessions Judge, Nagpur in Criminal Bail Application No. 2215/2022 by which anticipatory bail is granted to the present respondents.

3. As per the contention of the applicant/State that on 15.07.2022, informant namely Mohd. Arshad Mohd. Tahir Khan, R/o Shajhanbad, Bhopal, Madhya Pradesh lodged a report alleging that he is working as Operation Manager in the company named as Seema Enterprises. The said company dealing with the business of manufacturing and fitting of steel equipments required for the construction of railway steel bridges. In the year 2019, his company had got the contract of constructing total five bridges by Maharashtra Rail Infrastructure Development Corporation, Nagpur. The total five bridges were at one railway bridge each at Katol, Godhani Gate, Borgaon Gate and two bridges at Kalmeshwar. Accordingly, two bridges – one at Borgaon and other at Kalmeshwar were constructed and the construction works and other three bridges were in progress. Since Katol railway bridge work was about to start therefore, his company transported various material through the four trucks of Omdev Logistics Bhopal to the railway bridge site at Katol from 08.03.2022 to 10.03.2022. The said trucks were unloaded the material at Katol bypass includes Girders, Bottom outer spice plates, bottom inner spice plates, web spice plates etc. in a huge quantity. The workers, labourers were present on

the said side. Some persons pretending themselves to be the officers, wearing safety helmets and jackets and virtually uplifted the aforesaid unloaded steel material by informing labours present therein that the same is being transported to other site. Thus, the theft was committed of the said material. It is alleged that the said theft was committed by one Latif Sheikh. With this allegation, the FIR was lodged against the said Latif Sheikh. During the investigation, it revealed that said Latif Sheikh has sold the said material to one Salim Baksha, who is reported to dead during the investigation. Thereafter, said material was handed to one Salim and thereafter to one Dilip Shahu. The said Dilip Shahu is also released on anticipatory bail by this Court by order dated 08.09.2022 in Criminal Application No.623/2022 and from the said Dilip Shahu the present respondents who are Directors in Ramsons Casting Private Limited, MIDC, Hingna allegedly received the said stock therefore, they were implicated in the said crime. The Additional Sessions Judge, Nagpur has considered the application for bail and released the present applicant on bail.

4. The said bail order is challenged by the State on the ground that there is *prima facie* material against the present respondents to show that they have committed the offence under Section 411 of the Indian Penal Code and purchased the stolen material and the

said stolen material came to be melted by the company. The record pertaining to the trucks unloading the scrap iron material, weighing scale machine in operating room also could not be found. However, the Sessions Court has not considered the *prima facie* case and released the applicant on anticipatory bail which has hampered the investigation and therefore, the bail granted to the present respondents deserves to be cancelled.

5. The said application is strongly opposed by the respondents on the ground that the respondents were not aware that the material which was sold to the company was of stolen articles. The involvement of the present respondents in the alleged crime is not at all disclosed during the investigation. As there was no *prima facie* case against the present respondents and therefore, they are released on bail. The documents shows that the present respondents were not aware regarding the ownership of the said stock. The police had given notices under Section 91 of the Code of Criminal Procedure solely for the purpose to harassing the respondents and police demanded the irrelevant documents beyond the scope of investigation. In fact, the *prima facie* material was not against the present respondents to attract the provisions of Section 411 against the present respondents, considering the same the respondents are released on anticipatory bail by the Sessions Court. The application is filed by the State on

the baseless ground and hence, the application deserves to be rejected.

6. Heard learned APP for the State. He reiterated the contentions and submitted that the Sessions Court has not considered the *prima facie* material against the present respondents and erroneously released the present respondents on bail, in the event of the arrest. Due to which, entire investigation in the said crime was hampered. The present respondents are only concerned with the administration of the said company and production and therefore, they are responsible for destroying the material and its original form was change. Considering the *prima facie* material against the present respondents, the bail granted to him, deserves to be cancelled.

7. On the other hand, learned Senior Counsel Mr. Manohar submitted that the respondents have allegedly received the said material from one Dilip Shahu who is already released on anticipatory bail by this Court in Criminal Application No.623/2022. The bail order granting to the said Dilip Shahu is not challenged by the State. Thus, the investigation papers show that the crime was registered against one Latif Sheikh, who has committed the theft of scrap material. FIR was against the said Latif Sheikh. He has sold the said scrap material to one Salim Baksha, who

subsequently reported to be dead. The said Salim Baksha has sold it to one Dilip Shahu and the said Dilip Shahu has allegedly to be sold to the company. In fact, there is no reason for the present respondents to know that the material which is allegedly sold to the company are of a stolen material. There is no knowledge to the present respondents regarding the ownership of the said material. The scrap material was not received by the present respondents. In fact, there is no material to connect the present respondents with the alleged offence. The investigating agency relied upon irrelevant documents and unnecessarily harassed the present respondents. The learned trial Court has considered the same and observed in the order. That on perusal of the case diary, the respondents have cooperated with the investigating agency. It is further observed by the trial Court that the prosecution story of theft of large quantity of iron of 102 tonnes is stolen amounting of Rs.92,82,000/-. However, there is no material to show that the present respondents who are the Directors of Ramsons Casting Private Limited has received the same. The concerned Police Station has issued the notice and the present respondents have cooperated the investigating agency. However, the Investigating Officer could not connect the present respondents to show that the scrap material which was stolen is the same material which was received by the company. In fact, the company never received any material which was stolen

and therefore, the trial Court has released the respondents, on anticipatory bail. Now, all the other co-accused are already released on bail. There are no grounds made out by the State to cancel the bail. Now, the investigation is completed and the chargesheet is also filed against the other co-accused. The investigation carried out by the investigating agency nowhere connects the present respondents with the alleged offence. In view of that, the application of the State deserves to be rejected.

8. Having heard both the sides and on perusal of the investigating papers as well as the reply filed by the respondents. I have also perused the application and grounds raised by the State. Admittedly, the crime was registered against one Latif Sheikh who has committed the theft. As far as the involvement of the present respondents are concerned, the allegation against the present respondents are that they have received the stolen articles and melted it. On perusal of the case diary, no material was brought before the Court, while considering the anticipatory bail application to show the involvement of the present respondents. The investigating agency relied upon some receipts and photographs. The Statement of the present respondent was also recorded. The grounds raised by the Investigating Officer is that to screen themselves from the punishment, the record was also not maintained by

the present respondents. However, the mobile photographs shows that some trucks were unloaded in the said company. Thus, on the basis of this mobile photographs, the involvement of the present respondents were shown. All the adverse allegations are of course denied by the present respondents. As per the submission of the present respondents 150 tonnes of steel is manufactured daily in the factory of Ramsons Casting Private Limited at Hingna. The proportion of raw material used is about 95% sponge iron and about 5% scrap. Out of this, 5% scrap about 4% is the self generated scrap i.e. the rejected goods and products will do not match the quality of standards. Thus, remaining 1% of total raw material i.e. scrap is purchased from scrap vendors. This 1% is minuscule quantity as from where to the total raw material. The value of the total 1% is also negligible. Thus, as per the contention of the respondents only 1% used to purchase from the outsiders scrap vendors and they are preparing 4% of the raw material by self generating the scrap. It further reveals from the investigation papers that though investigation was carried out, but the exact role of the present respondents regarding purchase of the stolen scrap material is not revealed and therefore, the Sessions Court has granted bail to the present respondents in the event of their arrest.

9. As far as the consideration for cancellation of bail is concerned, it is well settled that while considering the application for the cancellation of the bail the overwhelming circumstances are required to cancel the bail. Only because that the bail was granted erroneously is not sufficient to cancel the bail. The overwhelming circumstances are not pointed out by the State either in its application or during their submission before the Court. After perusal of the orders, it reveals that the Sessions Court has considered entire material before the Court and thereafter, allowed the application for anticipatory bail. It is pertinent to note that the co-accused one Dilip Shahu who allegedly sold the said scrap material to the present respondents is already released on anticipatory bail and the order granting him is not challenged by the State. Now, the investigation is completed against the co-accused and chargesheet is filed. More than one year has already passed chargesheet is filed trial likely to be commenced. The consideration for cancellation of bail are (i) When bail granted is unjustified, arbitrary or vitiated by serious infirmity or wrong exercise of discretion. (ii) Post bail conduct of accused was indicative of tampering of evidence. The custodial interrogation of the present respondents is not at all required. At least nothing is on record to show that their custodial interrogation is required for any other purpose. Considering the fact that the prime accused who has allegedly sold the said

material to the present respondents is released on anticipatory bail and that order is not challenged. The custodial interrogation of the present respondents is required is not explained by the investigating agency. No overwhelming circumstances are brought on record to cancel the bail. Thus, applications have no merits and liable to be rejected.

10. In view of that the applications are rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate