



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 200 OF 2024

FARUKPASHA BASHUMIYA SHAIKH
VERSUS
AFROZ MAHEMUD TAMBOIL AND ANOTHER

Party in Person for the appellant
Mr. M. G. M. Shaikh, Advocate for respondent nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 10th OCTOBER, 2024

PER COURT :-

1. This appeal takes exception to the order dated 29/01/2024 passed by Addl. Sessions Judge-2, Latur refusing to take cognizance of application filed under Section 340 r/w 195 of the Code of Criminal Procedure (for short 'Cr.P.C.').

2. Appellant is informant in Crime No. 536/2023 registered against the contesting respondent for the offences punishable under Sections 307, 324, 452, 380, 382, 323, 201, 204, 427, 504, 506 r/w 34 of the Indian Penal Code and Sections 43, 66, 66(B) of the Information Technology Act, 2000. The respondents filed application in the said crime for seeking anticipatory bail bearing Criminal Bail Application No. 790/2023. This application came to be allowed by order dated 29/01/2024.

3. It is the case of the appellant/informant that this order was obtained by the respondents by making two false statements which read thus:

. *"The Applicants are having clean and unblemished record in their credit till this date."*

. *the Applicant as they are respectable persons in their neighborhood and it may damage their reputation in the society."*

4. It is his contention that there are number of other offences registered against the respondents and hence the statement that they have clean and unblemished record in their credit till this date, is a false statement. He relied upon dictionary meanings of term 'blame' which according to him is any charge against a person amounts to blame and hence it cannot be said that the respondents had unblemished record and therefore, this is a false statement made on oath. He also challenges the statement of the respondents that they are respectable persons in the neighborhood. It is his submission that in view of of the offences registered against them they cannot be called as respectable or reputation persons in the society and as such this is fit case for invocation of Section 340 read with 195 of Cr.P.C. He has also made grievance that the learned Addl. Sessions Judge has not heard appellant herein and passed impugned order.

5. Learned counsel for the respondents opposed the said contention by stating that there is no conviction recorded against the respondents till date by any competent Court and as such it cannot be said that the statement made before the Court is false. He has also drawn attention of the Court that the appellant herein was heard at the time of passing of the order of grant of anticipatory bail and as such it cannot be said that the order has been obtained by making any false statement by the respondents.

6. In order to invoke provision of Section 340 r/w Section 195 of the Cr.P.C., there has to be a *prima facie* case made out about a false statement being made by any party to seek any relief from the competent Court. Needless to say that since the said provision has penal consequences, the statement so made are to be strictly construed and interpreted. Needless to say that in the statement has more than one interpretation, it cannot be said that the statement so made is the false statement to bring the case under these provisions.

7. First statement which is stated to be false is with regard to the clean and unblemished record of the respondents till date. Undeniably, there is no conviction recorded by any competent Court against the respondents. If the respondents claim this to be unblemished record, it is not open for the appellant to interpret as there being no

offence registered against them. Similarly, in so far as the statement about claim of the respondents that they are respectable persons and have reputation in the society, unless established otherwise, it is not permissible to hold that they are not respectable persons. There is no bar for the respondents to claim themselves to be a respectable person in the society.

8. Now question arises as to whether any false statement is made and used to obtain favourable order from the Court. There is no dispute about the fact that appellant/ informant was duly heard before granting anticipatory bail to the respondents herein. It was pointed out by informant to the said Court that there are other offences registered against them. It is after considering the said contention of informant, order of grant of pre arrest bail was passed. Thus, it cannot be said that any false statement was made or relied upon to obtain order. Moreover it is pertinent to note that, the order passed by the learned Addl. Sessions Judge of granting anticipatory bail to the respondents was challenged before this Court by the appellant by filing an application for cancellation of the bail. The said application is rejected by this Court. As far as grievance of appellant that he was not heard, the record indicates that the written notes of argument and judgments were filed by the appellant which are duly considered by the Court. Thus, there is no substance in

the contention that the appellant was not heard.

9. As a result of above discussion, this Court finds no merit in the appeal. Hence, the appeal stands dismissed.

(R. M. JOSHI, J.)

ssp