



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

CRIMINAL APPLICATION (APPLN) NO.11/2023

Narendra s/o Sahajram Sainani

..VS..

State of Mah., thr.PSO PS Sitabuldi, Nagpur and ors

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

Court's or Judge's Order

Shri S.S.Ghate, Counsel for the Applicant.

Shri Sanket Walde, Counsel for NA No.2.

Mrs.A.Mishrikotkar, Advocate h/f Shri P.Bezalwar, Counsel for NA No.3.

Shri S.S.Hulke, Additional Public Prosecutor for NA No.1/State.

<u>CORAM</u>	: <u>URMILA JOSHI-PHALKE, J.</u>
<u>CLOSED ON</u>	: <u>28/02/2024</u>
<u>PRONOUNCED ON</u>	: <u>04/03/2024</u>

1. Heard.

2. The applicant (original complainant) seeks cancellation of bail granted to non-applicant Nos.2 and 3 (accused persons) by order dated 9.2.2023 passed by learned Additional Sessions Judge, Nagpur in Criminal Bail Application Nos.231 and 286/2023.

3. The accused persons were granted bail in connection with Crime No.0050/2023 registered with the non-applicant/police station for offences punishable under Sections 408, 420, 468, and 471 read with 34 of the Indian Penal Code.

4. The original complainant is Director of "Dust Blowers Facility Management Services Private Limited" (the company) established in the year 2000. The company has been providing facility management services to various establishments since last twenty three years such as hospitals, corporate offices, IT companies, sports, recreations, hotels, and banks etc.. Thus, the company has been providing facilities of supplying of man power. Non-applicant No.2 has been appointment as Facility Executive. Whereas, non-applicant No.3 has been serving as Operation Manager since last fifteen years.

5. The original complainant lodged a report against accused persons as in the year 2015, the company received Work Orders from the CIIMS Hospital, Bajaj Nagar, Nagpur (the hospital) and an agreement was executed. In pursuance of the agreement, the company has to provide house keeping staffs and Work Order were renewed time to time. It was also renewed from period 1.12.2021 to 31.3.2023 and in accordance with the said agreement, the company provided 39 house keeping staffs, 3 supervisors, one facility executive to hospitals.

Non-applicant No.2 was appointed as Facility Executive and deputed in the hospital and was under obligation to see and verify work of staffs provided, deploy duties of house keeping staffs and to maintain registers.

Non-applicant NO.3 has been appointed as Operation Manager to supervise and manage the hospital's site and a duty was assigned to him to visit sites, verify staffs, check-in and check-out registers, to redress grievances of house keeping staffs, to verify final attendance sheets on every month, to sign attendance sheets, and submit bill for approval.

It revealed to the original complainant that the accused persons manipulated registers depicting false entries in registers and prepared false attendance sheet. On 26.10.2022, the Chief Administrative Officer of the hospital called the original complainant and it was found that there was no cleanliness in the hospital despite of several staff was deployed and it revealed that an inadequate staff was appointed there and false entries are taken, and therefore, the crime was register against the

accused persons.

6. After registration of the crime, the accused persons preferred applications bearing Criminal Application Nos.231 and 286/2023 for grant of pre-arrest bail. The Appellate Court below, observing that custodial interrogation of accused persons is not required and case is based on documentary evidence, released accused persons on bail.

7. Being aggrieved and dissatisfied with the grant of bail to accused persons by the Appellate Court below, the present application is preferred for cancellation of bail on ground that the Appellate Court below had not considered involvement of accused persons in the a crime like, "misappropriation of amount" for which their custodial interrogation is required. They manipulated records and shown excessive staff. However, in fact, they appointed inadequate staff. The Appellate Court below only observed that custodial interrogation is not required and granted the bail. In fact, specimen handwriting of the original complainant was required to ascertain the involvement of accused persons. It is further submitted that the Appellate Court below, while

passing the order granting bail, ignored evidence on record and, therefore, the application deserves to be allowed cancelling the bail.

8. Learned Additional Public Prosecutor for the State supporting contentions of the original complainant submitted that while granting the anticipatory bail, parameters required to be taken into consideration are not considered and the bail has been granted.

9. Learned counsel for accused persons submitted that while passing the order impugned, the Appellate Court below considered that custodial interrogation is not required as the entire case is rested on documentary evidence. It is well settled that normally granting of bail is not to be interfered with unless there are circumstances to show that persons granted bail have misused the liberty granted in their favour. There are no supervening or overwhelming circumstances to cancel the bail. Hence, the application deserves to be rejected.

10. Having heard learned counsel appearing for parties; perused investigation papers, and the

impugned order granting the bail, it reveals that the original complainant runs the company and provides manpower to various establishments. Non-applicant No.2 was appointed as Facility Executive. Whereas, non-applicant No.3 was appointed as Operation Manager. They were looking after the management of the staff employed at the hospital. The original complainant received a complaint regarding unhygienic condition in the hospital and, therefore, visited the hospital and revealed that inadequate staff is deployed and false report is prepared to show that the manpower provided by the company is working in the hospital and thereby misappropriated amount Rs.11.00 lacs.

11. During investigation, various statements of witnesses were recorded. The accused persons issued letter in the name of the original complainant and admitted that they have prepared false record to show that 39 employees are deployed and in fact inadequate staff was deployed. The hospital availed services of the company to maintain hygienic condition in the hospital which is an utmost requirement considering maintenance of hygienic condition requires for keeping reputation of the hospital as well as for the betterment of patients.

12. This court, admittedly, has a narrow scope of interference in an order granting bail while exercising its power. The parameters for cancelling the bail are that cogent and overwhelming circumstances are required.

13. Expression "cogent and overwhelming circumstances" has been well illustrated by the Honourable Apex Court in the case of **Daulat Ram and ors vs. The State of Haryana, reported in (1995)1 SCC 349** which are, (i) evasion or attempt to evade due course of justice or abusing or attempt to abuse concession or bail granted; (ii) possibility of the accused to abscond; (iii) development of supervening circumstances impeding upon principles of fair trial, and (iv) the link between gravity of the offence, conduct of the accused and the societal impact on the court's interference.

14. Sub section (2) of Section 439 of the Code of Criminal Procedure indicates that a power is conferred on courts mentioned therein. The provision nowhere indicates that the said powers can be exercised only if the State or investigating agency or a public prosecutor moves a petition. The principle

laid down, while considering cancellation of bail, is that very cogent and overwhelming circumstances are required for directing cancellation of bail. It is also true that cancellation of bail cannot be limited to occurrence of supervening circumstances.

15. The Honourable Apex Court in the case of **Deepak Yadav vs. State of Uttar Pradesh and anr, reported in (2022)8 SCC 559** held that following are the illustrative circumstances where the bail can be cancelled:

- a) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record;
- b) where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim;
- c) where the past criminal record and conduct of the accused is completely ignored while granting bail;
- d) where bail has been granted on untenable grounds;
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice;

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;

g) when the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

16. In the light of above parameters, if the order impugned is perused, it reveals that the Appellate Court below has only considered that custodial interrogation is not required as the entire case is based on documentary evidence which is available with the hospital. In fact, the Appellate Court below ought to have considered that accused persons are charged with misappropriation of money and forgery of documents. The manner in which the offence is committed is a part of investigation and unless accused persons are taken into custody, the same cannot be investigated. The accused persons were responsible employees of the company and have prepared forged documents to obtain economical benefits or gains.

17. Thus, it reveals that the Sessions Court has not considered relevant record and granted the bail

only considering that custodial interrogation is not required ignoring relevant material and requirement of their physical custody.

18. In the light of the above, as the order passed by the Appellate Court below is perverse and liable to be set aside, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) The order dated 9.2.2023 passed by learned Additional Sessions Judge, Nagpur in Criminal Bail Application Nos.231 and 286/2023 granting bail to accused persons is hereby quashed and set aside.

The application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!