



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

CRIMINAL APPLICATION (APPLN) NO.54 OF 2022

Dr. Kshitij s/o Youraj Lange
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Hudkeshwar District Nagpur and another

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

Court's or Judge's orders

Mr. S. R. Kumbhalkar, Advocate h/f Mr. P. S. Tiwari, Advocate for applicant.
Mr. N. B. Jawade, APP for non-applicant no.1/State.
Mr. D. M. Dixit, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/03/2024

1. By this application, the applicant is seeking cancellation of bail under Section 439(2) of the Code of Criminal Procedure in connection with Crime No.440/2020 registered with Police Station Hudkeshwar, District Nagpur for the offence punishable under Sections 406, 420, 465 and 506-B read with Section 34 of the Indian Penal Code.

2. The non-applicant No.2 is arraigned as an accused in connection with Crime No.440/2020 alleging that the applicant has purchased few plots in Mouza Kaldongri and Mouza Chikhana for valuable consideration in his name from hard earned income and erected plot on the said land. As the applicant was not aware about the business of real estate he entered into a partnership deed with the non-

applicant No.2 and his brother who were acquainted with the applicant since childhood. But the non-applicant No.2 and his brother taking undue benefit of the trust shown by the applicant and in furtherance of their common intention, misappropriated huge amount of Rs.58,56,540/-. By entering into transaction with prospectus buyers by forging the signatures of the applicant and also not paying the share of the applicant as agreed in the partnership deed and having in fact opened a fake account and cheated the applicant.

3. After registration of the crime, the non-applicant No.2 approached to the Sessions Court for grant of anticipatory bail by filing Misc. Criminal Application No.3275/2020. The learned Additional Sessions Judge by considering the investigation papers and after hearing both the sides observed that from the copies of the document filed on record that complainant and both the accused persons are well acquainted with each other and enter into a partnership. It is further observed that perusal of the record further shows that though the misappropriation of huge sum and cheating is alleged against the present applicant and his brother, but it is seen that dispute prima facie appears to be of civil nature and released the non-applicant No.2 on bail on the condition, he shall execute the PR bond of Rs.50,000/- with one solvent surety in the like amount. While releasing him on bail, the condition

was imposed that the applicant shall not, directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court to any police officer.

4. Being aggrieved and dissatisfied with the said order, the original complainant preferred this application for cancellation of the bail, on the ground that the learned Sessions Court has not considered that the non-applicant No.2 is involved in the serious offence. The another ground raised is that the non-applicant No.2 has jumped from the conditions of the bail and contravened the condition which is imposed on him while releasing him on bail. As he entered into the house of the present applicant on the pretext of settling the matter and threatened the present applicant for that purpose the Crime No.230/2021 was registered against him and the third ground raised is that in view of the order passed by this Court, the non-applicant No.2 has not attended the Police Station. Thus, considering that the non-applicant No.2 has contravened the terms and conditions imposed by this Court while releasing him on bail. The learned Sessions Court has not considered the nature of offence and need of the custodial interrogation of the present non-applicant No.2 and released him on bail in the event of his arrest, therefore, the bail granted to the present non-applicant No.2 deserves to be rejected.

5. Learned APP supported the contention of the applicant and submitted that considering the fact that the custodial interrogation is required, the order passed by the learned Sessions Court deserves to be set aside and the bail granted to the non-applicant No.2 deserves to be cancelled.

6. Per contra, learned Counsel for the non-applicant No.2 submitted that after considering the entire record and after hearing both the sides, the bail is granted to the present non-applicant No.2. As far as the contravention of the terms and conditions is concerned for the same the Crime No.230/2021 was already registered against the non-applicant No.2 and he is released on bail by the Sessions Court in the said offence also. Now, after one year of releasing him on bail, this false application is filed to cancel the bail. He submitted that the learned Sessions Court has considered the nature of the allegation against the present non-applicant No.2 which covers under the civil litigation and for which the non-applicant No.2 is having appropriate remedy. He further submitted that as far as the allegation against the present non-applicant No.2 that he has not attended the Police Station. The non-applicant No.2 has filed on record the extract of diary which shows that in all on 21 dates the non-applicant No.2 has attended the Police Station. Thus, there is no overwhelming and superwhelming circumstances to cancel the bail.

Moreover, the non-applicant No.2 cannot be put behind the bar by way of punishment when the learned Sessions Court after considering the entire material released him on bail. Now, investigation is already completed and charge-sheet is filed and the trial is on the verge of commencement, as charge is yet to be framed. In view of that, the application deserves to be rejected.

7. Heard learned Counsel for the applicant. He invited my attention towards the bail order passed by the learned Sessions Court as well as the conditions imposed while releasing non-applicant No.2 on bail. He vehemently submitted that the registration of the crime against the present non-applicant No.2 bearing No.220/2021 is itself sufficient to show that non-applicant No.2 has contravened the condition imposed on him while releasing on bail. There is no other material required to cancel the bail, as overwhelming and super whelming circumstances are available. He further submitted that the order passed by the learned Sessions Court is perverse as the learned Sessions Court has not considered the large magnitude of the offence wherein the amount is involved to Rs.58,56,540/-. He submitted that the non-applicant No.2 has also contravened the condition which was imposed on him to attend the Police Station. The Non-applicant No.2 has not attended the Police

Station. In view of that also the application filed by the applicant deserves to be allowed.

8. Learned Counsel for the non-applicant No.2 vehemently submitted that as far as the allegation regarding non attendance of Police Station is concerned, he has filed on record the entries of diary which shows that the non-applicant No.2 has attended the Police Station on 20 occasions and cooperated with the investigating agency.

9. He also pointed out that the State has not filed any application alleging that the non-applicant No.2 has not cooperated with the investigating agency and sought any cancellation of bail.

10. He further submitted that as far as the second FIR against the present non-applicant No.2 is concerned, he visited the house only to settle the dispute, and there was no other reason. For that purpose, the crime was already registered and non-applicant No.2 was arrested and the learned Sessions Court has already released him on bail considering all these facts. In view of that, the application is devoid of any merit and is liable to be dismissed.

11. The allegation against the present non-applicant no.2 is that the applicant, who is the owner of agricultural land bearing Khasra No.109,

P.H. No.40 admeasuring 1.12 Hectare i.e. 2.76 acres which was purchased by him from one Abdul Zaffar for the consideration of Rs.47,00,000/-. Thereafter, he entered into an agreement with the non-applicant No.2 and they had a partnership. As per the allegation of the complainant, the non-applicant No.2 by taking disadvantage of the said partnership executed the sale deeds in favour of various purchasers and that too behind his back by posing the signature of the present applicant sold out the said plots.

12. The learned trial Court after going through the investigation papers observed that *prima facie* the dispute appears to be a civil nature and he further submitted that the accused No.2 i.e. Jitendra Lanjewar, who is the brother of the present non-applicant No.2 i.e. Vinod Lanjewar is already arrested and is in the custody of the police.

13. The documents, particularly copy of the FIR clearly shows that the offences solely based on the documentary evidence and said documentary evidence can be obtained without the custodial interrogation of the present non-applicant No.2 and released him on bail. The conditions were imposed on the non-applicant No.2 while granting bail. In view of that condition it was directed that the non-applicant No.2 shall not directly or indirectly make any inducement, threat or promise to any

person acquainted with the facts of the accusation against him, so as to dissuade him from disclosing such facts to the Court or any police officer.

14. The record further shows that on an allegation that present non-applicant No.2 attempted to tamper the prosecution evidence and visited the house of the present applicant and threatened him by way of phone call regarding the same Crime No.230/2021 which was registered against the present non-applicant No.2. It is also part of the record that he has approached Court for grant of bail wherein also he was released on bail.

15. On perusal of the subsequent FIR, it reveals that applicant is a Medical Practitioner by profession and he has acquainted with the non-applicant No.2 and his brother. In the Second FIR, it is alleged that the non-applicant No.2 used to call him repeatedly and thereafter, on 20.03.2021 he received a phone call of one Munna, who threatened him that if he did not settle the dispute with the present non-applicant No.2, he will see that he would not get any relief. On the basis of said FIR, the another crime was registered against the non-applicant No.2 and one Munna Tiwari.

16. Thus, as far as the contentions of the applicant that the non-applicant No.2 has visited his house and threatened him is not substantiated by the

said second FIR. In the second FIR, there is allegation that the another co-accused Munna Tiwari has called him and threatened him. The recitals of the second FIR nowhere shows that it was the present non-applicant No.2, who came to his house on the pretext of settlement and threatened him.

17. Reverting back to the order passed by the Sessions Court, the Sessions Court had considered that being a nature of offence seems to be civil nature and custodial interrogation of the non-applicant No.2 was not required, he was protected by the granting anticipatory bail.

18. It is further observed by the Sessions Court that the entire case revolves around the documentary evidence and one of the accused is already arrested and the Investigating Officer can procure the said document without the custody of the present non-applicant No.2 and released him on bail.

19. Thus, the contention of the learned Counsel for the applicant that the order passed by the Sessions Court is perverse, is not sustainable as the Sessions Court has already considered the necessity of the custodial interrogation of the non-applicant No.2. As far as the allegation regarding the contravention of the terms and conditions are concerned, it is already observed that the subsequent crime is registered against the present non-applicant

no.2 and considering the recitals of the FIR in the subsequent FIR, he is released on bail.

20. The another contention raised by the applicant is that he has not attended the Police Station is also not substantiated by the documents. On the contrary, the extract from the diary shows that at the most on 20 occasion the non-applicant No.2 has attended the Police Station and cooperated with the investigating agency. There is no allegation by the prosecution also that the non-applicant No.2 has not cooperated with the investigating agency.

21. When Court is considering the application for cancellation of bail, considerations are different than the considerations of grant of bail. If there is no *prima facie* case, there is no question of considering the other circumstances. Even where a *prima facie* case is established, the approach of the Court in the matter of the bail is not that the accused should be detained by way of punishment but whether the presence of the accused could be readily available for trial or whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. The Sessions Court has considered the same and released him on bail. Very cogent and overwhelming circumstances are necessary for an order seeking for cancellation of the bail. It is now well-settled by the catena of decisions of the Apex Court that power to grant bail is not to be exercised as if the punishment

before the trial is being imposed. The only material considerations in such a situations are whether the accused would be readily available for the trial and whether he is likely to abuse the discretion granted in his favour by tampering with witness. It is also well settled that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail which is already granted.

22. In the instant case, the crime was registered in the year 2020. Now, the investigation is also completed and charge-sheet is filed. There is no complaint from the Investigating Officer that the non-applicant No.2 has not cooperated with the investigating agency. The record shows that he has already attended the Police Station. As far as the attempt of tempering witness is concerned, the present non-applicant No.2 has visited the house of the present applicant, but the recitals of the FIR are silent about the same. The recitals of the FIR on the basis of which Crime No.230/2021 is registered shows the allegation against the co-accused i.e. Munna Tiwari, who threatened the present applicant. Thus, no overwhelming and superwhelming circumstances are brought on record to cancel the bail. The order of the learned Sessions Court also shows that on the basis of the material which is collected during the investigation and considering the parameters that the bail cannot be denied to the accused by way of punishment, he is released on bail.

So, no perversity appears from the order and therefore, the application is devoid of merits and is liable to be dismissed. Accordingly, I proceed to pass following order.

ORDER

The application is dismissed.

(URMILA JOSHI-PHALKE, J.)