



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

CRIMINAL APPLICATION (APPLN) NO.81/2022
The State of Mah., thr.Station House Officer, Warora, Taluka Warora,
District Chandrapur
..VS..
Sachin Umakant Darne and anr

WITH

CRIMINAL APPLICATION (APPLN) NO.82/2022
The State of Mah., thr.Station House Officer, Warora, Taluka Warora,
District Chandrapur
..VS..
Suresh Pundlikrao Dhale and anr

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

Court's or Judge's Order

.....
Shri Nitin Autkar, Additional Public Prosecutor for the
Applicant/State.
Shri Anil S.Mardikar, Senior Counsel assisted by Shri V.D.Darne,
Counsel for Applicants.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 19/03/2024
PRONOUNCED ON : 05/04/2024

1. Both these applications, under Section 439(2) of the
Code of Criminal Procedure, are preferred by the State for
cancellation of bail granted to non-applicants by learned Additional
Sessions Judge, Chandrapur in connection with Crime No.262/2022
registered for offences punishable under Sections 353, 395, and 186
of the Indian Penal Code.

2. Heard learned Additional Public Prosecutor Shri Nitin Autkar for the applicant/State and learned Senior Counsel Shri Anil S.Mardikar for non-applicants.

3. Ravindra Uttamchand Gedam, the Circle Officer, lodged a report alleging that on 2.5.2022, at about 6:30 pm to 7:00 pm, he received an information regarding illegal excavation of sand from Karanji Ghat. He immediately rushed the spot along with his team Karanji Ghat of Wardha River. On inspection, it reveals that 2000 brass sand worth of Rs.60.00 lacs was excavated illegally. Upon an enquiry, names of four persons namely Sanjay Sapat Pravin Mahajan, Suresh Dhale, and Sachin Dharne, who are non-applicants, came forward and informed that they obtained Sand Ghat in auction and instrument of excavation belongs to them. On inspection, it was found that the sand was excavated not from Auction Ghat, but Sand Ghat from Eastern Side of the bank of the Wardha River which falls under Chandrapur district and is not auctioned in favour of non-applicants. When he along with his team was drawing panchanama and carrying out other procedure, non-applicants obstructed the procedure and ran away from the spot of the incident incident along with their instruments. On the basis of the said report, the police registered the crime.

4. After registration of the crime, non-applicants approached the Sessions Court at Chandrapur for grant of pre-arrest bail by filing applications vide Criminal Application Nos.85 and 86 2022 respectively. Learned Sessions Judge, having perused investigating papers and heard both sides, granted pre-arrest bail to non-applicants.

5. Being aggrieved with the same, present applications are preferred for cancellation of bail by the State on ground that non-applicants excavated sand of 2000 brass illegally from the Eastern Side of bank of Wardha River which falls under jurisdiction of Warora Tahsil. The Government has not auctioned the Sand Ghat from where the sand was excavated in favour of non-applicants. Non-applicants obstructed the informant and other raiding party members when they were discharging their official duties. The State has further raised ground that learned Sessions Judge had not considered a fact that non-applicants excavated the sand from the Ghat which was not auctioned and thereby committed the offence. The order passed by learned Sessions Judge is by ignoring investigation papers. As such, the bail granted to non-applicants deserves to be cancelled.

6. *Per contra*, learned Senior Counsel for non-applicants

invited my attention to observation made by learned Sessions Judge wherein it is mentioned that learned APP fairly submitted that there are no indications or marks on the spot differentiating exact spot of the Sand Ghat. The spot panchanama also nowhere differentiates exact spot of any demarcation between Karanji Ghat and the Sand Ghat which was allotted to non-applicants in auction. He further submitted that now investigation is already completed and no purpose will be served by sending non-applicants behind bars after two years of the incident and he prays for rejection of applications.

7. Having heard both parties and perused investigation papers as well as documents filed on record, it reveals that one of non-applicants namely Sachin Darne has participated in auction of Sand Ghat situated at Mouza Shelu-Khurd, taluka Wani and in auction, the said Ghat was allotted to him on depositing Rs.75,59,000/-. As per agreement, he was permitted to excavate sand from the date of possession of the Sand Ghat, till 9.6.2022. The said agreement is placed record. The Government Resolution dated 28.1.2022 lays down procedure of excavation of sand after the Sand Ghat was allotted to the concerned persons. Thus, there is no dispute as to fact that non-applicants were allotted the Sand Ghat in auction procedure and they were permitted to excavate the sand at

Mouza Shelu-Khurd, taluka Wani. During investigation, the Investigating Officer drew spot panchanama and also drawn map. The spot panchanama nowhere shows any material differentiating between Karanji Ghat and the Sand Ghat which was taken in auction by non-applicants. The observations of learned Sessions Judge show that learned APP fairly submitted that there are no indications or marks differentiating exact spot of Sand Ghat. Perusal of panchanama also shows that there is no express demarcation differentiating Karanji Ghat and the Sand Ghat i.e. Mouza Shelu-Khurd, taluka Wani allotted non-applicants in auction. Even, panchanama nowhere shows that there were any marks of excavation at the said spot. Though the prosecution relied upon map, it also nowhere differentiates or shows mark where exactly the excavation was made.

8. It is well settled that parameters for grant and cancellation of bail are different. Bail granted to an accused can be cancelled if the court is satisfied that after being released on bail (1) the accused has misused liberty granted to him; (2) flouted conditions of bail order, and (3) that bail was granted in ignorance of statutory provisions restricting powers of court to grant bail or that the bail was procured by misrepresentation or fraud.

9. The Honourable Apex Court, in the case of **Himanshu Sharma vs. State of Madhya Pradesh, reported in 2024 SCC OnLine SC 187**, after referring catena of decisions, dealt with scope of cancellation of bail and held that consideration for grant and cancellation of bail are entirely different and lays down grounds on which bail can be cancelled.

10. On the basis of above observations of the Honourable Apex Court, in the present case, none of these circumstances exists. As orders passed by learned Additional Sessions Judge, Chandrapur are well reasoned order, both applications deserve to be rejected and the same are rejected.

Applications stand **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!