



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

**CRIMINAL APPLICATION (APPLN) NO.45 OF 2023**

**Jayesh s/o Manibhai Chandarana**

**..VS..**

**State of Maharashtra, through PSO PS Ganeshpeth, Nagpur**

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

Court's or Judge's Order

**Shri R.K.Thakkar, Counsel for the Applicant.**  
**Shri N.B.Jawade, Additional Public Prosecutor for NA No.1/State.**  
**Shri R.S.Akbani, Counsel for NA No.2/Accused.**

**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED ON : 23/10/2024**

**PRONOUNCED ON : 14/11/2024**

1. By this application, the applicant/complainant seeks cancellation of bail dated 2.5.2023 granted by learned Additional Sessions Judge, Nagpur (learned Sessions Judge) in Criminal Bail Application No.931/2023 to non-applicant No.2/accused in connection with Crime No.87/2023 registered with Ganeshpeth Police Station, Nagpur for offences punishable under Sections 420, 406, and 120-B read with 34 of the Indian Penal Code.

2. On the basis of report lodged by the

applicant/complainant, a crime was registered against non-applicant No.2/accused. As per allegations in the First Information Report, non-applicant No.2/accused and other co-accused persons, in connivance with each other, induced him to invest amount Rs.1.00 Crore in a company by name “P.Bhagat and Company” on a false promise. On the inducement of co-accused persons, he invested the amount and subsequently, he came to know that non-applicant No.2/accused and other co-accused persons duped him by obtaining the amount. On the basis of the said report, the police registered the crime. After registration of the crime, non-applicant No.2/accused approached the Sessions Court for grant of bail and learned Sessions Judge released him on bail.

3. The application filed by the applicant/complainant for cancellation of bail is on ground that a detailed investigation is required to seize the amount. There was nexus between non-applicant No.2/accused and other co-accused persons, who in connivance with each other duped him. Non-applicant No.2/accused played a key role in commission of the offence and, therefore, his custodial interrogation is required. Learned

Sessions Judge did not consider this aspect and released him on bail by ignoring relevant material collected during the investigation.

4. The application is strongly opposed by non-applicant No.2/accused on ground that there is no allegation against him either of inducement or receipt of the amount. Only on the basis of statements of co-accused persons, he was involved in the crime. After he was released on bail, he co-operated with the investigating agency and there is no allegation against him either he contravened conditions or committed any breach of any condition. In view of that, the application deserves to be rejected.

5. The State supported the application on ground that involvement of non-applicant No.2/accused is in serious offence of cheating and criminal breach of trust and, therefore, his custody is required for recovery of the amount. In view of that, the application deserves to be allowed.

6. Heard learned counsel Shri R.K.Thakkar for the applicant/complainant, learned Additional Public Prosecutor

Shri N.B.Jawade for non-applicant No.1/State, and learned counsel Shri R.S.Akbani for non-applicant No.2/accused.

7. Learned counsel for the applicant/complainant reiterated grounds raised in the application and submitted that relevant material was not considered by learned Sessions Judge while releasing non-applicant No.2/accused on bail. A huge amount is involved and involvement of non-applicant No.2/accused is in economic offence. In view of that, the protection granted to non-applicant No.2/accused deserves to be cancelled. He placed reliance on the decision of the Hon'ble Apex Court in the case of **Arnesh Kumar vs. State of Bihar and anr, reported in AIR 2014 SC 2756.**

8. Learned counsel for non-applicant No.2/accused supported the order passed by learned Sessions Judge and placed reliance on the decision of the Hon'ble Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51.**

9. Perusal of the application as well as replies filed by non-applicant No.1/State and non-applicant No.2/accused and

submissions made on behalf of parties, reveals that the crime is registered on the basis of report lodged by the applicant/complainant wherein it is alleged that he was acquainted with co-accused Hitesh Rewatkar who informed him that one company is in his contact which accepts amounts for investment under a Scheme of Trade Profit Fund and if amount is invested in the said company, handsome returns are paid. He was induced to invest amount Rs.2.00 crores on a promise that he would receive Rs.3.20 Crores and, therefore, the applicant/complainant met Advocate Hitesh Rewatkar who explained the entire Scheme to the applicant/complainant. On deciding to invest amount, the applicant/complainant visited office of the company at Rangunwala Building, Bhaldarpura Chowk, Nagpur and handed over the amount. At the relevant time, three persons namely Advocate Hitesh Rewatkar, Jayant Wankhede and Avinash Bhorekar were present in the said office. Though he handed over the amount, he did not receive returns immediately through RTGS and, therefore, he enquired with co-accused and the co-accused promised him that he will definitely receive returns, but, subsequently, he came to know that he is

duped by non-applicant No.2/accused and other co-accused persons.

10. Perusal of investigation papers reveals that involvement of non-applicant No.2/accused is on the basis of statements of co-accused persons. CDRs show that there was communication between non-applicant No.2/accused and one Satyendra Shukla. It reveals from investigation papers that there is no allegation that either non-applicant No.2/accused induced the applicant/complainant to invest the amount or received the amount. The entire investigation papers and recital of the First Information Report do not show presence of non-applicant No.2/accused either with co-accused persons at the time of handing over the amount or when the applicant/complainant met other co-accused persons in the office of the company. The investigation papers also nowhere show in what manner non-applicant No.2/accused was connected with the said company wherein the applicant/complainant invested the amount. Only connection appears between non-applicant No.2/accused and one Satyendra Shukla is that he rented his premises to Satyendra Shukla situated at Gandhi Bagh, Agrasent Chowk, in

Rangunwala Building. Besides rent agreement, there is absolutely no material to show connection between non-applicant No.2/accused and other co-accused.

11. Learned Sessions Judge, while releasing non-applicant No.2/accused on bail, considered the aspect of Section 420 of the Indian Penal Code so also criminal breach of trust and audio clips of conversation and observed that it is co-accused persons, and not non-applicant No.2/accused, who induced the applicant/complainant fraudulently and dishonestly to invest the amount and released non-applicant No.2/accused on bail.

12. In the decision of the Hon'ble Apex Court in the case of **Arnesh Kumar** *supra*, on which learned counsel for the applicant/accused placed reliance, it is held that from a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid.

The said aspect is also considered by the Hon'ble Apex Court in the case of **Satender Kumar Antil** *supra*, on which learned counsel for non-applicant No.2/accused placed reliance, wherein it is held that Section 41 under Chapter V of the Code of Criminal Procedure deals with arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section 41 of the Code. If the officer is satisfied that a person has committed a cognizable offense, punishment with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. It is further held that Section

41 of the Code mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record reasons for arrest in writing. The consequence of non-compliance with Section 41 of the Code shall certainly inure to the benefit of the person suspected of the offence.

13. In the present case, observations of learned Sessions Judge show that the investigating officer specifically stated that there is no compliance of issuing notice under Section 41 or 41-A of the Code.

14. Thus, in view of observations of the Hon'ble Apex Court, as there was no compliance by issuing notice under Section 41 of the Code, which certainly inure to the benefit of the persons suspected of the offence, any non-compliance would entitle the accused to grant bail.

15. As far as cancellation of bail is concerned, it is well settled that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by

enjoying the concession of bail during the trial. In case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail.

16. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. Circumstances where bail can be cancelled are :

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, and

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

17. In the light of above considerations, admittedly, no overwhelming or supervening circumstances are brought on record for cancellation of bail.

18. As far as merits of the matter is concerned, admittedly, there is no compliance by issuing notice under Section 41 of the Code though the alleged crime is registered under Sections 420 and 406 of the Indian Penal Code for which punishment provided is upto seven years. This aspect is considered by learned Sessions Judge. Moreover, there is no allegation as to the inducement or tampering or breach of

conditions. On the contrary, extract of diary placed on record shows that non-applicant No.2/accused has attended the economic offence wing and cooperated with the investigating agency.

19. Considering above aspects, since no case is made out for cancellation of bail, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!