



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

CRIMINAL APPLICATION (APPLN) NO. 78 OF 2023

Amar s/o Bansilal Ahuja Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. V.R. Deshpande, counsel for applicant
Mr. S.V. Narale, APP for non-applicant/State.
Ms. S.S. Jadhav, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 25/11/2024.

1. By this application, the complainant is seeking cancellation of bail granted to the non-applicant no.2 in connection with Crime No. 274/23 registered under Section 274/2023 registered under Sections 408 and 420 of the Indian Penal Code, 1860.

2. The application is filed on the ground that the complainant is running the business in the name of "Gurukrupa Garments" from August-2022 at Nandgaonpeth Amravati and also runs other businesses, and therefore, he has employed the present applicant to look after the day-to-day activities of the shop. The non-applicant No. 2 came to the complainant for work in September 2022, as he was a friend of the complainant, and the complainant engaged in his shop, and the non-applicant No. 2 started working as a Manager and drawing a salary of Rs. 30,000/- per month. From October 2022, the salary of the accused was increased, and he was getting Rs. 60,000/- per month. In the month of January

2023, the mother-in-law and father of the complainant were ill, and therefore he could not concentrate towards his business and was completely dependent on the accused. On 31/3/2023, the financial year was over therefore, the complainant asked his auditor for the auditing and it revealed that the accused has misappropriated an amount of Rs. 53,68,663/-. During the said period, there were 745 rolls of cloth which were missing. The said 745 rolls was worth of Rs. 35,76,700/-. Thus, the accused has received the amount of Rs. 1,73,885/- and also gained the amount by misappropriating the cash amount as well as in the nature of misappropriating the 745 rolls. Therefore, the complainant approached the police station and lodged the report. On the basis of said report, the crime was registered.

3. After registration of the crime, the non-applicant no.2 approached the Sessions Court, and the Additional Sessions Judge, Amravati, released the non-applicant No.2 on bail by observing that the investigation is in progress and there is nothing on record to show that the applicant will flee from justice if released from bail. It is further observed that there is no material on record to show that the applicant will use his liberty to subvert the justice or tamper with the evidence.

4. Being aggrieved and dissatisfied with the said order, the present application is filed by the complainant on the ground that the learned Sessions Judge has ignored the relevant material and, without assigning any reason, released the non-applicant No.2 bail, merely by observing that there is

no material on record to show that he would be fleeing from the justice or he would tamper with the evidence. As far as the merit of the matter is concerned, whether his custodial interrogation is required or not, or the investigation material collected by the investigating officer was not at all considered. For all the above reasons, prayed for cancellation of bail.

5. Learned APP supported the said contention and submitted that the statements of the co-employees recorded during the investigation, namely Vishal Manoj Patil, Gaurav Anandrao Kadam, and Shankar Ambadas Bhagat, substantiate the allegation levelled against the non-applicant No.2. He also invited my attention towards the statement of Shrikant Pralhad Raut as well as the chart which is given by the investigating officer to show the stake of misappropriation. He submitted that this chart collected by the investing officer also substantiates the contention as to the misappropriation of the stock as well as the cash amount. The audit report also substantially states the misappropriation of the amount. The findings of the auditor show that the modus operandi of the fraud is based on the documents reviewed, information collected, and discussion conducted. During the course of the fraud examination, and was revealed that there was a misappropriation and financial fraud to the tune of Rs. 53,68,663/-. He submitted that considering this aspect, the custodial interrogation of the present non-applicant no.2 is required, considering the stake of the amount which is involved. He submitted that relevant material is not considered by the sessions court while considering the bail

application, and i.e. one of the reason for the cancellation of bail.

6. Learned counsel for the non-applicant no.2 submitted that sessions court has considered that the custodial interrogation of the non-applicant no.2 is not required. Moreover, there is no material to show that the present non-applicant No.2 is involved in the said crime. After releasing him on bail, he has not misused the liberty. The supervening and overwhelming circumstances are required for cancellation of bail. She also submitted that the applicant had also filed a private complaint. It is further submitted by her that the Sessions Court has rightly considered that there is no material on record to show that if the non-applicant no.2 is released on bail, he would tamper with the prosecution evidence or will hamper the investigation. The non-applicant no.2 has also cooperated with the investigation agency. For all the above grounds, the application deserves to be rejected.

She placed reliance in the case of *Abdul Basit @ Raju & Ors. Etc. vs Md.Abdul Kadir Choudhary [(2014) 10 SCC 754]*, wherein the considerations of cancellation of bail are dealt by the Hon'ble Apex Court and it is held that Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail.

Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter

XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last mentioned case, one would expect very strong grounds indeed.

7. She submitted that in the light of the above principals laid down by the Hon'ble Apex Court, no case is made for cancellation of bail, which is granted to the non-applicant No.2.

8. After hearing learned counsel for the applicant as well as learned APP, and learned counsel for non-applicant

No.2, perused the impugned order, wherein the Sessions Court has released the non-applicant no.2 on bail. On perusal of the reasons mentioned in para no. 6 it is only for the purpose of reference as follows ;

“6] It seems from record that, investigation is in progress. There is nothing on record to show that, applicant will flee from justice, if released on bail. There is no material on record to show that the applicant will use his liberty to subvert justice or tamper with the evidence. It prima-facie appears from record that there is no reasonable apprehension of tampering with the witnesses. Hence, applicant is entitled to be released on bail.”

9. Thus, it is apparent that Sessions Court has only considered that there is no apprehension as to the fleeing away of the non-applicant no.2 from the Court of Justice, and there is no ground to apprehend that he would tamper with the prosecution case. As far as the merit of the matter is concerned and the investigation carried out by the investigation officer, so far it was not at all considered by the Sessions Court. The audit report, which was relied upon by the State as to show the prima-facie case, was also not considered. The audit report shows that there was a modus- operandi to commit a fraud, and the said modus operandi was in detail laid down in the said audit report.

10. The recommendations in the audit report specifically show that, on the basis of documents and information produced before us, that Shri Anil Prakashlal Panjwani (the present non-applicant No.2) had committed a financial fraud with M/s Gurukrupa Garments to the tune of Rs. 53,68,663/- approx. Further considering the modus-operandi of fraud committed and information, documents available before them.

11. The statements of the witnesses are also recorded by the investigating officer during the investigation. The statements, namely Vishal Manoj Patil and Gaurav Anandrao Kadam, who were working in the said shop, also substantiate the same contention that, it was the applicant who was looking after the monetary transactions in the shop of the complainant. These allegations are substantiated not only by the documentary evidence but also statement of the witnesses.

12. As far as the ground mentioned in the application is concerned, the trial Court has not considered the material which was collected and ignored the relevant material and released the accused on bail. Admittedly, there is no whisper in the order passed by the Sessions Judge as to the merit of the matter and whether custodial interrogation is required or not. Admittedly, the involvement of the present non-applicant No.2 is in an economic offence. The allegation is substantiated by the audit report as well as the statements of the witnesses, but it is apparent that the Sessions Court has not considered

the same and only observed that there is no apprehension of fleeing away from justice or tampering of the witnesses.

13. As far as the law regarding the cancellation of bail is concerned, it is well settled that considerations for grant of bail and cancellation of bail are different. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in catena of decisions in ***Myakala Dharmarajam & Ors. Etc. Vs The State Of Telangana & Anr [2020 (2) SCC 743]***, wherein it is held that:

“It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail”.

14. In ***Deepak Yadav Vs. State of U.P and another*** reported in ***2023 (2) Mh. L. J. (Cri) (S.C.) 196***, wherein also it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among

which the nature of the offence, the severity of the punishment and a *prima-facie* view of the involvement of the accused are important.

15. The Hon'ble Apex Court laid down illustrative circumstances where the bail can be cancelled are as follows:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) 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.
- iii) Where bail has been granted on untenable grounds.
- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- v) 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.
- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

16. In light of the well-settled legal position, if the facts of the present case are taken into consideration, admittedly, the Sessions Court has not considered the material which was collected during the investigation, especially the audit report and statement of the witnesses. The Sessions Court has only considered that the applicant is at a flight risk. As observed earlier, the overwhelming and supervening circumstances are required for cancellation of bail, and one of the grounds which is to be considered whether the Court has taken into consideration the substantial investigation papers, which were before it or whether the order was passed by ignoring the relevant material.

17. Moreover, it is apparent that there is no single whisper in the order passed by Sessions Court why the Court is granting bail to the applicant. It is also well settled that merely because the custodial interrogation is not required is not sufficient to grant the bail. At the same time, merely because the state is saying that custodial interrogation is required is not sufficient. Both have to substantiate the contention by relevant material.

18. In view of that, in the present case, the applicant has made out a case for cancellation of bail. In view of the above, the application is allowed. Accordingly, I proceed to pass the following order:

- a] The bail granted to the present non-applicant No.2 by order dated 24/08/2023 is hereby cancelled.
- b] The applicant shall surrender before the Investigating Officer on 02/12/2024.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]