



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

CRIMINAL APPLICATION NO.147 OF 2022

(State of Maharashtra Vs. Subhashappa Vishwambharappa Bondre and ors.)

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

Court's or Judge's Order

Mrs. H.N. Prabhu, APP for the State.
Mr. V.R. Deshpande, Advocate for respondent Nos.1 to 3.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 19, 2024.

By preferring this application, the applicant/State is seeking cancellation of bail which is granted to the non-applicants by the Additional Sessions Judge, Buldhana vide order dated 21/07/2022 in Anticipatory Bail Application No.228/2022.

2. The non-applicants are facing the charge on the basis of the report lodged by Vijay Bhagwanrao Walekar alleging that mother of the informant by name Jyoti Walekar had purchased 392 square feet land from field Survey No.103/5 from one Sk. Arshad Sk. Israil who is the resident of Chikhli. Sk.Arshad had purchased said immovable property from one Maroti Govind Godwe. Maroti Godwe had purchased the said land from one Pradip Pitambar Walekar. It is further alleged that while purchasing the disputed land/plot one order relating to converting field property into non- agricultural land passed by S.D.O. was annexed with sale-deed and it

revealed during the investigation that said order is a forged order. No such order was passed as far as the conversion of the land into non-agricultural purpose is concerned. On the basis of said report, police have registered the crime against the present non-applicants. They approached to the Additional Sessions Judge, Buldhana for grant of anticipatory bail. Learned Sessions Judge, has considered the material collected during the investigation and released them on bail.

3. Being aggrieved and dissatisfied with the said order passed by the Additional Sessions Judge, Buldhana present application is filed by the State for cancellation of bail on the ground that the learned trial Court has not taken into consideration the seriousness of the offence, preparation of the forged non-agricultural order which is having seal of the concerned authority, and therefore, custodial interrogation of the present non-applicants is necessary.

4. Learned trial Court has also not taken into consideration that in all there are more than 56 plot owners, they were suffered due to the illegal act of the present non-applicants, and therefore, investigating agency requires the custodial interrogation. Thus, considering the custodial interrogation of the present non-applicants is required, the anticipatory bail granted to the non-applicants deserves to be cancelled.

5. Heard learned APP for the State. She reiterated the said contention and submitted that during investigation it revealed that the non-agricultural order which was annexed along with the sale-deed by the present non-applicants while the execution of the sale-deed in respect of the land field Survey No.103/5 of Chikhli town is forged. During investigation it further revealed that to the Investigating Officer that no such order has been passed by the Revenue officers converting the field property into the non-agricultural land. Due to the said forgery by the present non-applicants other 56 plot owners have suffered. Thus, to ascertain the exact role of the present non-applicants their custodial interrogation is required, and therefore, bail granted to the present non-applicants deserves to be cancelled.

6. Learned Counsel for the non-applicants submitted that there is no single material or the evidence collected by the investigating officer to show that it was the present non-applicants who have created or forged the said documents. Though Investigating Officer has recorded several statements of the witnesses and collected the various documents, there is no single document showing the involvement of the present non-applicants in the said forgery. Learned trial Court has passed exhaustive order by observing all these things and released the non-applicants on bail. He further submitted that considerations for grant of bail and cancellation of bail are

different. The supervening and overwhelming circumstances are required to cancel the bail. In view of that, the application deserves to be rejected.

7. Having heard learned Counsel appearing for both the parties. Perused the investigation papers. As far as the involvement of the present non-applicants in the forgery is concerned, during investigation the Investigating Officer has recorded the various statements of the witnesses as well as collected the various documents. The impugned order passed by the trial Court shows that the trial Court has considered the entire material and also observed that at this stage it cannot be decided that the order dated 29/12/2013 is genuine or forged one. As per the prosecution, it is alleged that in the absence of record found in the office of concerned Revenue Officer and after being investigated regarding case register, Investigating Officer did not find entry regarding the fact that the case number shown in non-agricultural order is mentioned in case register. Therefore, the prosecution or the investigating agency come to the conclusion that said order dated 29/12/2013 is fabricated one.

8. It is well settled that once bail 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. A very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. In the case of *Dolat Ram and ors vs. The State of Haryana, [1995(1) SCC 349]*, the Honourable Apex Court laid down grounds for cancellation of bail, which are as under:

- (i) interference or attempt to interfere with the due course of administration of Justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of accused absconding;
- (v) likelihood of/actual misuse of bail, and
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

9. It is no doubt true that cancellation of bail cannot be limited to occurrence of supervening circumstances. The court has discretion to cancel the bail of an accused even in the absence of supervening circumstances, in following circumstances:

- 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.

10. Thus, where a court considering an application for bail fails to consider relevant factors, the court has discretion to cancel the bail. While cancelling the bail, it has to be seen, whether the order granting bail suffers from non-application of mind or is not borne out from prima facie view of the evidence on record. Thus, it is necessary for the court to see, whether on the basis of record there existed a *prima facie* case or reasonable ground to believe that the accused has committed crime.

11. It appears from the record that till the land sold to Maroti Govind Godwe from field Survey No.103/5, in such field property, plots were not demarcated and

prior to that transaction, nobody appears to have applied for converting agricultural land into non- agricultural one. Real dispute between parties appears to have been started after the transaction done by Maroti Godwe. Furthermore, letter of bank reveals that non-applicant No.4 had raised huge amount by mortgaging allegedly plots owned by other purchasers with the bank. It is further alleged that the involvement of the present non-applicants is in the forgery of the said order. On the basis of the investigation there is no single document which would points out that it was the non-applicants who are involved in the forgery of the documents.

12. Learned APP though submitted that the involvement of the present non-applicants is in the forgery of the document but on perusal of the investigation papers there is no single document or the statement of the witnesses which shows the involvement of the present non-applicants in the forgery of the documents. Merely, because they have attached or annexed the said order along with the sale-deed is not sufficient to held that they are the same persons who have forged the said documents. There should be some iota of evidence to connect them with the alleged offence. At this stage, from the investigation papers nothing is revealed to show their involvement in the alleged offence.

13. As far as the consideration for grant of bail and considerations for cancellation of bail are admittedly

different. The supervening and overwhelming circumstances are required to cancel the bail. At the same time, bail can be cancelled if the concerned Court has not considered the material which is relevant to consider the bail application of the accused. As far as the order impugned in the present application is concerned, learned trial Court has extensively dealt with the material which is collected during the investigation and thereafter granted the bail. Thus, no grounds are made out by the State for cancellation of bail. In view of that, the application deserves to be rejected.

14. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*