



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

CRIMINAL APPLICATION (APL) NO. 895 OF 2024

TUSHAR VILAS MAHALLE

VERSUS

STATE OF MAH., THRU. P.S.O., P.S., LOHARA, DIST. YAVATMAL

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

Court's or Judge's Order

Mr. Sumit G. Joshi, Advocate for the applicant.
Mr. H. D. Futane, A.P.P. for the non-applicant/State.

CORAM : G. A. SANAP, J.

DATE : AUGUST 07, 2024.

1. Heard finally Mr. Sumit G. Joshi, learned advocate for the applicant and Mr. H. D. Futane, learned Additional Public Prosecutor for the non-applicant/State, at the stage of admission itself. Perused the record and proceedings.

2. In this application, filed under Section 482 of the Code of Criminal Procedure, challenge is to the order dated 29.04.2024 passed by the learned Additional Sessions Judge, Yavatmal, in Other Misc. Criminal Application No. 01/2024, whereby the learned Judge has rejected the application made by the prosecution for cancellation of anticipatory bail, but at the same time passed the following order :

*"1. Application is rejected with following riders :
(I) The I.O. in crime bearing No. 236/2023 registered with Lohara police-station is hereby directed to de-freeze the bank account of the*

accused non-applicant and utilize the amount lying in said bank account towards repayment of the FIR amount at the instance of the accused to the Director of Industries, Yavatmal, informant.

(ii) Inform Bank authorities accordingly to debit aforesaid amount lying in the bank account of the accused and credit it into the account of the Director of Industries, Yavatmal in consultation with the concerned I.O.

(iii) the I.O. in crime bearing No. 236/2023 registered with Lohara police-station is at liberty to attach the movable as well as immovable properties of the non-applicant accused and the sale proceed be credited in the account of the Director of Industries, Yavatmal towards the remaining due payments of the FIR amount, payable by the accused to them.”

3. It is the case of the applicant that the learned Judge was not right in issuing the above directions. Learned advocate submitted that in stead of passing such an order, learned Judge ought to have cancelled anticipatory bail and made the accused to face the consequences. Learned advocate pointed out that on merits, the learned Special Judge was inclined to reject the application for cancellation of bail. Learned advocate further submitted that pursuant to this order, the bank account was de-freezed and amount of Rs.30,06,632/- has been withdrawn and credited in the account of the Director of Industries, Yavatmal. Learned advocate submitted that if this Court is inclined to allow the application, then the amount which has been debited from

the account of the applicant and credited to the account of the Director of Industries, Yavatmal, may be retained with them till final disposal of the matter.

4. Learned APP submitted that if the amount of Rs.30,06,632/- is retained with the Director of Industries, Yavatmal, till disposal of the matter, then the Court may pass an appropriate order.

5. Learned advocate for the applicant took me through the record and proceedings. Learned advocate, by relying upon the decision of the Hon'ble Apex Court in ***Ramesh Kumar .vs. The State of NCT of Delhi***, arising out of SLP (Cri.) No. 2358/2023, dated 04.07.2023, submitted that in first place, it was not within the powers of the learned Judge to put a condition directing the accused to deposit the amount involved in the crime. The Hon'ble Apex court in *Ramesh Kumar (supra)*, has deprecated this practice. Be that as it may, in this case the learned Judge was not inclined to cancel the anticipatory bail granted to the applicant. In stead of cancelling the anticipatory bail, this course of action was adopted. In my view, the purpose of prosecution would be served, if the amount of Rs.30,06,632/- is retained with the Director of Industries, Yavatmal.

6. In view of the above, the impugned order passed by

learned Judge is required to be set aside. Accordingly, the order dated 29.04.2024 passed by learned Additional Sessions Judge, Yavatmal in Other Misc. Criminal Application No. 01/2024, is set aside. The applicant/accused is not required to comply the condition of deposit of the amount.

7. The amount of Rs.30,06,632/- be retained with the Director of Industries, Yavatmal till disposal of the criminal case.

8. The criminal application is accordingly allowed and disposed of.

(G. A. SANAP, J.)

Diwale