



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

CRIMINAL APPLICATION NO.96 OF 2024

(Sau. Kalpita w/o Kumar Kinkhede Vs. State of Maharashtra and ors.)

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

Court's or Judge's Order

Mr. N.D. Dawda, Advocate h/f Mr. A.M. Jaltare, Advocate for the applicant.
Mr. N.B. Jawade, APP for the State.
Mr. S.S. Sohoni, Advocate for non-applicant Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : JULY 23, 2025.
PRONOUNCED ON : SEPTEMBER 02, 2025

By this application, the applicant is seeking cancellation of anticipatory bail of non-applicant Nos.2 and 3 in connection with Crime No.161/2023 registered at police station Ambazari, Nagpur for the offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of a report lodged by Kalpita Kumar Kinkhede on an allegation that she along with she entered into the partnership firm along with present non-applicant Nos.2 and 3 by executing a Partnership Deed on 05/04/2000 and started Kinkhede developers. They entered into an agreement to develop the building by name Vijayraj and entered into the contract with Keshav Builders to construct 30 flats. As per the agreement, the Keshav builders would be entitled for 12 flats and 18 flats would remain along with the

Kinkhede developers. It was further agreed that the consideration amount of 18 flats would be divided into all partners; however, non-applicant Nos.2 and 3 sold the said flats, obtained the consideration amount and not paid any amount to them and they are duped. On the basis of the said allegations the crime was registered against the present non-applicants.

3. After registration of the crime, they approached to the District Judge and Additional Sessions Judge, Nagpur for grant of bail. The Sessions Judge after considering the fact that the entire investigation revolves around the documentary evidence. The custodial interrogation is not required and allowed the bail application.

4. Being aggrieved with the same, present application is filed for cancellation of bail on the ground that the non-applicants have committed the criminal breach of trust and cheating with the applicant with a common intention to have a pecuniary gain for themselves. The Sessions Court has not considered the parameters for grant of anticipatory bail and wrongly granted the anticipatory bail. Their custodial interrogation is required. In view of that, the bail granted to the non-applicant Nos.2 and 3 deserves to be cancelled.

5. Heard learned Counsel for the applicant who reiterated the contention and submitted that considering

the nature of the allegations, the custodial interrogation is not required; however, the Sessions Judge has not considered the same and without considering the investigation papers granted anticipatory bail to the non-applicant Nos.2 and 3, and therefore, the investigation was hampered. The custodial interrogation was required for the purpose of the investigation. In view of that, the bail granted to the present non-applicant Nos.2 and 3 deserves to be cancelled.

6. *Per contra*, learned Counsel for non-applicant Nos.2 and 3 supported the order passed by the Additional Sessions Judge and submitted that considering the aspect and the relationship between the applicant and the non-applicants it was observed by the Sessions Court that the alleged misappropriation took place in the year 2010 and the report has been lodged in the year 2023. The allegations levelled against the non-applicants for selling of the flats belonging to the partnership firm and misappropriated the said amount. However, no documents were filed pertaining to the partnership firm and misappropriation of the amount of sale proceed. Moreover, the entire evidence is in the documentary form, and therefore, the custodial interrogation is not required.

7. Learned APP for the State supported the contention of the applicant.

8. On perusal of the order passed by the Sessions Judge as well as the submissions advanced by the learned Counsel for the applicant and non-applicant Nos.2 and 3 and learned APP, the Sessions Judge has observed that the perusal of the charge-sheet shows that the alleged misappropriation is of the year 2010 and the report has been lodged in the year 2023. The allegation is not substantiated by the documents as regards to the partnership firm and misappropriation of the amount.

9. Learned Sessions Judge has further considered that the said dispute appears to be of a civil nature. The report has been lodged after the gap of almost 13 years. No specific allegation is levelled against the non-applicants. As far as misappropriation of any specific amount and entire evidence is in the documentary form and granted the bail.

10. On perusal of the entire investigation it reveals that admittedly, the applicant and non-applicant Nos.2 and 3 were partners. The Partnership Deed is on record. As per the agreement, it was decided to develop a building and out of 30 flats in the building 12 flats would be of developer and 18 flats would remain with the present applicant and non-applicant Nos.2 and 3. As per the allegations, the said flats are sold by non-applicant Nos.2 and 3. Thus, as far as the observation of the Sessions Court is concerned that the entire investigation

revolves around the documents. As far as the custodial interrogation is concerned which is not required. This observation is required to be considered in the light of the parameters which are relevant for granting of bail and parameters which are for cancellation of bail.

11. The present application is filed for cancellation of bail. The considerations for cancellation of bail are admittedly different than the considerations for grant of bail. The considerations that guide the power to the Court in assessing correctness of an order granting bail stand on a different footing from an assessment of the application for the cancellation of bail. It is consented that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the

contrary, delves into the justifiability and the soundness of the order passed by the Court.

12. Thus, where a Court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. Thus, it is well settled that once bail is 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. The grounds for cancellation of bail, which can be enumerated 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.

13. 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.

14. Thus, on going through the order passed by the Sessions Court it reveals that the Sessions Court has considered the role of the present applicant and the nature of the allegations, the statements of the witnesses and requirement of the present applicant to be in a custody and thereafter came to the conclusion that the considering the dispute, limited role is attributed to the present non-applicants and the nature of the dispute is of a civil nature and the investigation revolves around the documents. Thus, by giving due waitage to the above said factors, granted the bail by observing that the custodial interrogation of the present non-applicant Nos.2 and 3 is not required.

15. Thus, considering the order passed by the Sessions Court, it appears that after application of mind, he comes to the conclusion that the discretion

can be used in favour of the non-applicant Nos.2 and 3 and granted bail.

16. In view of the contention, the contention of the learned Counsel for the applicant has no substance and the application being devoid of merits as no case is made out for cancellation of bail, the application deserves to be rejected.

17. Hence, the criminal application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*