



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

CRIMINAL APPLICATION (APPLN) NO. 129 OF 2024

(Sau. Shilpa Baburao Jadhav

Vs.

State of Maharashtra, Thr. PSO, Police Station Malegaon, District
Washim & Anr.)

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

Court's or Judge's orders

Mr. R.N. Ghuge, Advocate for the Applicant.
Mr. Neeraj Jawade, APP for the Non-applicant No.1/State.
Mr. G.S. Chandok, Advocate for the Non-applicant No.2.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 25th JULY, 2025

1. The present Application is preferred by the Applicant/original Complainant for seeking cancellation of anticipatory bail which is granted to the present Non-applicant No.2 in connection with Crime No.458/2024 registered under Sections 406, 408 and 420 of the IPC.

2. Heard learned Counsel for the Applicant who submitted that the Applicant is the original Complainant who lodged the report with the Malegaon Police Station, District Washim alleging that she being the owner of Petrol Pump has appointed the Non-applicant No.2 as a Manager for looking after the daily affairs of the conduct of Petrol Pump and the duty of the Non-applicant No.2 also included to daily count the money received at the Petrol Pump and accordingly after

due payments deposit the remaining amount in the bank account. In fact, the Non-applicant No.2 is a close relative of the present Applicant has been performing the said role since year 2017, therefore she trusted him but the Non-applicant No.2 has not deposited the amount in the account of the Petrol Pump but he has deposited the same in his personal account and subsequently deposited in his relatives account. On the basis of the said report Police have registered the crime against the present Non-applicant No.2. After registration of the crime, he approached to the Sessions Court for grant of anticipatory bail. The learned Sessions Judge has considered the application and granted him bail in the event of his arrest, and therefore, the present Application has been filed for cancellation of bail.

3. The ground raised in the present Application is that the Sessions Court has not considered the relevant material while considering the anticipatory bail application. It is not considered that the involvement of the present Non-applicant No.2 is in misappropriation of the amount which was collected at the Petrol Pump where the Non-applicant No.2 was serving as a Manager. It was his duty to daily count the money received at the Petrol Pump and accordingly deposited the same in the bank account of the Petrol Pump but he has deposited the same in his personal account and subsequently transferred to his own relatives account. Thus, the intention of the present Non-applicant No.2 is clear from the said activity but the learned Sessions Court has clearly considered that the Investigating Officer can seize the documents from the Informant, and therefore,

custodial interrogation of the Non-applicant No.2 is not required. Moreover, the offence is not punishable more than 7 years and considering the nature of the offence and observing that the nature of offence is of civil in nature and released the Non-applicant No.2 on bail. He submitted that the learned Sessions Judge ignored the fact that the involvement of the present Non-applicant No.2 is in misappropriation and committing the breach of the trust, and therefore, his custodial interrogation was required. He submitted that, the learned Sessions Judge has ignored the material evidence which was collected during the investigation and granted bail in the event of the arrest, and therefore, it needs to be cancelled.

4. The learned Counsel for the Non-applicant No.2 has opposed the said application.

5. Learned APP supported the contention of the learned Counsel for the Applicant/original Complainant and submitted that there is non-cooperation on the part of the Non-applicant No.2, and therefore, the contention of the learned Counsel for the Applicant that bail is to be cancelled is required to be considered, in view of that he also prayed for cancellation of bail.

6. *Per contra* learned Counsel for the Non-applicant No.2 submitted that as far as the State's allegation as to the non-cooperation on the part of the Non-applicant No.2 is concerned, is baseless and false. He placed on record the extracts of the diary showing that the Non-applicant No.2 has

not only attended the Police Station but he has cooperated with the investigating agency. He placed on record the extracts of the diary which shows that, he has attended the Police Station on 25.12.2024, 18.11.2024, 02.12.2024, 04.12.2024 and 07.12.2024 and submitted that these entries sufficiently shows that the Non-applicant No.2 has cooperated with the investigating agency, therefore the allegation of the State as to the non-cooperation on the part of the Non-applicant No.2 is also baseless and deserves to be discarded. He further submitted that, considerations for grant of bail and considerations for cancellation of bail are completely different. Once bail is granted unless there are overwhelming and super whelming circumstances it cannot be cancelled as far as the contention of the Applicant is concerned, the learned Sessions Judge has considered that the entire investigation revolves around the documentary evidence, which can be obtained without the custody of the present Non-applicant No.2. The Sessions Court has also considered that offence alleged is punishable with imprisonment of up to 7 years, and therefore, there has to be compliance by issuing notice under Section 35(2) of the BNS, 2023 and under Section 41 of the Cr.P.C., that compliance is not there, and therefore, in view of the guidelines issued by the Hon'ble Apex Court, learned Sessions Judge has released the present Non-applicant No.2 on bail. He submitted that as there are no overwhelming and super whelming circumstances to cancel the bail, and therefore, the Application deserves to be rejected.

7. After hearing both the sides and on perusal of the

entire record as far as the contention of the State that he has not cooperated with the investigating agency is concerned, which is not substantiated by any material. The another ground raised by the Applicant is that the learned Trial Court has not considered the material which is collected during the investigation and granted bail. There is no dispute as to the fact that the offences alleged are punishable with imprisonment up to 7 years.

8. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation, 2022 SCC (10) 51*, wherein by referring to Section 41, it is observed by the Hon'ble Apex Court that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable 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 offense, 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. One more ground on which an arrest may be necessary is

when his/her presence is required after arrest for production before the Court and the same cannot be assured.

9. It is further held by the Hon'ble Apex Court that this provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense.

10. Thus, considering that the offence alleged is punishable up to imprisonment 7 years the Sessions Judge has considered the same and also considered that there is no compliance under Section 41 by issuing notice and by giving reasons for the arrest, and therefore, considered the application for grant of bail in the event of the arrest. Moreover, the Sessions Judge has also considered the fact that the entire investigation revolves around the documents, and therefore, the custodial interrogation of the present Non-applicant No.2 is not required and put him on condition that he shall attend the concerned Police Station and cooperate with the Investigating Agency. Admittedly, grant of bail or rejection of the same is a discretion of the Court. Admittedly, the considerations for grant of bail and considerations for cancellation of bail are totally different. While considering the application for grant of bail, the Court

is under obligation to see the nature of the offence and its gravity, whether the Non-applicant No.2 would be available for the purpose of interrogation, whether there are chances of fleeing away from the Court of justice and whether there are chances of tampering the evidence, whereas for cancellation of bail the considerations are different. It is well settled that, once the bail is granted it cannot be cancelled unless there are overwhelming and super whelming circumstances or unless it is shown that the Trial Court or this Court has ignored the relevant material while granting bail.

11. In the light of the above legal position, if the facts of the present case are taken into consideration, admittedly, the Trial Court has considered that the alleged offence punishable with imprisonment up to 7 years and there is no reason to keep him behind bars or to sent him behind bars for the purpose of the interrogation as the purpose of interrogation can be achieved by imposing certain conditions on the present Non-applicant No.2. As far as the overwhelming and super whelming circumstances are concerned, nothing is on record to show that the present Non-applicant No.2 either not cooperated with the investigating agency or has not attended the Police Station or made any attempt to tamper the prosecution evidence. Thus, there are no overwhelming or super whelming circumstances. As far as cancellation of bail is concerned, no case is made out for cancellation of bail. In view of that the Application deserves to be rejected. Accordingly, I proceed to pass the following order:

ORDER

i. The Application is **rejected**.

12. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

SD. Bhimte