

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 164 OF 2024

Sanjiv Rajendra Bharati

...Applicant

Versus

Chhaya Vilas Giri And Ors.

...Respondents

Mr. Pawan Mali, for the Applicant.

Mr. Rajabhau Chaudari, for the Respondent Nos. 1 and 2

PSI. Janak Wakankar, EOW, Pimpri-Chinchwad is present.

Ms. S. M. Yadav, APP for the Respondent – State.

Mr. Mithilesh Mishra, Amicus Curiae

CORAM: MADHAV J. JAMDAR, J.

DATED: 19th JANUARY, 2026.

PC:-

1. Heard Mr. Pawan Mali, learned Counsel appearing for the Applicant, Mr. Mithilesh Mishra, learned Counsel appointed as *amicus curiae*, Ms. Yadav, learned APP for the State and Mr. Chaudhari, learned Advocate appearing for the the Respondent Nos. 1 and 2.

2. Mr. Mali, learned Counsel appearing for the Applicant submitted that apart from various contentions on merits one of the contention is that the learned Additional Sessions Judge while deciding the Anticipatory Bail Application has made observations

on merits and observed that the entire prosecution case regarding the alleged fraud is washed out. He submits that the learned Additional Sessions Judge has committed a jurisdictional error and therefore, the impugned order dated 1st February, 2023 passed by learned Additional Sessions Judge, Khed – Rajgurunagar, District – Pune in Criminal Bail No 848 of 2022 be quashed and set aside.

3. Mr. Mithilesh Mishra, learned Counsel appointed as *amicus curiae* pointed out several aspects including that the charge sheet is already filed and many other aspects. However, as far as the contention raised by Mr. Mali, learned Counsel appearing for the Applicant that the learned Additional Sessions Judge has exceeded the jurisdiction, learned *amicus* concurs with the said submission.

4. Mr. Mithilesh Mishra, learned *amicus* points out decision of the Supreme Court in the case of ***State Of U.P. v. Mohammad Nooh***¹ held in paragraph 11 observes as follows:-

On the authorities referred to above it appears to us that there may conceivably be cases – and the instant case is in point – where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly

1 1957 SCC OnLine SC 21

obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.

5. Mr. Chaudhari, learned Advocate for Respondent No. 1 & 2 has also pointed out several aspects, however, as the learned Additional Sessions Judge has exceeded his jurisdiction, he submits that impugned order be quashed and set aside and the Criminal Bail Application No. 848 of 2022 be remanded back to the learned Additional Sessions Judge. However, he requests that the ad-

interim protection which is granted by the impugned order, the same be continued till disposal of the Criminal Bail Application No. 848 of 2022.

6. Perusal of the impugned order shows that the learned Additional Sessions Judge has exceeded his jurisdiction and observed that if the defence raised by the Respondents are taken into consideration, the entire prosecution case is washed out. Such observations are not at all warranted at the time of consideration of the Anticipatory Bail Application.

7. Accordingly, the order dated 1st February, 2023 passed by learned Additional Sessions Judge, Khed – Rajgurunagar, District – Pune in Criminal Bail Application No. 848 of 2022 is quashed and set aside and the said Criminal Bail Application No. 848 of 2022 is restored to the file of learned Additional Sessions Judge, Khed – Rajgurunagar, District – Pune

8. Learned Additional Sessions Judge, Khed – Rajgurunagar, District – Pune is requested to dispose of the Criminal Bail Application No. 848 of 2022 on or before 30th April 2026. Till then no coercive steps be taken against the Applicant.

9. It is clarified that the impugned order is quashed and set aside on very limited point as indicated herein above and therefore contentions of all the parties are expressly kept open.

10. Learned APP submits that the further investigation is going on and the Applicant is not attending the Police Station nor cooperating with the investigation.

11. Although, no coercive steps be taken against the Applicant till 30th April 2026, as directed hereinabove, the same is on the condition that the Applicant shall attend the Police Station on 28th January 2026 and 29th January 2026 between 11:00 am to 2:00 pm and thereafter as and when called by the police and to cooperate with the investigation. The Applicant shall not tamper with the evidence.

12. All the parties shall appear before the Learned Additional Sessions Judge on **2nd February 2026**.

13. Accordingly, the Criminal Application is disposed of.

14. This Court places on record its appreciation for the assistance rendered by Mr. Mithilesh Mishra, learned *amicus curiae*.

(MADHAV J. JAMDAR, J.)