
Dr. Yogesh Vs The State of Maharashtra and Others

Criminal Application No. 618 of 2013

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Aug. 13, 2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 438, 439(2)#Penal Code, 1860 (IPC) " Section 406, 409, 420, 465, 467

Citation: (2013) 5 ABR 1069 : (2013) ALLMR(Cri) 3525 : (2013) 4 BomCR(Cri) 758

Hon'ble Judges: T.V. Nalawade, J

Bench: Single Bench

Advocate: V.B. Jagtap, for the Appellant; D.R. Kale, APP for State and Mr. R.R. Mantri h/f. Mr. P.D. Bachate, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T.V. Nalawade, J.

The application is filed u/s 439(2) of Criminal Procedure Code for cancellation of relief granted by Sessions Court,

Jalgaon in Criminal Application No. 1392/2012. Both the sides are heard. This Court has heard the learned APP also. The crime at C.R. No.

146/12 is registered in Chalisgaon Police Station on the basis of report given by applicant for offences under sections 406, 409, 420, 467, 471

etc. of Indian Penal Code. The applicant has completed B.A.M.S. course from the Medical College run by Kisan Dnyanodaya Mandal,

Chalisgaon. Respondents/accused were running the institution. They were working as Treasurer, Principal and also as Trustees. Allegations are

made that the respondents/accused joined hands with Members of Committee appointed by C.C.I.M. and created false record regarding the

appointment of staff, the compliance of the conditions necessary for giving permission to continue the institution. It is contended that after inspection

of the institution the permission granted to aforesaid college was cancelled on 1.9.2011. It is contended that by creating false record of

appointment of professors, staff and also by creating false record in respect of students, Government was cheated and the Government money was

misappropriated by the accused. Some names are given, who were not actually working with the institution, but false record in respect of those

persons was created.

2. The respondents had filed Criminal Writ Petition No. 386/2012 for quashing of the F.I.R. In the said proceeding, interim relief of following

nature was given.

2. Perused the complaint on the basis of which Crime No. 146 of 2012 registered with Chalisgaon Police Station, District Jalgaon. The police shall

submit all papers of investigation before this Court and till next date shall not take coercive action against the applicants.

3. After dismissal of the aforesaid proceeding by the High Court, the respondents/accused filed application for anticipatory bail in Sessions Court

on 29.12.2012. In the application, they contended that Hon"ble High Court had given some interim protection to them and the protection was

likely to be continued after restoration of the matter by the High Court. By order dated 3.1.2013 the learned Additional Sessions Judge, Jalgaon

granted relief of anticipatory bail for limited period by passing order of following nature.

ORDER

Application is allowed.

In the event of arrest of applicant nos. 1 to 3 at the hands of Chalisgaon Police in C.R. No. 146 of 2012 registered u/s. 406, 409, 420, 465, 477-

A, 504, 506 etc. of I.P. Code, they be released on P.B. and S.B. of Rs. 25,000/- each on following conditions:-

(a) they shall co-operate investigating agency and shall supply the documents as and when asked by the Investigating officer in writing.

(b) They shall not tamper with the prosecution witnesses, in any manner.

This order shall remain in force till the decision of Criminal Application No. 1392 of 2012 filed by the applicants before the Hon"ble the High

Court, bench at Aurangabad for restoration of Writ Petition No. 386/2012.

4. This Court has carefully gone through the so called reasons given for making aforesaid order by Sessions Court. The learned Additional

Sessions Judge has considered the circumstance that High Court had given some protection in writ petition to the accused and matter was filed for

restoration of the said Writ Petition by the accused. Thus, the discussion of the rival contention is there and only because the High Court had given

the interim relief in the Writ Petition in the past, the Sessions Court has given relief of the aforesaid nature to the respondents/accused.

5. Even if it is presumed that some proceeding was filed for restoration of Writ Petition, it was not proper on the part of the Sessions Court to

entertain the application for similar relief. This Court is avoiding to touch the point as to whether this Court could have granted the relief of the

nature of anticipatory bail in Writ Petition filed for quashing of F.I.R. Interim relief of such nature was granted by this Court by preventing the

police from taking coercive action against the accused. It can be said that instead of filing application for anticipatory bail, aforesaid step was taken

by the accused. The learned Additional Sessions Judge did not give thought over the propriety of entertaining the proceeding, when for some time,

such relief was granted by High Court and then the proceeding itself was dismissed. Anticipatory bail for such limited period could not have been

granted by Sessions Court and this position of law is also not considered by Sessions Court.

6. In view of nature of allegations and the offences for which the crime was registered, it can be said that there are serious allegations against the

accused persons. In the case reported as State of Maharashtra and Another Vs. Mohd. Sajid Husain Mohd. S. Husain etc., and Adri Dharan Das

Vs. State of West Bengal, , the Apex Court has made it clear that while granting relief of anticipatory bail, the Court must record reasons. In

section 438 of Cr.P.C. some factors are mentioned which need to be considered at the time of deciding the application filed u/s 438 of Cr.P.C.

This section shows that these factors are only illustrative and not exhaustive. When there are serious allegations, the Court is required to consider

the difficulties, which investigating agency may face, if the relief of anticipatory bail is granted.

7. In the case reported as Puran Vs. Rambilas and Another etc. etc., , the Apex Court has discussed the power of High Court u/s 439(2) of

Cr.P.C. The discussion made by the Apex Court shows that High Court has power to cancel the bail granted by Sessions Court. Section 439(2)

of Cr.P.C. shows that this power is independent of the appellate and revisional power of High Court. In this case, the Apex Court has further

observed that if the Criminal Court ignores relevant material and passes order of granting bail in serious offences and if it has not given any reason

for the same, such order would be against the principles of law. It is observed that in such a case, the High Court can cancel the order made by the

Sessions Court in the interest of justice. In view of this position of law, this Court holds that the order made by Sessions Court cannot sustain in

law.

8. The learned counsel for respondents/accused made submissions of various kind. He submitted that section 439(2) of Cr.P.C. cannot be used

when relief of anticipatory bail is granted by the Sessions Court. This submission is not at all acceptable. The word "bail" used in this section

includes the "relief of anticipatory bail" also. Another submission was made that once bail is granted, it can be cancelled only by showing that there

has been breach of conditions from the accused. This submission is also not acceptable. Law is settled that the bail can be cancelled when there is

breach of conditions and also when there are aforesaid circumstances, of infirmity in the order made by the Criminal Court which granted bail.

9. The facts of the present case show that the accused could have taken proper steps after dismissal of the Writ Petition. Atleast, after obtaining

the order of aforesaid nature from the Sessions Court on 3.1.2013, they ought to have taken proper steps and they ought to have filed proceeding

for getting relief of anticipatory bail or for restoration of the proceeding which was filed by them in the High Court. Such steps were not taken. This

Court has no hesitation to observe that accused/respondents misused the process of law and due to the aforesaid circumstances, the investigation

must have been hampered. In view of this discussion, this Court holds that the order cannot sustain in law.

10. In the result, the application is allowed. The order made by the Additional Sessions Judge, Jalgaon in Criminal Application No. 1392/12 is

hereby set aside. The relief granted is cancelled. The request made by the learned counsel for the respondents/accused to suspend the present

order for a period of one week is rejected, in view of the fact that the order was made by the Sessions Court in January 2013, but appropriate

steps were not taken and order was misused by the accused.