

(2008) 03 BOM CK 0134

Bombay High Court (Aurangabad Bench)

Case No: Criminal Application No. 599 of 2008

The State of Maharashtra

APPELLANT

Vs

Pramodkumar Damodhar Wani
and Smt. Sunanda Rajendra
Wani

RESPONDENT

Date of Decision: March 26, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 438, 439(2)
- Penal Code, 1860 (IPC) - Section 34, 406, 408, 409, 420

Hon'ble Judges: V.R. Kingaonkar, J

Bench: Single Bench

Advocate: N.B. Khandare, P.P, for the Appellant; R.M. Deshmukh, holding for Deshmukh and Joydeep Chatterji, for the Respondent

Final Decision: Allowed

Judgement

V.R. Kingaonkar, J.

Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. These are applications for cancellation of anticipatory bail orders rendered by learned IInd Additional Sessions Judge, Jalgaon.

3. The respondents were Directors of Shri Swami Samarth Urban Cooperative Credit Society Limited, Savda. An Audit Inspection was carried out for the year 2005-2006. The Auditor noticed a large number of irregularities, illegalities and financial misdeeds. It was found that a large number of loans were sanctioned by the Board of Directors of the Credit Society in lots on 27th September, 2004, 28th September, 2004, 4th January, 2005, 7th January, 2005 and 8th January, 2005. The examination of record showed that 87 loan cases were sanctioned without verification of credentials of the borrowers without obtaining proper securities and a large number of borrowers were not in existence. Some of the loans were sanctioned to

relatives of Chairman Rajendra Wani and also to members of the Board of Directors. There was a designed plan, prima facie, to defraud the depositors and members of the Cooperative Credit Society. The Credit Cooperative Society was put to loss of approximately Rupees eight (8) crores due to such financial bunglings, manipulations and money laundering. The Auditor noticed that members of the Loan Committee, including Chairman Rajendra Wani, his wife as well as members of the Board of Directors have defrauded the depositors who were allured to deposit amounts in the Cooperative Credit Society by floating schemes like giving of free gifts such as gold rings, etc. on making deposits. He lodged F.I.R. Thereupon, the police registered Crime No. 75/2007 at Savda Police Station for offences punishable under Sections 420, 406, 408, 409, 465 read with Section 34 of the I.P. Code.

4. While the investigation was in progress, a large number of Directors approached this Court for relief of anticipatory bail. A group of their applications (Criminal Applications No. 4100/2997, 4138/2007, 4147/2007, 4197/2007 and 4071/2007) was considered and decided by common order dated 12-12-2007. Some of the applications were granted whereas some were dismissed. The Directors who had resigned prior to the financial misdeeds, were protected and so also one of the woman applicants (Vandana Zope) was granted the protection.

5. The respondents approached the Sessions Court by filing applications (Criminal Application No. 1043/2007 and Criminal Application No. 1054/2007). By almost identical orders, the learned Additional Sessions Judge allowed their applications on 24-12-2007. The said orders dated 24-12-2007 are subject matter of challenge in these applications.

6. Mr. Khandare N.B., learned Public Prosecutor, strenuously argued that when the other Directors were denied discretionary relief u/s 438 of the Criminal Procedure Code by this Court on 12-12-2007, then learned Additional Sessions Judge could not have granted such relief to similarly placed respondents. He would further submit that the respondents are concerned with the loan transactions which were cleared in a single sitting on the days mentioned above. He would point out that the huge amounts are disbursed on 08-01-2005 and the identity of borrowers is yet doubtful. He would point out that the borrowers, to whom such loans were sanctioned, were not found to reside within the jurisdiction of the said Cooperative Credit Society. A public notice was published in the newspaper, but it was in vain. For, most of the loan cases are bogus. He invited my attention to the fact that other similarly placed Directors of the Cooperative Credit Society were denied the protection u/s 438 of the Criminal Procedure Code by this Court for the reason that they were involved in commission of the alleged crime. Mr. Khandare would further submit that the impugned orders are rendered without application of judicial mind. He would point out from para 10 of the impugned orders that a sweeping statement is made by the learned Additional Sessions Judge to the effect that the respondents are not directly involved in commission of the crime. According to Mr. Khandare, the arrest of the

respondents is essentially required for locating the modus operandi, the identity of borrowers in whose names large number of loans were sanctioned and to carry out effective investigation. Hence, he urged to allow the applications and cancel the impugned bail orders. Per contra, learned advocates Mr. R.M. Deshmukh, Mr. Chatterji and Mr. S.P. Deshmukh, submitted that the grounds put forth by the applicant - State are inadequate and both the applications are liable to be dismissed. It is contended that interference in the discretionary exercise of the powers available to the Court of Sessions should not be interfered with. Reliance is placed on [Dolat Ram and Others Vs. State of Haryana](#), ".

7. The Apex Court in "Dolat Ram and Ors. v. State of Haryana" (supra), observed that bail once 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. There is no difficulty in accepting the proposition that the anticipatory bail, once granted by the Court, should not be cancelled in a mechanical manner. It is necessary, therefore, to find out whether the applicant - State has made out substantial grounds for cancellation of bail. The legal position in this behalf is recently set out in "State of Maharashtra and Anr. v. Mohd. Sajid Husain Mohd. S.S.S. Husain, etc. AIR 2007 SCW 6354".

The Apex Court cancelled anticipatory bail granted by this Court in the above referred case. The Apex Court observed:

...We at this stage although cannot enter into the details in regard to the merit of the matter so as to prejudice the case of one party or the other at the trial, but it is now well-settled principle of law that while granting anticipatory bail, the court must record the reasons therefor.

8. In the present case, a very vague and sweeping reason is recorded by the learned Additional Sessions Judge while granting the application for anticipatory bail in favour of the respondents. The impugned orders, in fact, do not show as to why the cases of respondents were treated by the Sessions Court on different footings from that of other Directors to whom this Court denied anticipatory bail. It is also reported that the respondents failed to attend the Police Station in accordance with the condition put forth by the learned Additional Sessions Judge while granting the anticipatory bail. In this context, the Apex Court in "Deepak Singchi v. State of Rajasthan and Anr. AIR 2007 SCW 5539", observed:

10. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider amount other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

11. Any order dehors of such reasons suffers from non-application of mind as was noted by this Court, in [Ram Govind Upadhyay Vs. Sudarshan Singh and Others](#) , [Puran Vs. Rambilas and Another etc. etc.](#), and in [Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another](#) ,

12. The above position was highlighted by this Court in [Chaman Lal Vs. State of U.P. and Another](#) , and in Kamaljit Singh v. State of Punjab and Anr. 2005 (7) SCC 226, and CrI. Appeal No. 543 of 2007 (arising out of SLP (CrI.) No. 49 of 2007), Gajanand Agarwal v. State of Orissa and Anr.

13. In view of the settled position in law, the inevitable conclusion is that the impugned order of the High Court is indefensible and the same is set aside. The matter is remitted to the High Court for fresh consideration of the bail application."

9. The Apex Court in "Gobarbhai Naranbhai Singala v. State of Gujarat WITH Jayeshbhai @ Panchabhai Muljibhai Satadiya v. Jayrajsinh Temubha Jadeja and Anr. AIR 2008 SCW 1014", held:

24. Shri Arun Jaitley, learned senior counsel appearing for the respondents, submitted that this Court should not ordinarily interfere in the matters relating to bail. It was pointed out that in the last two years, the respondent has not misused the liberty granted to him. There is no doubt that this Court does not ordinarily interfere in the matters granting bail but the same is subject to certain exceptions. When the basic requirements necessary for grant of bail are completely ignored by the High Court, this Court would be justified in cancelling the bail. In the present case, three witnesses, who had allegedly seen the occurrence, have unequivocally in their statements u/s 161, Cr.P.C. have stated that the respondent, was present at the time of occurrence and he had fired with his gun. Prima facie a case for grant of bail was not made out.

10. The legal position is well-settled. Where it is found that anticipatory bail is granted without recording proper reasons and without considering the material on record, the order may be interfered with. It need not be reiterated that much prior to the impugned orders rendered by the learned Additional Sessions Judge, this Court had rejected applications of similarly placed Directors. There was no reason to deal with the cases of respondents in different manner. Neither the respondents nor the learned A.P.P. brought it to the notice of learned Additional Sessions Judge that bail applications of some other Directors, who are similarly situated, were rejected by this Court. In other words, it may be said that the respondents suppressed

material facts from the Sessions Court. It does not stand to reason that they were unaware about rejection of bail applications in respect of other Directors.

11. The learned Public Prosecutor was right in his submissions that the order granting anticipatory bail can also be set aside by this Court under the inherent powers when such an order is found to be perverted. This contention of learned Public Prosecutor finds support in the following decisions.

(i) [Puran Vs. Rambilas and Another etc. etc.,](#) ; and

(ii) [Ram Govind Upadhyay Vs. Sudarshan Singh and Others,](#) . The Apex Court, while upholding the decision of this Court in case of "Puran etc. v. Rambilas and Anr. etc." (supra), observed in paras 9 and 10 thus:

9...One such ground of cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected.

10. Further, it is to be kept in mind that the concept of setting aside the unjustified, illegal and perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation...." In the case of (Gurcharan Singh and Ors. v. State Delhi Administration) AIR 1978 S.C. 179, it has been held that u/s 439(2) of the Criminal Procedure Code, the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere. Whereas, in the case of Ram Govind Upadhyay (supra), Apex Court stated thus:

Grant of bail, though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course, order for bail, bereft of any cogent reasons, cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered, but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though, however, the same are only illustrative and not exhaustive, neither there can be any. the consideration being:

(a) While granting bail, the Court has to keep in mind, not only the nature of accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

12. In the fact situation of the present case, there is sufficient material available to infer that the Directors joined hands with Chairman Rajendra Wani while sanctioning the loan cases on a single day, in the four lots mentioned above, which resulted into huge financial loss to the Cooperative Credit Society. Nobody made any attempt to verify whether the borrowers were eligible, whether the proper procedure was followed, whether the sufficient securities were obtained and whether such huge loans were likely to be recovered. Since some of the borrowers are not in existence at all and no security is obtained from many of them, it is obvious that recovery of the loans under the Maharashtra Cooperative Societies Act would be difficult. The learned Additional Sessions judge failed to consider these aspects of the matter. He did not record sufficient reasons and vaguely observed that the respondents were not directly involved in the financial misdeeds. Needless to say, the impugned orders are illegal, perverse and liable to be quashed.

13. In the result, both applications are allowed and the impugned orders, rendered by the learned IInd Additional Sessions Judge, Jalgaon, are quashed. The anticipatory bail granted to the respondents is cancelled.