

**Hemand Vs. Sharad and Another**

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**Court :** Mumbai Aurangabad

**Decided On :** Nov-18-2016

**Judge :** A.S. Chandurkar

**Appeal No. :** Criminal Application No. 584 of 2016

**Appellant :** Hemand

**Respondent :** Sharad and Another

**Judgement :**

Oral Order:

1. By the present application, the applicant who is the informant, on the basis of which F.I.R. No.384 of 2015, for offences punishable under sections 406, 409, 420, 467, 468 and 471 of the Indian Penal Code, seeks cancellation of the anticipatory bail granted in favour of respondent no.1.

2. The respondent no.1 has been accused of preparing and sanctioning eight loan cases with regard to non-existent persons, so as to enable such persons to get benefit under the NBCFDL scheme conducted by the Vasantrya Naik Vimukta Jati and Bhatkya Jamati Development Corporation, Latur. After aforesaid offence was registered, the applicant applied under section 438 of the Code of Criminal Procedure, which application came to be allowed by the Sessions Court by order dated 9<sup>th</sup> December, 2015. This order is sought to be cancelled by the applicant.

3. Mr Malte, the learned Counsel for the applicant submitted that the learned Judge of the Sessions Court was not justified in granting anticipatory bail to the respondent no.1. He referred to the reports dated 21st September, 2015 and 5th October, 2015, to submit that on bare reading of said reports it was clear that the respondent no.1 had sanctioned the loan cases with a view to defraud the corporation. He submitted that the learned Sessions Judge, without considering the documents filed on record and by treating the annual report to be the audit report, proceeded to grant anticipatory bail. According to him, such relief ought to have been refused and interrogation of the respondent no.1 was necessary. He termed the order passed by the learned Sessions Judge to be perverse and on that ground sought its cancellation. In support of his submissions, the learned Counsel placed reliance upon the judgment of the Honourable Supreme Court in the case of **Sudhir vs. State of Maharashtra and anr., 2016 (1) SCC 146** and judgments of learned Single Judge in the case of **Yogesh Duryodhan Murkut (Dr.) vs. State of Mah. and ors., 2013 (4) Bom. C.R. (Cri.) 758** and **Ramesh Manik Patil vs. State of Mah. and anr., 2015 (4) Bom. C.R. (Cri.) 190**. He also sought to rely upon certain other documents that were not placed on record to substantiate his prayer for cancellation of the aforesaid order.

4. The application was opposed by Mr Deshmukh, the learned Counsel for the respondent no.1. According to him, the parameters for cancellation of anticipatory bail are well settled and the present application did not satisfy any such ingredients. He submitted that the present applicant had no locus to challenge the order granting anticipatory bail and that the prosecution had not sought any such relief of cancellation of anticipatory bail. According to him, the report in question had been lodged merely because of internal disputes relating to service matter between the applicant and the respondent No.1. According to him, the respondent No.1 was entitled for promotion on the post of Managing Director and with a view to prejudice said claim, the aforesaid complaint had been filed. He then submitted that the learned Judge of the Sessions Court after considering all relevant aspects of the matter, had granted anticipatory bail on 9th December, 2015, which was almost a year ago. The respondent No.1 had co-operated in the investigation by complying with all the conditions. He, therefore, submitted that the application was liable to be rejected. In support of his submission, the learned Counsel placed

reliance upon the judgment of the Honourable Supreme Court in **State of U.P. Through CBI Vs. Amarmani Tripathi** reported in **(2005) 8 Supreme Court Cases 21**.

5. I have heard the learned Counsel for the parties at length and have perused the material placed on record. At the outset, it may be stated, the contention raised on behalf of the respondent No.1 that it was not open for the applicant, who was the complainant, to seek cancellation of anticipatory bail cannot be accepted in view of the decision of the Honourable Supreme Court in **Bhadresh Bipinbhai Sheth vs. State of Gujarat and anr., 2015 (9) SCALE 40**, wherein it is held that such application could be moved either by the Public Prosecutor or by the complainant. Hence, present application can be considered on merits.

6. According to the applicant, the respondent No.1 was enlarged by granting anticipatory bail by passing a perverse order. Perusal of the order dated 9th December, 2015, passed by the learned Judge of the Sessions Court indicates that there is reference to the audit report of the relevant period, which indicated absence of any irregularity and flaw during said period. Though it was urged on behalf of the applicant that what was considered was the annual report for the year 2011-12, perusal of said annual report indicates that the report of the Principal Accountant General carrying out audit for the year ending on 31st March, 2012, is part of the same annual report. Thus, in effect, the learned Judge of the Sessions Court has considered the audit report itself. Hence, said contention that only the annual report was considered cannot be accepted.

7. In paragraph 10 of the said order, the Sessions Court has recorded a prima facie satisfaction after considering the entire material, that the first information report was lodged after 1 year after the said audit report was prepared. This observation appears to be justified in view of the material placed on record. It is to be further noted that as per the order dated 9th December, 2015, certain conditions including attending the police station were imposed on the respondent No.1. There is no grievance by the investigating agency that these conditions have been violated.

8. In Sudhir (supra), the Honourable Supreme Court found that from the gravity of the offence, allegations of corruption and misappropriation along with conduct of the applicants therein, the order cancelling anticipatory bail was justified. In the present facts, it can be seen that the initial report given by one Smt. S.P. Kale is dated 29th September, 2015, while the subsequent report dated 5th October, 2015, is given by the present applicant. In paragraph 11 of the affidavit filed on behalf of the respondent No.1, it has been stated that the respondent No.1 had submitted an adverse enquiry report against said Smt. S.P. Kale in the year 2015. Similarly, the applicant herein is Regional Manager of the Corporation, which equivalent post is also held by the respondent No.1. The likelihood of further promotion to the post of Managing Director of either the applicant or the respondent No.1 is an aspect which cannot be given a go-bye.

9. Thus, in the facts of the present case, I do not find that the observations made in the judgment of learned Single Judge in the case of Yogesh Duryodhan Murkut and Ramesh Manik Patil (supra), can assist the case of the applicant. I do not find that the present is a case which warrants cancellation of grant of anticipatory bail. Though it was urged on behalf of the applicant that the present application had been moved immediately on 25th January, 2016, at this point of time when the respondent No.1 has co-operated with the investigation, I do not find it justified to quash the order granting anticipatory bail. Similarly, the Counsel for the applicant sought to rely upon certain other reports after filing of the present application, but as they were not made part of the record, I have not taken those documents into consideration.

10. As a result of aforesaid discussion, I do not find any merit whatsoever in the prayer made by the applicant. The application, therefore, stands rejected with no order as to costs.

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