
(2013) 09 BOM CK 0026
In the Bombay High Court
Case No : Criminal Appeal No. 5620 of 2012

The State of Maharashtra

APPELLANT

Vs

Esarar Ahmedkha and Another

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3984

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

Bench : Single Bench

Advocate : S.B. Pulkundwar, app, for the Appellant; D.S. Mali, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal. The application is filed for cancellation of anticipatory bail granted by Additional Sessions Judge, Latur in Criminal Misc. Application No. 487/2012. The Sessions Court has granted the relief in C.R. No. 174/2012 registered in Shivaji Nagar Police Station, Latur for offences punishable under sections 420, 467, 468, 471 and 120B of Indian Penal Code.

2. This Court has perused the documents collected by the investigating agency and the report submitted by the Investigating Officer. The crime is registered on the basis of report given by one Pathan Jafarali Khan of Nanded. Son of respondent No. 2 - Mohammad Masood viz. Rahimali Khan had contested the election to Nanded-Waghela Municipal Corporation from reserved category. He had produced a caste certificate and this caste certificate was referred to Caste Scrutiny Committee for verification. There are allegations that even the caste certificate produced by the candidate was false. Inquiry was made by the complainant with the institutions and authorities from where the record was collected in support of caste claim. The caste certificate was not bearing stamp or seal of Tahsil Office, Nanded. It was noticed that there was no entry of this certificate in the register of the office. Before the Caste Scrutiny Committee,

present respondent No. 1, the uncle of candidate, filed affidavit in support of the claim and he produced school leaving certificate issued by Gramin Vidyalaya Neharu Nagar, Nagalgaon, Tahsil Kandhar, District Nanded. Affidavit of another brother of candidate was produced along with his school leaving certificate issued by Nagsen Vidyalaya, Jamb, Tahsil Mulched. School leaving certificate issued to the sister of candidate namely Haseena by Nagsen Vidyalaya, Jamb, Tahsil Mukhed was also produced. The inquiry revealed that the approval of the school was cancelled well back on 26.4.1991 and this school was not in existence. One more document of mortgage was produced of the year 1951, on which there was mention of the caste. When inquiry was made with the Sub-Registrar, it transpired that no such document was registered with Sub-Registrar Office and it was forged document. Vigilance Officer made inquiry for the Scrutiny Committee and he gave report accordingly.

3. It appears that initially the first Caste Scrutiny Committee validated the claim of the candidate and issued validity certificate. This order was challenged in this Court by filing Writ Petition No. 5474 of 2009. This Court set aside the order of the Caste Scrutiny Committee and remanded the matter back to the Caste Scrutiny Committee. After considering the aforesaid circumstances and the facts revealed during inquiry, the Caste Scrutiny Committee invalidated the claim of the candidate by the order dated 22.6.2010. In the report given allegations are made against the previous Caste Scrutiny Committee that it had joined hands with the candidate and only due to that, the first Caste Scrutiny Committee had ignored the record already collected by the Vigilance Officer. Unfortunately, in the decision dated 22.6.2010 the second Caste Scrutiny Committee did not give direction to give report to police and to take action in respect of aforesaid forged record. It can be said that the Caste Scrutiny Committee itself was involved when the previous certificate was issued. In view of these circumstances and as forged documents were created, provisions of section 11 of the said Act need not be considered.

4. The material collected by Vigilance Officer and the order of the Caste Scrutiny Committee show that false record of caste "Julaha" was created by the candidate and the present respondents were actively involved in creation of false record. The learned counsel for respondents submitted that the aforesaid order of the Caste Scrutiny Committee is challenged by filing the proceeding in the Court. Though such proceeding is pending, as per the submissions made by the learned counsel, no stay is granted by the Court to the order made by the Caste Scrutiny Committee. In any case, there are aforesaid circumstances showing that the respondents created false record in respect of claim of caste of the candidate. They are close relatives of the candidate.

5. In spite of the aforesaid circumstances, it appears that the learned Sessions Court granted relief of anticipatory bail to the respondents. The reasoning given is that, there is no record to show that the applicants had collected false record, they are old persons, they are ailing persons, report was given late etc.

Surprisingly, some portion of the order made by the Caste Scrutiny Committee, which is set aside, is also considered by the Sessions Court. Reliance is placed on the some reported cases by the Sessions Court.

6. Whenever the offence of forgery is committed and the forged documents are used before the authority like Caste Scrutiny Committee, it is always desirable to make investigation in to the allegations. When a person is protected by order of anticipatory bail and he is interrogated, such interrogation is never effective. It is always necessary for any Court to keep in mind that police has statutory power of investigation and the Court is expected to take care and see that there is no interference in the exercise of that power of police. If, in such a case, relief of anticipatory bail is granted, the entire purpose behind the investigation gets frustrated. The learned Judge of the Sessions Court has not considered the matter from this angle. This Court has no hesitation to hold that the investigation must have been hampered due to relief granted in favour of respondents. Further, granting of relief in such a case sends a wrong signal to society. If such persons are not kept behind bars for atleast few days, it gives wrong signal to the society. Only because persons like respondents had held some posts like Standing Committee Chairman etc., the relief of anticipatory bail cannot be granted to them. The status becomes immaterial when there are such serious allegations.

7. The learned counsel for respondents placed reliance on few reported cases like Bhagirathsinh Judeja Vs. State of Gujarat, . The Apex Court has considered and quoted the considerations for cancellation of bail. In the case reported as 1981 Mah.L.J. 791 (Bombay High Court) [Jagannath Ramchandra Biyani v. State of Maharashtra], the factors which are required to be considered at the time of granting anticipatory bail are discussed. In the case reported as Manjit Prakash and Others Vs. Shobha Devi and Another, , the Apex Court has laid down that the order of cancellation of bail must be a reasoned order. It is also laid down that the cancellation of bail and rejection of bail are different things and these different things need to be kept in mind by the Court. There cannot be dispute over the propositions made in the aforesaid cases.

8. In section 438 of Criminal Procedure Code, some factors are laid down, which need to be considered while granting or refusing relief of anticipatory bail. Those factors are illustrative and not exhaustive, but the nature of offence needs to be kept in mind by any criminal Court. This Court has already observed that whether the investigation will be hampered, is also a factor which needs to be considered by Criminal Court while granting relief of anticipatory bail. The Sessions Court did not consider the matter from this angle.

9. The learned counsel for respondents submitted that the respondents are law abiding citizens and they have complied the conditions imposed by the Court. This submission has no relevance in view of the aforesaid discussion. 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 relief granted by

Court like Sessions Court or other subordinate Court can be cancelled when there are supervening circumstances, there is record of breach of conditions. The relief can also be cancelled when it appears to the Court that Sessions Court or other subordinate Court has committed error while granting the relief. The present case falls under the second category.

10. The learned counsel for respondents submitted that even before filing of the present proceeding, the chargesheet was filed by police. This circumstance cannot come in the way of Court in view of the facts and circumstances of the case. Police become helpless when criminal Court grants relief of anticipatory bail. After granting of such relief, the bonds are taken and so police feel that it is necessary for them to file chargesheet with whatever record they could collect during investigation. In view of the facts and circumstances of this case, this Court holds that the order made by Sessions Court cannot sustain in law.

11. In the result, the application is allowed. The order made by the Additional Sessions Judge, Latur in Criminal Mis. Application No. 487/2012 stands set aside. The relief of anticipatory bail granted in favour of respondents stands cancelled. The respondents are to be committed to custody immediately. Rule is made absolute in aforesaid terms. On the request of learned counsel for the applicants, time is given to the respondents of two weeks to surrender.