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FIDA HUSSAIN BOHRA

v.

THE STATE OF MAHARASHTRA
(Criminal Appeal No. 420 of 2009)

B

MARCH 3, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

C

Bail – Anticipatory bail – Embezzlement of public fund – Sessions Judge granted anticipatory bail to appellant subject to conditions – High Court setting aside the order – Justification of – Held: Not justified – Appellant had complied with conditions mentioned in the order passed by the Sessions Judge – The Investigating agency itself was satisfied with the conduct of appellant vis-a-vis that order and furthermore did not object to relaxation of the conditions of bail.

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According to the prosecution, the appellant was involved in embezzlement of public fund to the tune of about Rs. 26 crores. Appellant applied for and was granted anticipatory bail by the Sessions Judge subject to certain conditions. High Court set aside the order of the Sessions Judge.

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In appeal to this Court, it was contended that the appellant did abide by the conditions laid down in the order granting anticipatory bail and the investigating agency itself having given out that the strict conditions imposed thereby be suitably relaxed, the High Court erred in canceling the anticipatory bail granted to appellant by the Sessions Judge.

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Allowing the appeal with directions, the Court

HELD: 1. Correctness or otherwise of the orders

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passed by the appellate court setting aside an order granting bail or an order of cancellation of bail, is required to be considered on the factual matrix involved in each case. For the purpose of grant of bail the amount involved may be of some relevance but not the only consideration. [Paras 9 and 10] [1002-H; 1003-A]

2. Appellant was not named in the FIR. His complicity in the commission of the alleged crime came to light only from the statements made by the other accused persons during investigation. He was granted anticipatory bail subject to the conditions mentioned therein. He complied with the said conditions. According to the appellant he had produced all books of accounts and has been fully cooperating with the investigating agency. The investigating agency accepted that the conditions for grant of anticipatory bail may be relaxed. If the investigating agency itself was satisfied with the conduct of the appellant *vis-a-vis* of the orders passed by the Sessions Judge and furthermore did not object to relaxation of the conditions of bail, one fails to understand as to on what premise the High Court could be approached for setting aside the order granting bail. [Para 10] [1003-B-E]

3. Also, appellant had remained on bail for a long time. If matters relating to the involvement of the appellant in the crime *vis-à-vis* the other accused were required to be further probed, the Sessions Judge again could have been approached. [Paras 11 and 12] [1003-F-G]

4. If a huge amount had been paid on the basis of bogus bills without any supply of medicine or other articles having been made, one fails to understand as to on what basis bail could be granted to other accused persons while depriving the appellant from obtaining the said benefit. It is also beyond anybody's comprehension

A as to why the High Court was not moved for cancellation
of bail granted in favour of other public servants. [Para
12] [1004-A-C]

B 5. In the facts and circumstances of this case,
interest of justice would be sub-served if it is directed that
the appellant shall in the event, any application therefor
is filed by the investigation agency may be interrogated
at any time suitable for the Investigating Officer either
alone or with other accused persons, shall be allowed.
C Appellant shall comply with such other direction or
directions as may be issued by the Sessions Judge, if
and when, the Sessions Judge passes an order at the
instance of the investigating agency or otherwise relying
or on the basis of these observations. [Para 13] [1004-C-
E]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 420 of 2009.

E From the Judgment and Order dated 03.12.08 of the High
Court of Bombay, Bench at Nagpur in Criminal Application
No.1117 of 2008.

Sudhanshu S. Choudhari, Arundhanti S. Sukhtankar and
Naresh Kumar for the Appellants.

F Aparajita Singh, Atul Dakh and Ravindra Keshavrao
Adsure for the Respondent.

The Judgment of the Court was delivered by

G S.B. SINHA, J. 1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied
with a Judgment and Order dated 3rd December, 2008 passed
by the High Court of Judicature at Bombay, Nagpur Bench,
Nagpur whereby and whereunder an Order dated 19-12-2007
passed by the learned Additional Sessions Judge, Akola
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granting anticipatory bail in his favour was set aside. A

3. Civil Surgeon, Akola lodged a First Information Report on or about 30th November, 2006 alleging that since the year 2000, several officers of the LDH Hospital Murtijapur and National Cooperative Consumer Federation of India Ltd., its authorized suppliers, subordinate suppliers etc. committed criminal misappropriation of the public fund. B

Appellant was not named therein. Indisputably most of the accused named in the First Information Report or made accused subsequently filed applications for grant of anticipatory bail and/or regular bail which have been allowed. It is stated that brother of the appellant was also arrested. He named the appellant as also the authorized suppliers. It was disclosed by the authorized suppliers that the appellant is the real beneficiary of the amount misappropriated as they were being paid only a sum of Rs. 2000/- per month by him. C D

4. Appellant applied for and was granted anticipatory bail by the learned Sessions Judge, Akola subject to the condition that he would attend the office of C.I.D Akola thrice a week between 11:00 a.m. to 3:00 p.m. till completion of investigation. Indisputably the said order has been complied with. E

5. On an application filed by the appellant for relaxation of the said condition and the response thereto filed by the C.I.D., the said condition was relaxed by an Order dated 18th April, 2008 directing the appellant to attend the office of the C.I.D only twice a month. It is said that the C.I.D itself stated that it was not necessary for him to attend their office thrice a week. F

6. Prior thereto the State filed an application purported to be under Section 482 of the Code of Criminal Procedure (Cr.P.C.) before the High Court questioning the correctness of the said order granting anticipatory bail to the appellant on 19-12-2007. By reason of the impugned judgment, the said application has been allowed. G H

A 7. Mr. Naresh Kumar, learned counsel appearing on behalf of the appellant would submit that the High Court has committed a serious error in passing the impugned Judgment as by reason whereof anticipatory bail granted in favour by the learned Sessions Judge has illegally been cancelled.

B It was urged that keeping in view the fact that the appellant had abided by the conditions laid down in the order granting anticipatory bail and the investigating agency itself having given out that the strict conditions imposed thereby may suitably be relaxed, the High Court must be held to have committed a serious error in passing the impugned Judgment.

C 8. Ms. Aparajita Singh, learned counsel appearing on behalf of the respondent, on the other hand, would contend that the learned Additional Sessions Judge committed a serious error in granting anticipatory bail to the appellant on the premise that the period involved in respect of commission of the offence was 2001-2007; whereas in fact the period involved was 1-04-2005 to 7-10-2006.

D It was urged that no reliance should have been placed on the statement of the store keeper of the hospital that the medicines etc. allegedly supplied by the authorized suppliers had been received, inasmuch as he himself being an accused must have made such a statement with a view to save his own skin.

E Appellant was the kingpin and the amount involved in the matter is about 26 crores which has been embezzled by the accused without making any supplies and by raising bogus bills.

F The High Court in its impugned Judgment has rightly pointed out that there exists a distinction between an appeal from an order granting bail and an order of cancellation of bail.

G 9. Correctness or otherwise of the orders passed by the appellante court setting aside an order granting bail or an order

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of cancellation of bail, in our opinion is required to be considered on the factual matrix involved in each case. A

10. For the purpose of grant of bail the amount involved may be of some relevance but not the only consideration.

The First Information Report was lodged in 30th November, 2006. Appellant was not named therein. His complicity in the commission of the alleged crime came to light only from the statements made by the other accused persons during investigation. B

He was granted anticipatory bail subject to the conditions mentioned therein. He indisputably complied with the said conditions. According to the appellant he had produced all books of accounts and has fully been cooperating with the investigating agency. The investigating agency, as noticed hereinbefore, accepted that the conditions for grant of anticipatory bail may be relaxed. If the investigating agency itself was satisfied with the conduct of the appellant vis-a-vis of the orders passed by the learned Additional Judge and furthermore did not object to relaxation of the conditions of bail, we fail to understand as to on what premise they could approach the High Court for setting aside the order granting bail. C D E

11. Appellant had remained on bail for a long time; the impugned judgment having been passed only on 3-12-2008. If the investigating agency was of the opinion that custodial interrogation or interrogation of the appellant in presence of the other accused was necessary, the learned Sessions Judge could have moved in that behalf. F

12. If matters relating to the involvement of the appellant in the crime *vis-à-vis* the other accused were required to be further probed, the Sessions Judge again could have been approached. G

We would assume that the appellant was involved in H

A regard to the commission of offence for the period in question namely 1-04-2005 to 7-10-2006.

B We would also assume that the statement of store-keeper was not correct. If his statement was not correct and if a huge amount has been paid on the basis of bogus bills without any supply of medicine or other articles having been made, we fail to understand as to on what basis bail could be granted to other accused persons including the store-keeper while depriving the appellant from obtaining the said benefit. It is also beyond anybody's comprehension as to why the High Court was not moved for cancellation of bail granted in favour of other public servants including the store keeper.

D 13. We, therefore, are of the opinion that in the facts and circumstances of this case interest of justice would be subserved if it is directed that the appellant shall in the event, any application therefor is filed by the investigation agency may be interrogated at any time suitable for the Investigating Officer either alone or with other accused persons, shall be allowed. Appellant shall comply with such other direction or directions as may be issued by the learned Sessions Judge, if and when, the learned Sessions Judge passes an order at the instance of the investigating agency or otherwise relying or on the basis of these observations.

F 14. For the reasons aforementioned, the impugned judgment is set aside and the appeal is allowed with the aforementioned directions.

B.B.B.

Appeal allowed.