

[2012] 7 S.C.R. 979

MARUTI NIVRUTTI NAVALE

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v.

STATE OF MAHARASHTRA & ANR.
(Criminal Appeal No. 1376 of 2012)

SEPTEMBER 7, 2012

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[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.438 - Anticipatory bail - Complaint against appellant for committing forgery in lease deed and other documents in respect of property belonging to complainant and furnishing false information to Education Authorities - Held: It is true that the parties have also approached civil court for various reliefs - At the same time, considering the seriousness relating to additions/alterations made in various documents, information furnished to the Education Authorities which, according to them, are incorrect, and in order to secure possession of those documents, custodial interrogation of appellant is necessary - Courts below rightly rejected the relief of anticipatory bail - Penal Code, 1860 - ss.420, 465, 468 and 471 r/w s.34 IPC.

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Respondent No.2-Trustee of a Charity Trust filed a complaint against the appellant-Founder President and Managing Trustee of a Technical Education Society for offences punishable u/ss 420, 465, 468 and 471 read with s.34 IPC stating that the Charity Trust leased certain properties to the appellant to run the school housed in a building on the said property, under a lease deed for a period of 35 months w.e.f. 15.4.2008, and when on the expiry of the lease period, i.e. on 9.3.2011, the possession of the said building and land was to be handed over back to the Trust, it was revealed that the appellant had made forgery in the lease deed and other documents and asserted his claim over the property. The appellant

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- A applied for anticipatory bail which was also opposed by the State on the ground that he had produced copies of false documents and submitted false information to the Education Department while obtaining permission for running the school. The prayer was declined by the
B Additional Sessions Judge as also the High Court.

Dismissing the appeal, the Court

- HELD: 1.1 The Additional Sessions Judge and the High Court while considering the application for
C anticipatory bail scrutinized/analysed the materials. It is true that the parties have also approached the civil court for various reliefs. At the same time, there are serious allegations against the appellant relating to corrections/
D additions/alterations made in various documents, information furnished to the Educational Authorities which, according to them are incorrect, and allegation that the appellant has made false representation before the Public Authority on the basis of those documents for obtaining necessary permission. This Court is, therefore,
E of the view that in order to bring out all the material information and documents, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated and which are in possession of the appellant and in order to secure their
F possession, the custodial interrogation is necessary. Therefore, in view of the mandate prescribed in s.438 of the Code, the Additional Sessions Judge and the High Court were right in rejecting the relief of anticipatory bail. [Para 12, 14] [986-D-H; 987-A, C]

- G 1.2 It is stated that after the order of this Court dated 23.09.2011 granting interim protection to the appellant, he has misused his liberty in creating hindrance to the investigation and continues to scuttle it and also has been intimidating and pressurizing the complainant as
H well as the prosecution witnesses. Accordingly, the

interim protection granted by this Court on 23.09.2011 shall stand vacated. [Para 13,15] [987-B, D] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1376 of 2012.

From the Judgment & Order dated 19.09.2011 of the High Court of Judicature of Bombay in Criminal Application No. 786 of 2011. B

Mukul Rohtagi, Ranjit Kumar, Krishnan Venugopal, V. Prakash, Vineet Naik, Sukand Kulkarni, Shivaji M. Jadhav, Brij Kishor Sah, Anish R. Shah for the Appellant. C

Prashant Bhushan, Chinmoy Khaldkar, Sanjay V. Kharde, Asha Gopalan Nair, for the Respondents.

The Judgment of the Court was delivered by D

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final order dated 19.09.2011 passed by the High Court of Judicature at Bombay in Criminal Application No. 786 of 2011 whereby the High Court dismissed the application for anticipatory bail filed by the appellant herein. E

3. Brief facts:

(a) The appellant is the Founder President and Managing Trustee of Sinhgad Technical Education Society, Pune (in short 'the Society'). The Society is engaged in imparting formal and informal education by establishing various schools, colleges and institutions in the State of Maharashtra. Respondent No.1 is the State and Chainsukh Sobhachand Gandhi-Respondent No.2 herein is the original Complainant and is a Trustee of Pawan Gandhi Charity Trust (in short 'the Trust') working for the upliftment of economically and socially impoverished sections of the society. F
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A (b) Respondent No. 2 was running a school on land
 bearing Survey No.154/6/1 admeasuring 57 acres
 situated at Ambavet, Tal. Mulshi, Dist. Pune, on which a
 building in the area of 650 sq. mts. was constructed. In the
 year 2008, it was decided to run the School with the help
 B of other educational institutions by leasing out the property.
 Respondent No. 2 approached the appellant herein for the
 same. The appellant herein has also shown interest in
 acquiring lease hold rights in order to run school activities
 in the said property. Pursuant to the same, negotiations
 C took place and it was offered to lease out the said school
 building for a period of 87 years and to sell the other
 property, viz., land bearing Survey No. 165/1 admeasuring
 8500 sq. mts., Survey No. 162 admeasuring 7600 sq. mts.,
 Survey No. 160/1 admeasuring 1900 sq. mts. and Survey
 D No. 161 admeasuring 21300 sq. mts. situated at Ambavet,
 Tal. Mulshi, Dist. Pune for a consideration of Rs.
 3,50,00,000/-.

(c) Accordingly, two separate Memorandums of
 Understanding (MoUs) were executed on 10.05.2008.
 E Both the memorandums were duly notarized and
 registered. On 13.05.2008, in order to realize the object,
 the Trust leased out the said property to the Society for a
 period of 2 years and 11 months commencing from
 15.04.2008 and expiring on 09.03.2011 by way of an
 F interim arrangement for an amount of Rs. 1/- towards lease
 fee for the entire duration of the lease granted. This deed
 was duly registered with the office of sub-Registrar, Mulshi
 (Paud) at S.No. 3701/2008.

(d) On 19.02.2011, the appellant-Society received a legal
 G notice to remove the dead stock and articles kept in the
 school within 4 days and further to vacate the school and
 to handover the possession in favour of the Trust alleging
 breach of the clauses mentioned in lease deed dated
 13.05.2008. By reply dated 07.03.2011, the appellant-
 H Society denied the said allegations.

(e) The Trust filed an application under Section 41E of the Bombay Public Trust Act, 1950 before the Joint Charity Commissioner, Pune seeking prohibitory orders against the appellant-Society. A

(f) Aggrieved by the inaction of the Trust, the appellant-Society also filed two separate suits bearing Special Civil Suit bearing Nos. 1146 and 1147 of 2011 before the Civil Court, Pune. B

(g) On 20.07.2011, respondent No.2 filed a complaint with the Deccan Police Station, Pune under Sections 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 which was registered as S.No. 168 of 2011. C

(h) Against the said complaint, the appellant filed an application bearing No. 2651 of 2011 before the Court of Additional Sessions Judge, Pune for grant of anticipatory bail. By order dated 29.08.2011, the Sessions Judge dismissed the said application. D

(i) Aggrieved by the said order, the appellant preferred Criminal Application No. 786 of 2011 before the High Court. By impugned order dated 19.09.2011, the High Court dismissed the said application. Against the said order, the appellant has filed this appeal by way of special leave petition. E

4. Heard Mr. Mukul Rohtagi and Mr. Ranjit Kumar, learned senior counsel for the appellant and Mr. Chinmoy Khaldkar, learned counsel for Respondent No.1-State and Mr. Prashant Bhushan, learned counsel for Respondent No. 2-Complainant. F

5. The only point for consideration in this appeal is whether the appellant has made out a case for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1908 (in short 'the Code'). G

6. Inasmuch as the Additional Sessions Judge, Pune in the H

A order dated 29.08.2011 and the High Court in the impugned
 order dated 19.09.2011 adverted to all the factual details
 relating to the appellant-accused and the Respondent No. 1-
 State and Respondent No. 2-Complainant, there is no need to
 traverse the same once again except certain aspects which are
 B essential for the disposal of the present appeal. According to
 the Complainant/respondent No.2 herein - Pawan Gandhi
 Charity Trust had been established in the memory of his son
 and the Trust had a land on which a building was constructed
 for running a school. The appellant claims to be the founder
 C President and Managing Trustee of the said Society and the
 Trust had a land bearing Survey No. 154/6/1 admeasuring 57
 acres on which building in the area of 650 sq. mts. was
 constructed. An English Medium School was started in the
 building in 2005 known as Loyala School. In March, 2008, it
 D was offered to lease out the said school building for a period
 of 87 years and also to sell other property of the Trust to the
 Society. Based on the negotiations, two separate Memorandum
 of Understandings (MoUs) dated 10.05.2008 were signed
 between the parties.

E 7. It is the claim of the Complainant-respondent No.2 herein
 that on 13.05.2008, a lease deed for a period of 35 months
 w.e.f. 15.04.2008 was executed and registered between the
 parties and it was agreed not to act upon the two MoUs. On
 the expiry of the lease period i.e. on 09.03.2011, the Society
 F was to handover the possession of the said building and the
 land to the Trust.

G 8. It is the stand of the first respondent-State and the
 second respondent-Complainant that the present appellant
 made a forgery in further lease deed dated 07.03.2011
 pertaining to the granting of lease for 87 years without the
 consent of the Complainant. It is also stated that on the same
 date, the appellant also made a forgery by making additions/
 alterations in the original draft agreement for lease which was
 prepared at the time of executing the MoU and got it franked.
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It is also their grievance that the document was notarized in the year 2008 and even in the said notarized document, forgery was committed by the appellant. It is the contention of the Complainant that on the basis of the forged document, the appellant asserted his claim over the property.

9. During the course of hearing, Mr. Rohtagi, learned senior counsel for the appellant by taking us through the MoUs and lease deed and also the corrections in those documents submitted that those corrections have been made with the consent of the Complainant and according to him, no forgery has been committed as claimed by the respondents. He pointed out that inasmuch as the sale deed could not take place and the property of the Trust could be leased out for a period of more than 3 years without the permission of the Charity Commissioner, the lease deed for a period of 35 months was executed and registered as stop-gap arrangement with an understanding that the Trust would approach the concerned Assistant Charity Commissioner for necessary permission and, thereafter, the lease deed for a period of 87 years in respect of the school building and the sale deed about the larger property could be executed and registered.

10. In the course of argument, learned counsel appearing for the State vehemently opposed the claim of anticipatory bail and contended that custodial interrogation of the appellant is necessary because he has forged several documents and also submitted false information to the Education Department while obtaining permission for running the school. It is further pointed out that he has also produced copies of false document. It is his claim that unless custodial interrogation of the appellant is granted, it would not be possible to seize all those documents from him. In other words, according to the State, the appellant has committed not only the offence of forgery in respect of private documents but also made false representations and committed offence of cheating by giving false information to the Education Department, thus committed an offence not only

A against the State but also against the public in general.

B 11. Like the counsel appearing for the State, Mr. Prashant
 Bhushan, learned counsel for the second respondent-
 Complainant by drawing our attention to various materials
 including corrections in the documents and several
 communications with the Educational Authorities as well as the
 letter dated 04.07.2012 of the Deputy Collector, Maval Sub-
 division, Pune addressed to Senior Police Inspector,
 Bundgarden Police Station, Pune submitted that in view of the
 conduct and involvement in various heinous offences, the
 C appellant is not entitled indulgence by this Court for any relief.

D 12. As observed above, all the three counsel appearing
 for the parties took us through MoUs, lease deed and other
 correspondence/communications with the Educational
 Authorities as well as the report of the Deputy Collector, Pune,
 to Senior Police Inspector, Bundgarden Police Station, Pune.
 E It is also relevant to point out that all these materials were
 scrutinized/analyzed by the Additional Sessions Judge, Pune
 and the High Court while considering the application for
 anticipatory bail. It is true that the parties have also approached
 the Civil Court for various reliefs. At the same time, as pointed
 out by counsel for the State and the second respondent-
 Complainant, considering the seriousness relating to
 corrections/additions/alterations made in various documents,
 F information furnished to the Educational Authorities which,
 according to them, are incorrect, we are of the view that in order
 to bring out all the material information and documents,
 custodial interrogation is required, more particularly, to ascertain
 in respect of the documents which were alleged to have been
 G forged and fabricated. In the said documents and other
 materials which are in the possession of the appellant and the
 allegation against him that he has made false representation
 before the Public Authority on the basis of those documents for
 obtaining necessary permission, as pointed out by the State,
 H in order to secure possession of those documents, custodial

interrogation is necessary. For this reason, the Additional Sessions Judge and the High Court rejected the claim for anticipatory bail.

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13. In addition to the same, it is stated by the respondents that after the order of this Court dated 23.09.2011 granting interim protection, the appellant has misused his liberty in creating hindrance to the investigation and continues to scuttle it and also intimidating and pressurizing the Complainant as well as the prosecution witnesses.

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14. In the light of the above discussion and in view of the mandate prescribed in Section 438 of the Code, we fully agree with the conclusion arrived at by the Additional Sessions Judge and the High Court in rejecting the relief of anticipatory bail. Consequently, the appeal fails and the same is dismissed.

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15. In view of our order dismissing the appeal, the interim protection granted by this Court on 23.09.2011 shall stand vacated and the appellant is granted two weeks time from today to surrender and seek regular bail. It is also made clear that the conclusion arrived at by the courts below including the present order relates only to eligibility or otherwise of the relief of anticipatory bail and the trial Court is free to decide the bail application de hors to the above observation and in accordance with law.

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Appeal dismissed.

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