

SANTOSH S/O DWARKADAS FAFAT

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v.

THE STATE OF MAHARASHTRA

(Criminal Appeal No. 1759 of 2017)

OCTOBER 10, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

*Bail: Anticipatory bail – Entitlement – Allegation against appellant that he received misappropriated food grains meant for public distribution – Appellant seeking anticipatory bail – Rejection by the courts below – Before this Court, Investigating Officer of the opinion that custody of the appellant was required for recording his confessional statement in terms of what co-accused had already stated; and that he was not co-operating because he kept on reiterating that he had not purchased the food-grains – Held: Purpose of custodial interrogation is not just for the purpose of confession – Right against self-incrimination is provided for in Article 20(3) of the Constitution – Merely because the appellant did not confess, it cannot be said that the appellant was not co-operating with the investigation – However, in case, there is no co-operation on the part of the appellant for the completion of the investigation, it would be open to the State to seek for cancellation of bail – Constitution of India – Article 20(3).*

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*Selvi and Ors. v. State of Karnataka (2010) 7 SCC 263 :*

*[2010] 5 SCR 381 – referred to.*

Case Law Reference

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[2010] 5 SCR 381

referred to

Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1759 of 2017

From the impugned Judgment and final Order dated 24.10.2016 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application (ABA) No. 672 of 2016.

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Kavin Gulati, Sr. Adv., Garvesh Kabra, Mrs. Pooja Kabra, Advs. for the Appellant

Nishant Ramakantrao Katneshwarkar, Adv. for the Respondent.

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A The Judgment of the Court was delivered by

**KURIAN, J.** 1. Leave granted.

2. The appellant is one of the accused in Crime No. 63 of 2016 registered at Goregaon Police Station, Goregaon, Maharashtra for offences under Section 408 of the Indian Penal Code, 1860 read with Sections 3 and 7 of the Essential Commodities Act, 1955. The allegation is that he received misappropriated food-grains meant for public distribution. In the order dated 07.10.2016, the Additional Sessions Judge, Gondia rejected the application for anticipatory bail. The High Court of Judicature at Bombay, Nagpur Bench, as per order dated 24.10.2016 was also of the same view, although the same court had initially granted interim protection. Thus aggrieved, the appellant is before this Court.

3. On 07.11.2016, this Court passed the following Order:

D “Learned counsel for the petitioner seeks an adjournment, so as to enable him to obtain instructions, whether or not the petitioner is ready and willing to deposit the total amount of Rs.45,08,469/- for the misappropriated grains, referred to in the first information report.

At request, and in the interest of justice, post for hearing on 11.11.2016.

E Instructions be obtained, in the meantime.”

F 4. The amount was deposited. Accordingly, the Court granted interim protection by order dated 18.11.2016 staying the arrest. On the submission made by the learned Counsel appearing for the State that the appellant was not cooperating with the investigation, this Court on 24.08.2017, passed the following Order:

G “Learned counsel appearing for the respondent/State submits that in view of the order dated 18.11.2016 there is no cooperation on the part of the petitioner. Therefore, the order dated 18.11.2016 regarding the stay of arrest of the petitioner is modified to the effect that the Investigating Officer is free to arrest the petitioner. However, after arrest he shall be released on bail on execution of a personal bond to the tune of Rs.2,00,000/- (Rupees Two Lacs) with two solvent sureties for the like amount. The petitioner is directed to cooperate with the investigation by responding to

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the call and attending the place wherever and whenever required by the Investigating Officer. A

The respondent/State is directed to file a status report with regard to the cooperation extended by the petitioner within two weeks.

Post on 12.09.2017.” B

5. The Investigating Officer (hereinafter referred to as “the IO”) has accordingly filed a Status Report dated 11.09.2017, which reads as follows:

“xxx xxx xxx C

1. Pursuant to the order dated 24.08.2017, the Petitioner was arrested and released on bail after completing necessary formalities.

2. Thereafter, the petitioner has been called daily to the Police Station by me towards investigation. Upon inquiry, the petitioner did not answer the questions properly. The petitioner reiterated that he has not purchased the food grains. Thereafter, I made Gulam Sarver Fharukh Khan i.e. the accused No. 1 to sit in from of the petitioner and asked him certain questions. The accused No.1 Gulam was the godown keeper. Gulam specifically submitted that he knows the petitioner very well. Gulam further submitted that he has nothing to say than the statement recorded during the police custody in remand. In his statement, Gulam had given the modus operandi of the petitioner which has been mentioned in detail in the Counter Affidavit. D E

3. Since there is no cooperation by the petitioner, the petitioner is not entitled for the relief of anticipatory bail. For proper completion of investigation the custody of the petitioner is very much necessary. ...” F

6. We are informed that the co-accused have been released on bail. G

7. It appears, the IO was of the view that the custody of the appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the Statement under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion H

- A that the appellant was not cooperating because he kept reiterating that he had not purchased the food-grains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well settled position in view of the Constitution Bench decision in Selvi and others v. State of Karnataka<sup>1</sup>, that Article 20(3) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.

8. Having regard to the peculiar facts and circumstances of the case, we are of the view that the liberty as above should be left to the jurisdictional Sessions Court, i.e., Sessions Court, Gondia.

9. In case there is no cooperation on the part of the appellant for the completion of the investigation, it will be open to the respondent to approach the Sessions Court, Gondia, Maharashtra in which case the Sessions Court having regard to the materials already collected by the IO, if so satisfied that the custodial interrogation of the appellant is still required for completion of the investigation, will be free to pass appropriate orders.

10. The appeal is disposed of as above.

Nidhi Jain

Appeal disposed of.

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<sup>1</sup> (2010) 7 SCC 263