

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 197 OF 2015

Vilas s/o Dasrao Kale,
Age: 36 years, Occu: Agril. & Business,
R/o. Sonar Galli, Aundha Nagnath,
Tq. Aundha Nagnath, Dist. Hingoli

...Petitioner

versus

1. The State of Maharashtra,
Through Police Station Aundha Nagnath,
Dist. Hingoli
 2. Dnyanoba Vithoba Gaikwad,
Age: 62 years, Occu: Pensioner,
R/o. At post Awal Konda, Tq. Udgir,
Dist. Latur
- ...Respondents

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Mr. S. J. Salunke, Advocate for petitioner
Mrs. M. A. Deshpande, A.P.P. for respondent/State
Mr. S. S. Gangakhedkar, Advocate for respondent No. 2

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WITH
CRIMINAL WRIT PETITION NO. 252 OF 2015

Vijay s/o Nivrutti Chaudante,
Age: 57 years, Occu: Service,
R/o Hingoli, Dist. Hingoli

...Petitioner

versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Aundha (Na),
Tal. Aundha (Na), Dist. Hingoli
 2. Dnyanoba Vithoba Gaikwad,
Age: 62 years, Occu: Pensioner,
R/o. At post Awal Konda, Tq. Udgir,
Dist. Latur
- ...Respondents

.....
Mr. H. V. Patil, Advocate for petitioner
Mrs. M. A. Deshpande, A.P.P. for respondent/State
Mr. S. S. Gangakhedkar, Advocate for respondent No. 2
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CORAM : N.W. SAMBRE, J.

DATE : 30th OCTOBER, 2015

ORAL ORDER :

The Additional Sessions Judge, Basmath, by an order dated 04/02/2015, has cancelled the regular bail granted to the petitioners by an order dated 14/11/2014 passed by Incharge J. M. F. C., Aundha in crime No. 70/2013 punishable under Section 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, as such present petitions.

2. Heard Mr. Salunke and Patil, learned Counsel for the petitioners, Mr. Gangakhedkar, learned Counsel for respondent/complainant and learned A.P.P. for State.

3. While assailing the order of cancellation of bail passed by learned Sessions Judge, Mr. Salunke, learned Counsel for the petitioner would urge that, in the present case the bail is cancelled by learned Sessions Judge on two counts; (a) that the Magistrate has not given any reason for releasing the petitioners on bail and (b) that

the petitioners have suppressed the fact that their application for pre-arrest bail was rejected by the High Court having noticed prima facie case. According to him, the fact remains that, the petitioners surrendered before the Court of J.M.F.C. on 14/11/2014 and in view of their surrender, the Magistrate has ordered their magisterial custody till 27/11/2014. As such, they moved the applications for releasing them on regular bail. According to him, the order passed by the High Court rejecting pre-arrest bail has hardly any bearing on the prayer for regular bail. He would then urge that, while alleging the petitioners, say of learned A.P.P. was called and as such, the petitioners were ordered to be released on bail. He would submit that, after completing investigation in the matter, chargesheet is already submitted on 24/02/2015 and prosecution has not moved for cancellation of bail in the matter. Learned Counsel for the petitioners submit that, they have co-operated with the investigating officer in the investigation and as such, there is no ground for cancellation of bail.

4. While opposing the claim of the petitioners, learned A.P.P. and learned Counsel for respondent/complainant would urge that in view of suppression of rejection of pre-arrest bail, in which there are findings recorded about prima facie involvement of the accused/petitioners, the learned Sessions Court was right in ordering the cancellation of bail. According to them, bail was rightly cancelled

by learned Sessions Judge, that too, by mentioning sufficient reasons and prayed for rejection.

5. Having considered the rival submissions, it is not in dispute that, the investigation in the matter is already complete and the chargesheet is filed on 24/02/2015. The petitioners/accused are responding to the process of law by honouring the Court order and are regularly appearing before the learned Court below. It is worth to mention here that the Apex Court in the following matters, while dealing with the issue of cancellation of bail has observed thus:

**A) Devender Kumar & Anr. Vs. State of Haryana & Ors.
2010 ALL MR. (Cri.) 1965 (S.C.)**

“Para 9. Bail had been granted to the Appellants by the learned Magistrate, Palwal, on 10th October, 2008, and as indicated herein before, there is no allegations that the same had been misused or that any attempt had been made after the Appellants were granted bail to recover the articles alleged to have been given to the Appellant No. 1 at the time of marriage with the complainant. The reason given by the High Court for cancellation of the orders granting bail and directing the arrest of the Appellants on the ground that disclosures have been made by the Appellants and that their police custody was necessary for recovery of the same, is, in our view, not sufficient for the purpose of cancellation of bail granted earlier”.

**B) Hazari Lal Das Vs. State of West Bengal & Anr.
2009 ALL MR (Cri.) 3457 (S.C.)**

“Para 10. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained.”

**C) Dolat Ram & Ors. Vs. State of Haryana
(1955) 1 SCC 349**

“Para 4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly (illustrative and not exhausting) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any matters. The satisfaction of the Court, on the basis of the material placed on record of the possibility of the accused absconding is yet another reason

justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factor relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

**D) Bhagirathsinh Judeja Vs. State of Gujarat
AIR 1984 Supreme Court 372(1)**

“5. It appears that the State of Gujarat filed Miscellaneous Criminal Application No. 1724 of 1983 in the High Court of Gujarat seeking cancellation of the order granting bail to the appellant. A learned Single Judge of the High Court held that once a prima facie case is established, the learned Sessions Judge ought to have taken into consideration the nature and gravity of the circumstances in which the offence is committed. The charge against the appellant is that he has committed an offence punishable under Sec. 307 I.P.C. and Sec. 135 of the Bombay Police Act and even on the date of hearing of this appeal before us on November 18, 1983, the Court was informed that the victim is alive and at present there is no danger to his life. Nearly 3 months have rolled by from the date of the offence. We fail to understand what the learned Judge of the High Court desires to convey when he says

that once a prima facie case is established, it is necessary for the court to examine the nature and gravity of the circumstances in which the offence was committed. If there is no prima facie case there is no question of considering other circumstances But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion grained in his favour by tampering with evidence. We would have certainly overlooked this aspect of the matter if the approach of the learned judge was otherwise one which would commend to us. It however appears that the learned judge was impressed by some of the most irrelevant considerations which prima facie emerge from the following observations of the learned judge which permits his whole order running into about 13 pages. Says the learned judge:

"The learned Judge ought to have seen the fact that the helpless victim had gone to the hospital for pre-operation check-up. He was a leading social and political worker. He was an active worker and Secretary of "Gundagiri Nivaran Samiti" which had raised a campaign against the atrocities allegedly having been committed by the Rajputs of Girasiya community. Admittedly the respondent is Girasiya and the complainant who was an active worker and Secretary of Gundagiri Nivaran Samiti had become a victim at the hands of the respondent. The learned Judge ought to have taken into consideration the material fact that the incident had taken place in the premises of the Hospital which may

terrorize a number of sick persons who might be getting treatment in the hospital."

At another place, the learned Judge has observed that the learned Sessions Judge has ignored, the fact that a social and political worker was attacked in the hospital premises with a knife having 9" blade and as many as 11 injuries were caused to a helpless victim."

"6. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available

for his trial and whether he is likely to abuse the discretion granted ill his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.”

7. If the cumulative effect of the above referred observations of the Apex Court are considered, in my opinion, when the chargesheet is filed and the petitioners' custodial interrogation is no more required, the cancellation of bail of the petitioners' particularly by curtailing of liberty, will of hardly any necessity at this stage.

8. In view of above, the petitions are allowed. The order dated 04/02/2015 impugned in the petitions, passed by the learned Sessions Judge, Basmath, is hereby quashed and set aside.

[N.W. SAMBRE, J.]