

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1510 OF 2014

Shri. Annasaheb s/o. Shankar Darade **....Applicant.**

Versus

The State of Maharashtra & Ors. **....Respondents.**

Mr. V.D. Sapkal, Advocate for applicant.

Mr. M.M. Nerlikar, APP for State.

Mr. V.D. Hon, Advocate for respondent Nos. 2 and 3.

WITH
CRIMINAL APPLICATION NO. 2375 OF 2014

Sau. Rohini w/o. Sanjay Aghav **....Applicant.**

Versus

The State of Maharashtra & Ors. **....Respondents.**

Mr. V.B. Jadhav, Advocate for applicant.

Mr. M.M. Nerlikar, APP for State.

Mr. V.D. Sapkal, Advocate for respondent Nos. 2 to 9.

CORAM : T.V. NALAWADE, J.
DATED : 17th February, 2015.

ORDER :

1) Both the applications are filed under section 439 (2) of Criminal Procedure Code. As the two crimes in which relief of bail and anticipatory bail is granted, have arisen out of the same

incident, both the applications are being decided together. Both the sides are heard.

2) The first application is filed in C.R. No. 191/2013 registered in Sonai Police Station. It was initially registered for offences punishable under sections 307, 149 etc. of Indian Penal Code. The injured died after few days and so, the offence punishable under section 302 of I.P.C. came to be added. Anticipatory bail was granted to respondent Nos. 2 and 3 of this proceeding when the crime was registered for offence punishable under section 307 etc. of I.P.C. After conversion of the crime for offence of murder, these respondents surrendered before police. Then they applied for regular bail and by the order dated 7.2.2014 regular bail was granted to them. This order is under challenge.

3) The aforesaid crime was registered on the basis of report given by one Annasaheb Darade. Bhausahab Darade is his real brother and he runs sugarcane juice shop. In front of his shop, there is shop of Sanjay Aghav, person from opposite side. As Bhausahab had started the business after starting of the business by Sanjay, Sanjay had become angry as there was competition to him. Allegations are made that on 25.10.2013 at

about 11-00 a.m. Sanjay picked up quarrel with Bhausahab due to aforesaid dispute and started giving abuses. Complainant went to spot and tried to convince both of them. At 1.30 p.m., on the same day, deceased Shankar Darade and his wife Chandrabhaga, who are parents of complainant, went to the shop of Sanjay to convince him to behave well. When Shankar was trying to convince Sanjay, quarrel started and then complainant and his brother Bhausahab also rushed there. Allegations are made that with Sanjay, his wife Rohini, his colleagues Anil Kedar, Pralhad Shinde, Karan Shinde, Rushikesh Aghav, Padam Kedar, Pragati Kedar had gathered there. Allegations are made that all these persons of opposite side started assaulting the parents of the complainant. Allegations are made that during incident, Sanjay gave blow of iron bar on the face of his father and then Anil Kedar threw a grinding stone on the head of the father of complainant. Allegations are made that beating was given by these persons to some persons from complainant's side and others were also injured. As Shankar sustained bleeding injury, he was shifted to Civil Hospital and he was admitted there. Report was given and the aforesaid crime came to be registered for offences punishable under section 307, 149 etc. of I.P.C.

4) Rohini, wife of Sanjay Aghav gave report to police and the crime came to be registered at C.R. No. 193/2013 for offences punishable under sections 307, 452, 354, 149 etc. of I.P.C. She made allegations that on 25.10.2013 at about 1.30 p.m. when she was present in her house situated near the aforesaid shop of Sanjay, Bhausahab Shankar Darade came to her house and he held her from backside. She has contended that Bhausahab Darade had evil eye on her and he used to try to talk with her when she was alone. It is her case that she realized the intention of Bhausahab and she shouted. It is her case that after hearing her shouting, first persons from the house of Bhausahab like Shankar, Annasaheb, Sampada, Manda, Chandrabhaga, Jyoti, Sarubai and Suman ran towards her house. It is her case that no male person from her house was at home. It is her case that accused were holding weapons like stones and iron bars. She has made allegations that Bhausahab then picked up the iron bar and said that he would finish the complainant as she was alone and she was harassing them. It is her case that Bhausahab gave blow of iron pipe on her head and due to that she collapsed. It is her case that their labour working in the shop viz. Pralhad Shinde came there to rescue her, but he was also assaulted by these persons. It is her case that an attempt was made on her life and Bhausahab had misbehaved with her. In

view of these allegations, crime for the aforesaid offences came to be registered.

5) In the crime registered against respondents of the first case, injury certificate of Shankar was produced which is to the effect that he had sustained head injury and he was admitted in private hospital for giving treatment in respect of head injury. His condition was stable and there was no fracture of skull. C.T. scan was done and injury was described as grievous injury. It can be said that only during scan, it revealed that there was underscalp haematoma. Application for anticipatory bail was made on 7.11.2013. F.I.R. was given in the first case on 29.10.2013. The Court considered the circumstance like nature of dispute. Further, the pursis filed by the complainant's side to the effect that they had no objection for granting anticipatory bail was considered and the relief was granted. Similarly, F.I.R. was given in the second proceeding on 30.10.2013 and the application for anticipatory bail was moved on 11.11.2013. In this proceeding, the Court considered the pursis filed by the complainant's side that they had no objection for granting relief of anticipatory bail. In view of the aforesaid nature of dispute, the relief was granted by the learned Additional Sessions Judge to the respondents of the second proceeding.

6) The learned counsel for the applicant from the first proceeding submitted that the reasoning given by the Sessions Court for granting relief of bail to the respondents in a case filed for offence under section 302 r/w. 149 of I.P.C. is not convincing and the relevant material is not at all considered by the learned Additional Sessions Judge. He submitted that exact role played by the respondents was described by the witnesses.

7) In the second proceeding, the learned counsel for applicant from that proceeding submitted that considering the conduct of the respondents and the fact that the crime was registered for offences under sections 307, 354 etc. of I.P.C and subsequent events, the relief granted in favour of respondents needs to be cancelled. Injury certificate in respect of two injured are produced in the matter and they show that injuries like C.L.W. and blunt trauma were there and Rohini had sustained fracture of mid shaft alna. Another person had sustained fracture of left temporal bone. The learned counsel for respondents in the second proceeding submitted that in the past, application was moved for cancellation of relief of anticipatory bail granted in favour of Bhausahab Shankar Darade and Sessions Court had cancelled the relief by order dated 23.1.2014 passed in Criminal

Application No. 24/2014. He submitted that this order was challenged by Bhausahab Darade by filing Criminal Application No. 555/2014 in this Court and this Court has set aside the order of cancellation made by the learned Additional Sessions Judge. The learned counsel for respondents of this proceeding submitted that in view of these circumstances, the proceeding itself is not tenable against the respondents. He submitted that the Sessions Court had refused such relief in respect of the other respondents in Criminal Application No. 24/2014.

8) The learned counsel for respondents of the first proceeding placed reliance on the following reported cases :-

(i) 2008 AIR (SC) 3032 [Manjit Prakash & Ors. Vs. Shobha Devi & Anr.],

(ii) 1995 (1) SCC 349 [Dolat Ram Vs. State of Haryana],

(iii) 1996 (3) Bom.C.R. 570 [Babulal Chottelal Shah Vs. The State of Maharashtra],

(iv) 1984 AIR (SC) 372 [Bhagirathsinh s/o. Mahipat Singh Judeja Vs. State of Gujrat],

(v) 2000 (10) SCC 237 [Abhilasha Vs. State of Rajasthan],

(vi) 2014 (3) Bom. C.R. (Cri.) 720 [Suresh Jagdeorao Sirsat Vs. Vinod Purushottam Dhanokar & Anr.].

He submitted that cancellation of bail is a serious matter and the criteria for the same are different and in view of the aforesaid circumstances, it is not desirable to cancel the bail granted to the respondents of the first proceeding. There cannot be dispute over the propositions made in the cases cited for the respondents of the first proceeding.

9) The facts and circumstances already quoted show that some incident did take place. There are possibilities as contended by both the sides. Both the sides had approached police late. They had given no objection to grant the relief to other side when the other side had filed application for anticipatory bail in Sessions Court. It can be said that only after the death of Shankar, the case became aggravated and the respondents of the first proceeding came to be arrested. However, considering the aforesaid circumstances, the Sessions Court granted relief of bail to the respondents of the first proceeding. It can be said that if Shankar had not died, the parties would not have taken such steps. In view of these circumstances, there is no possibility of interference in the orders made by the learned Additional Sessions Judge which are under challenge.

10) In the result, both the applications stand rejected.

[T.V. NALAWADE, J.]

SSC/