

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

**CRIMINAL APPLICATION NO. 3687 OF 2015**

Smt. Dwarkabai w/o Baban Avhad,  
Age: 45 years, Occ: Household,  
R/o. Rajegaon, Tq. Newasa,  
Dist. Ahmednagar.

...Applicant

versus

The State of Maharashtra & ors.

...Respondents

.....  
Mr. A.D. Shinde, Advocate for applicant  
Mr. S.R. Palnitkar, A.P.P. for respondent No. 1  
Mr. N.B. Narwade, Advocate for respondent Nos. 2 to 5  
.....

**CORAM : N.W. SAMBRE, J.**

**DATE : 7th SEPTEMBER, 2015**

**ORAL ORDER :**

This application is the complainant in Crime No. 49 of 2015 for the offence punishable under Sections 376(D), 342, 323, 427, 504, 506 read with Section 34 of the Indian Penal Code for cancellation of bail granted to the accused persons by learned District Judge-1 and Additional Sessions Judge, Newasa on 27/04/2015 in Criminal Misc. Application No. 71 of 2015.

2. Heard Mr. Shinde, learned Counsel for the applicant and Mr. Narwade, learned Counsel for the accused persons.

3. The foremost ground that is sought to be canvassed by Mr. Shinde, learned Counsel for the applicant is, looking to the nature of the accusations which are serious in nature, the Court was insensitive and has proceeded to grant regular bail, the cause which according to him, was not justified cause of the case. He would submit that perusal of the investigation papers reflects that the complainant is aged of 65 years, has suffered injuries, when the offence took place, as is reflected from the medical examination report about injuries, issued by the District Hospital, Ahmednagar. He would further urge that there is enough evidence on record to demonstrate that it was not fit case for exercising discretion vested in the trial Court. According to him, the trial Court has not assigned any reason while exercising such discretion and as such, relied upon the judgment of the Apex Court in the matter of **Gurcharan Singh vs. State (Delhi Administration)** reported in **AIR 1978 SC 179** and **Puran vs. Rambilas** reported in **AIR 2001 SC 2023** would urge that the order granting regular bail is liable to set aside and bail granted to the accused persons under Section 439 of the Code of Criminal Procedure is liable to be cancelled.

4. Mr. Narwade, learned Counsel for the respondents-accused persons, while opposing the said prayer, has stated the following facts.

That the bail was granted on 27/04/2015 and the present applicant has moved before this Court in July, 2015 i.e. almost after period of about two months. According to him, the investigation in the matter is complete and charge sheet is already filed. He would urge that from perusal of the record would reflect that there is no evidence available against the present respondents-accused persons. He would further urge that the order of bail is the discretion vested in Court, the Court has given enough reasons for granting bail and the discretion was exercised in right manner. As such, according to him, the application is liable to be rejected.

5. In the back ground of above referred submissions, it is required to be noted that whether the Court below was right in granting bail or not?

6. Admitted fact on record goes to show that the investigation in the present case is already complete and the charge sheet is already filed in the matter.

7. Apart from above, if the allegations against the present respondents-accused persons are considered, the same *prima facie* does not repose the complete confidence in the prosecution story.

Be that as it may, It will be appropriate to note that the investigating agency has referred the matter for D.N.A. test which was found against the accused persons, particularly in the matter of blood stains which were found on the clothes of complainant. The perusal of C.A. report which reflects that the blood stains which were found were of that of the complainant.

8. The injury certificate which is sought to be relied upon was duly investigated and if read with other incriminating circumstances on record, it is required to be presumed that same was given appropriate weightage while granting regular bail to the accused persons. The perusal of the order reflects that the Court was alive to the custodial interrogation of the accused persons in the present matter and existence of the enmity between the complainant's family and the accused persons is reflected in the F.I.R. itself. In view thereof, false implication cannot be ruled.

9. In view of above, in my opinion, even though the claim that is sought to be canvassed by learned Counsel for the applicant based on the above referred judgment of the Apex Court, that the allegations are serious in nature, that does not *ipso facto* disentitled the accused for discretionary relief of bail.

10. In my opinion, learned Sessions Judge has rightly exercised the discretion. No case for interference is made out. The application fails, same stands dismissed.

**[ N.W. SAMBRE, J. ]**