

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

CRIMINAL APPLICATION NO. 5046 OF 2014

Shivanand s/o. Babarao Jadhav **Applicant.**

Versus

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

Mr. H.V. Patil, Advocate for applicant.

Mr. N.B. Patil, APP for State.

Mr. V.J. Dixit, Senior Counsel i/b. Mr. N.G. Kale, Advocate for
respondent Nos. 2 to 10.

CORAM : T.V. NALAWADE, J.
DATED : 25th February, 2015.

ORDER :

1. The application is filed under section 439 (2) of Criminal Procedure Code for cancellation of bail granted by the learned Additional Sessions Judge, Biloli to the respondents in C.R. No. 56/2014 registered in Naigaon Police Station, District Nanded for the offences punishable under sections 302 r/w. 149 etc. of I.P.C. Both the sides are heard. The learned APP supported the applicant.

2. The incident in question took place on 19.7.2014. On that day, three times quarrel took place between two groups. In the first incident, which took place at about 12.00 noon,

respondents Sudhakar Jadhav, Shiva Jadhav and Sambhaji Jadhav assaulted Bramhanand, a person from complainant's side, when he questioned them as to why they were causing damage to standing Soyabin crop of complainant's side.

3. After the aforesaid incident, when the complainant Shivanand, his deceased brother Keshav and Bramhanand went to the field and they again questioned the respondents particularly Shiva, Sambhaji and Digambar as to why they were taking agricultural implements through the field of complainant's side and they were causing damage to the standing crops, the quarrel took place and in the quarrel both sides assaulted each other.

4. Third incident took place at about 1.00 p.m. of the same day. Allegations are made that on this occasion, all the respondents came together with sticks and they started assaulting complainant Bramhanand and deceased Keshav and also Dnyaneshwar. Allegations are made that respondents/accused Shiva, Sambhaji and Balu gave blows of sticks on the head and back of Keshav. Keshav collapsed on ground due to these blows. Particular part played by each respondent is given in the F.I.R. Keshav succumbed to the

injuries on 20.7.2014 at about 12.18 p.m. and the report came to be given on the same day and the crime came to be registered at about 1.00 p.m.

5. There are statements of injured witnesses. The P.M. report shows that as many as 10 injuries were found on the dead body which were mainly contusions, linear abrasions and train track contusions. Some injuries were present on head portion and they had caused cranial vault fracture and there were pieces of bone of vault. Due to that, there was extradural haematoma at vertex and parieto temporal region, which was around 100 gms. There was also subdural haematoma. The death took place due to head injury associated with pelvic fracture.

6. Bramhanand also sustained one fracture injury. It is the grievance of the learned counsel for the applicant that the learned Additional Sessions Judge did not consider this material at all and has made observation that the incident took place due to sudden provocation. The aforesaid material does not show that there was sudden provocation and so, there was no question of invoking the provision of exception I to section 300 of I.P.C. Another word 'fighting' is also used, when there was no such allegation in respect of third incident. The absence of

discussion of aforesaid material and the statements of eye witnesses show that the learned Additional Sessions Judge did not give convincing reasons. It appears that the learned Additional Sessions Judge considered the circumstance of delay caused in giving of the F.I.R. and he considered the aforesaid probabilities.

7. It can be said that in ordinary circumstances, atleast to some accused bail could have been refused. However, granting of bail is within discretion of the Court. Cancellation of bail is a serious thing and that also amounts to interference in the discretion of the Court. The motive which can be found in the aforesaid instance needs to be kept in mind. In view of the nature of material, this Court holds that at present, it is not desirable to cancel the bail granted in favour of respondents including the respondents Shiva, Sambhaji and Balu. The submissions made show that chargesheet came to be filed on 27.11.2014 and the case is committed. The operative order of the learned Additional Sessions Judge is not happily worded. It can be said that the learned Judge wanted to prevent the respondents from entering the village to avoid the tension and possibility of occurring one more incident. In view of the nature of material available as against respondents Shiva, Sambhaji and Balu, this Court holds that they need to be prevented from

entering the village Ransugaon, Tahsil Naigaon till the disposal of the case filed against them.

8. The learned counsel for the applicant placed reliance on the case reported as **AIR 2011 SUPREME COURT 1945 [Prakash Kadam and etc. Vs. Ramprasad Vishwanath Gupta and Anr.]**. He submitted that when relevant material is not considered by the Sessions Court, then bail can be cancelled even when there are serious circumventing circumstances. There cannot be dispute over this proposition. However, in view of the aforesaid circumstances, it is not desirable to cancel the bail now.

9. In the result, the application is rejected. It is made clear that the the aforesaid three respondents should not enter the village mentioned above till the disposal of the case filed against them. These observations are for the purpose of present proceeding only.

[T.V. NALAWADE, J.]

ssc/