

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

Criminal Application No.6640 of 2013

Jaberkhan Anwar Khan.

.. Applicant.

Versus

Prashant s/o Pandurang Kagade
And Others.

.. Respondents.

Shri. Atul M. Karad Advocate, for applicant.

Shri. Joydeep Chatterji, Advocate for respondent No.1.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent Nos.2 and 6.

Shri. Musahedul Haque, Advocate, for respondent No.3.

Shri. S.P. Salgar, Advocate for respondent Nos.4 and 5.

With

Criminal Application No.6641 of 2013

Jaberkhan Anwar Khan.

.. Applicant.

Versus

Milind @ Bablu S/o Shriram Ghagarmale
And Others.

.. Respondents.

Shri. Atul M. Karad Advocate, for applicant.

Shri. V.B. Jadhav, Advocate for respondent No.1.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for respondent Nos.2 and 6.

Shri. Khizer Patel & Shri. Musahedul Haque, Advocate, for respondent No.3.

Shri. S.P. Salgar, Advocate for respondent Nos.4 and 5.

With

Criminal Application No.6642 of 2013

Jaberkhan Anwar Khan.

.. Applicant.

Versus

Sumedh @ Sumya S/o Shriram Ghagarmale
And Others.

.. Respondents.

Shri. Atul M. Karad Advocate, for applicant.

Shri. V.B. Jadhav, Advocate for respondent No.1.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for respondent Nos.2 and 6.

Shri. S.P. Salgar, Advocate for respondent Nos.4 and 5.

With

Criminal Application No.6643 of 2013

Jaberkhan Anwar Khan.

.. Applicant.

Versus

Rahul S/o Deorao Makrand
And Others.

.. Respondents.

Shri. Atul M. Karad Advocate, for applicant.

Shri. Joydeep Chatterji, Advocate for respondent No.1.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent Nos.2 and 6.

Shri. Khizer Patel & Shri. Musahedul Haque, Advocate, for
respondent No.3.

Shri. S.P. Salgar, Advocate for respondent Nos.4 and 5.

CORAM: T.V. NALAWADE, J.

DATE : 9th MARCH 2015.

ORDER:

- 1) All the applications are filed under section 439
- (2) of the Code of Criminal Procedure for cancellation of
relief of bail granted by the Ad-hoc Additional Sessions
Judge Parbhani in a crime registered for offences
punishable under sections 302, 147, 148, 149, 120-B etc.
of the Indian Penal Code. Both the sides are heard.

Learned Additional Public Prosecutor supported the applicant.

2) Crime is registered on the basis of report given by Jaber Khan, brother of the deceased. According to him, in his presence in the incident of 16-9-2013 after 7.30 p.m. present respondents and one Kiran assaulted his brother. Allegations are made that all of them assaulted him by giving fist blows and kicks and by iron rod and also sword. Allegations are made that some accused were giving instigation to finish the deceased. They together lifted the deceased and virtually threw him on the ground and then left the spot.

3) This Court has gone through the material collected against the respondents. No bail is granted to Kiran. The material is of the nature of statements of the eye witnesses. The statements are of different nature. When the relatives of the deceased on one hand are saying that all the respondents and Kiran took part in the incident, there are statements of some witnesses showing that only Kiran was there. Some witnesses are saying that

only Kiran used the weapon though others were present and Kiran gave blow of iron rod after giving chase to the deceased.

4) The post mortem report shows that probably only one blow was given on the head portion which caused haemorrhage to the brain and fracture to skull bone. Death took place due to head injury. No specific opinion is yet obtained by the prosecution to show that more than one blow were given.

5) During investigation Kiran gave statement under section 164 of the Code of Criminal procedure. He did not implicate the other accused the incident.

6) Learned counsel for the applicant argued in respect of circumstance that previous investigating officer had given submission to the Prosecutor who was appearing for the State in the Sessions Court that he intended to file report under section 169 of the Code of Criminal Procedure against the present respondents. The learned Additional Sessions Judge has referred this circumstance while granting bail. It appears that

subsequently the investigating officer was changed and charge sheet came to be filed not only against Kiran but also against others. The learned Additional Public Prosecutor submitted that action is taken and departmental enquiry is initiated against the said investigating officer.

7) Even if the aforesaid circumstances are there, the material which is available against the present respondents needs to be kept in mind. Though there are some statements implicating the present respondents, there is post mortem report of aforesaid nature. In view of this circumstance this Court holds that the Sessions Court has committed no error in granting the relief. Cancellation of bail is a serious matter and it is possible only in exceptional cases. This case is not of that exceptional nature.

8) All the applications are rejected. The observations are only for the present proceeding.

Sd/-
(T.V. NALAWADE, J.)

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