

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 100 OF 2015

The State of Maharashtra	...	Applicant
VS.		
Yogesh Dada Gangurde & Ors.	...	Respondents

Mr. Arfan Sait, APP for the applicant/State.
Mrs. A.M.Z. Ansari, Advocate for respondent nos. 1 to 3.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 1st April, 2015.

P.C.

This Application is moved by the prosecution for cancellation of bail, which was granted by the Additional Sessions Judge by an order dated 9th December, 2014 in Sessions Case No. 117 of 2014. The accused persons were facing trial for the offence of murder under section 302 of the Indian Penal Code. The murder has taken place on 5th January, 2014. On 8th January, 2014 the police arrested all the three accused. Accused no. 1 alone had made an Application for bail on 30th June, 2014, which was rejected by the Sessions Court on 21st August, 2014. Thereafter charge was framed on 10th October, 2014. The first witness was put in the box on 14th November, 2014 and till 9th December, 2014, i.e., within three weeks, the prosecution has examined 7 witnesses including all eye witnesses. After examination of the eye witnesses, all the three accused moved the Bail Application. Accused no. 1 moved second bail application and for accused nos. 2 and 3 it is the first bail

application.

2. The learned APP has pointed out the chronology of the events and of the trial and submitted that some of the eye witnesses supported the prosecution and some eye witnesses did not. He submitted that yet prosecution wants to examine 18 witnesses on material evidence, i.e., two oral dying declarations, seizure panchanama of weapons and blood stained clothes. He submitted that all the accused and witnesses are residents of the same locality. The police have apprehension that they are likely to pressurize the witnesses. Moreover, learned APP submitted that when there is evidence against the accused, they should not have been released on bail during the trial. In support of his submissions, he relied on the judgment of Supreme Court in the case of **Puran vs. Rambilas & Anr., reported in (2001) 6 SCC 338**. He pointed out that the learned Judge at the time of passing order has discussed the evidence, which he ought not to have done at this stage.

3. The learned counsel for the respondents/accused has argued that the police were lethargic in producing the witnesses. The trial was going on slow. On the point of principles of cancellation of bail under section 439(1) & (2) of the Cr. P.C., the learned counsel relied on the ratio laid down by the Supreme Court in the case of **Gurcharan Singh & Ors. vs, State (Delhi Administration), reported in (1978) 1 SCC 118**. She argued that where the order was vitiated by any serious infirmity then

the bail is to be cancelled. These accused are not going to tamper the evidence. She also relied on the following judgments of Hon'ble Supreme Court:

- (i) **Bhagirathsinh Judeja vs. State of Gujarat, reported in AIR 1984 SCC 372;**
- (ii) **Dolat Ram & Ors. vs. State of Haryana, reported in (1995) 1 SCC 349;**
- (iii) **Rajkumar Jain & Anr. vs. Kundan Jain & Anr., reported in AIR 2004 SCC 3794;**
- (iv) **Samarendra Nath Bhattacharjee vs. State of West Bengal & Anr., reported in (2004) 11 SCC 165;**
- (v) **State through C.B.I. vs. Amarmani Tripathi, reported in AIR 2005 SCC 3490.**

4. As submitted by the learned counsel for the respondents, this Court is fully aware that the principles for rejecting bail and principles of cancellation of bail stand on different footing. Once the bail is granted, the Court is always slow to cancel it, as it takes away previous liberty of an individual. In the case of **Dolat Ram & Ors. vs. State of Haryana** (*supra*), it is rightly mentioned that interference or attempt to interfere with the due course of administration of justice or abuse of the concession granted to the accused is to be considered and the bail once granted is not to be cancelled in a mechanical manner without considering the circumstances and post bail conduct of the accused. In the case of

Puran vs. Rambilas & Anr. it is held that while passing the order of bail, the Court has to keep in mind that giving reasons is different from discussing merits or demerits. If the merits and demerits of the evidence are discussed in the bail, then that is to be deprecated. So arbitrary and wrong exercise of discretionary power of granting bail is to be corrected.

5. While considering the cancellation of bail, it is necessary to look into the perversity in the order passed by the Court while releasing the accused on bail. The facts of each case of the cancellation of bail are to be independently appreciated while entertaining such application. In the present case, considering the chronology of the events, the arrest of the accused, framing of charge and examination of 7 witnesses took place within a period of one year from the date of the murder. This cannot be said as a lethargy on the part of the prosecution or on the part of the Court. The learned Judge has mentioned in his order that examination of 7 eye witnesses is a change of circumstance. It is a change of circumstance, however, when a bail of accused no. 1 was rejected by the Sessions Court on 21st August, 2014, it is not just or judiciously proper for the same Judge to consider the second Bail Application and allow the same in the month of December, 2014, in the midst of the trial. Moreover, the learned Sessions Judge in paragraph 4 of his order has appreciated the evidence of eye witnesses and has observed that -

“The evidence of eye witnesses so far examined by the prosecution, if considered in its proper perspective, it can be

seen that they have some untrue version about the incident and to some extent they are exposed while being cross-examined”.

6. I fail to understand what exactly the learned Sessions Judge wanted to convey through this appreciation of the evidence. If at all the eye witnesses have turned hostile and there would not have any other evidence, he would have asked the prosecution to finish the trial as early as possible and could have passed the order of acquittal under section 232 of Cr. P.C. However, the learned Judge has not done so. His order is perverse and especially when the prosecution has to examine 18 witnesses including the witnesses on the point of two dying declaration, seizure of weapons and blood stained clothes and when the accused persons and witnesses are residing in the same locality. It is necessary for the Judge to take into account all the factors. Moreover, the trial has commenced within a year from the date of commencement of the murder. Learned APP has pointed out that after release, accused no. 1 was arrested under the Arms Act in 3030 of 2015. The learned Sessions Judge while releasing accused has considered only one factor i.e. whether the presence of the accused persons can be procured at the time of trial or not. When the trial proceeded and has travelled nearly half the way, then the learned Judge ought not to have passed such order. It is to be reiterated that the observation of the learned Judge in respect of

the evidence has made order perverse, as the case may take turn in any direction after examination of all other witnesses who are on the material point. The learned Judge ought to have tried his level best to complete the trial and examine all other witnesses on day to-day basis. It shows that the learned Judge has quite speedily examined 7 witnesses and therefore, examination of 18 witnesses was not a matter of much time. It is pertinent to note that PW-8 to be was examined on 9th December, 2014 and thereafter the matter was kept on 24th December, 2014 but PW-8 was absent. This shows that granting of bail to the applicant/accused has definitely caused interference in the judicial process. It is to be noted that the matter was fixed on 31st January, 2015 and PW-8 though remained present, the Court was busy in civil work. Then the matter was fixed on 11th February, 2015 and he was examined. It appears that after releasing accused persons on bail, the trial Judge has ignored Section 309 of the Cr. P.C. and did not bother to proceed with the trial once it is part-heard. Considering the facts of this case and the manner in which the order is passed and thereafter the manner in which the trial proceeded, it is a fit case to set aside the order passed by the learned Sessions Judge and the bail granted is cancelled. The accused persons are hereby directed to surrender before the same Sessions Judge on 4th April, 2015 at 11.00 a.m.

(MRS. MRIDULA BHATKAR, J.)