

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

CRIMINAL APPLICATION NO. 1973 OF 2016

Amol s/o. Bhausahab Autade .. Applicants
Age. 35 years, Occ. Agri.,
R/o. Padegaon, Tq. Kopargaon,
Dist. Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents

2. Jayant Rohmare s/o. Ramrao Rohmare
Age. 40 years, Occ. Contractor,
R/o. Pohegaon, Tq. Kopargaon,
Dist. Ahmednagar.

Mr.N.V. Gaware, Advocate for the applicant.
Mr.S.D. Ghayal, APP for respondent No.1/State.
Mr.Sanket S. Kulkarni, Advocate for respondent No.2.

CORAM : A.M. BADAR,J.

DATED : 05.10.2016

P.C. :-

1. This is an application under section 439(2) of Cr.P.C. by informant - Amol Autade for cancellation of regular bail of respondent No.2 - Jayant Rohmare granted vide order below Exh.18, in Sessions Case No. 83 of 2015 on 03.02.2016 by learned Additional Sessions Judge-2, Kopargaon.

2. Heard learned Counsel appearing for the

petitioner/informant. He pointed out rejection of application for anticipatory bail moved by respondent No.2, firstly by Additional Sessions Judge, Ahmednagar and secondly by this Court. Learned Counsel for the petitioner then drew my attention to order passed by Hon'ble Supreme Court in S.L.P. (Cri.) No. 4357 of 2015, whereby order rejecting application for anticipatory bail by this Court was challenged. Learned Counsel submitted that even the Hon'ble Supreme Court rejected the S.L.P. filed by respondent No.2, thereby confirmed the order of rejection of anticipatory bail by this Court. With this, learned Counsel argued that learned Additional Sessions Judge erred in granting regular bail to respondent No.2 without giving opportunity to Investigating Officer to take his custody and without his custodial interrogation.

3. I also heard learned A.P.P. as well as learned Counsel appearing for respondent No.2. He pointed out my attention to impugned order dated 03.02.2016 passed by learned Additional Sessions Judge, Kopergaon and submitted that even the Additional Sessions Judge has observed that interim protection was granted to respondent No.2/accused by the Hon'ble Apex Court and during that time, the Investigating Officer had arrested him and released on bail. Therefore, according to learned Counsel for respondent No.2/accused his further custodial

interrogation is not warranted. With this, he justified the impugned order dated 03.02.2016 passed by learned Additional Sessions Judge-2, Kopargaon, releasing respondent No.2 on bail.

4. Perused the record made available. The F.I.R. of the crime in question was lodged by petitioner - Amol Autade on 28.06.2014. The incident took place on 27.06.2014 at about 10.30 p.m. According to the informant, three accused persons including respondent No.2 - Jayant Rohmare assaulted Nitin as well as the informant. Informant - Amol had stated that co-accused Sachin fired bullet from the revolver causing injury to thigh of Nitin. It is averred that respondent No.2 Jayant Rohmare assaulted Nitin by means of sword on head. According to the F.I.R. co-accused Shubham assaulted informant by means of stick.

5. Undisputedly Cri.Misc.Application No.198 of 2014 filed by respondent No.2 - Jayant Rohmare claiming anticipatory bail was granted by the learned Additional Sessions Judge, Kopargaon on 02.07.2014. It is not in dispute that thereafter by filing Criminal Application No. 3661 of 2014, respondent No.2 - Jayant Rohmare claimed anticipatory bail from this Court. This Court rejected the said application on 25.07.2014 with following

observations found in para Nos.8 to 11 :-

"8. In so far as Criminal Application No.3660 of 2014 is concerned, the said application is filed by one Sachin Rohamare. In the first information report, a specific role is attributed to him that he has opened a fire. Whereas the application No.3661 of 2014 is filed by Jayant Rohamare. In the first information report, a specific role is attributed against him by first informant that he gave sword blow on the head of injured Nitin.

9. The learned Additional Public Prosecutor has made available the injury certificate of Amol. I have gone through the said injury certificate. The doctor has opined that Nitin has suffered grievous injury as per the role attributed to them and their weapon. Prima facie, to that extent the statement of fact made by the first informant in the first information report No.104 of 2014 appears to be correct.

10. Hence, I am of the view that, till the entire investigation is completed, they are not entitled for relief of anticipatory bail as such will cause prejudice to the ongoing investigation.

11. Hence, Criminal Application Nos.3660 and 3661 of 2014 are hereby rejected."

6. Bare perusal of this order goes to show that this Court had found custodial interrogation of respondent No.2- Jayant Rohmare necessary for proper investigation of crime in question.

7. Aggrieved by rejection of his anticipatory bail application, respondent No.2 – Jayant Rohmare carried the order rejecting his anticipatory bail before the Hon'ble Supreme Court by filing S.L.P. bearing No. 4357 of 2015. The Hon'ble Supreme Court dismissed that special leave petition by order dated 08.01.2016. It is apposite to reproduce said order. It reads thus :-

“

O R D E R

Heard learned counsel for the petitioners.

No ground for interference is made out to exercise our jurisdiction under Article 136 of the Constitution of India.

The special leave petitions are dismissed. Pending applications stand disposed of. The application for impleadment is dismissed. The petitioners are at liberty to surrender before the trial Court within three days and seek for regular bail. If such an application is filed the same may be considered expeditiously and dispose of the same in accordance with law.”

8. Bare perusal of the order dismissing the S.L.P. of respondent No.2 – Jayant Rohmare goes to show that he was given liberty to surrender before the Trial Court within three days and then to apply for regular bail. It is thus obvious that even the Hon'ble Supreme Court felt

that custodial interrogation of respondent No.2 - Jayant Rohmare is necessary for proper investigation of crime in question.

9. On this backdrop, it is seen that respondent No.2 - Jayant Rohmare filed application at Exh.18 in Sessions Case No.83 of 2015 (record page No.41) with a prayer that he be released on bail. It is seen that respondent No.2 Jayant Rohmare never moved an application for acceptance of his surrender before the learned Additional Sessions Judge, Kopargaon. It is thus clear that he never surrendered himself before learned Additional Sessions Judge, Kopargaon for complying order of the Hon'ble Supreme Court. It was incumbent on the part of respondent No.2 to surrender himself before the concerned Court with a prayer to accept his surrender. If that was done, it was for the Court to notice the investigator and to hand over custody of respondent No.2 to investigator by accepting his surrender. Without complying with these formalities after obtaining say of prosecution by impugned order dated 03.02.2016, learned Additional Sessions Judge-2, Kopargaon passed order releasing respondent No.2 on regular bail.

10. Perusal of impugned order dated 03.02.2016 shows that learned Additional Sessions Judge-2, Kopargaon noted

that charge-sheet is filed and the charge has already been framed against respondent No.2 – Jayant Rohmare and that pursuant to interim protection granted by Hon'ble Supreme Court, the investigator had, in-fact, arrested him and released on bail. With this, regular bail was granted to respondent No.2. The arrest pursuant to the interim order, if any, was merely a paper arrest which is mere formality to comply the order of the Court.

11. Perusal of the record shows that the averments are to the effect that respondent No.2 assaulted injured Nitin on head by means of sword. Injury Certificate issued by attending Doctor at Kopargaon and Civil Hospital, Nashik, goes to show that there was any injury on the head of Nitin. It was necessary for the investigator to recover sword allegedly used in the offence and attributed to respondent No.2 – Jayant Rohmare. Even though by that date, charge-sheet was filed further investigation as per enabling provision of section 173(8) of Cr.P.C. was necessary. Therefore, it was necessary for respondent No.2 to surrender himself before the concerned Court and it was duty of the concerned Court to hand over his custody by accepting surrender to the investigator for further investigation in terms of section 173(8) of Cr.P.C. This was not done.

12. With this record, it is clear that learned Additional Sessions Judge ignored the order of the Hon'ble Supreme Court and without considering those orders, released respondent No.2- Jayant Rohmare on regular bail without he being in custody either of the Investigating Officer or the Court. Therefore, the impugned order is totally perverse and needs to be set aside. Therefore, the following order :-

O R D E R

- i) Criminal Application No.1973 of 2016 is allowed.
- ii) The impugned order passed by learned Additional Sessions Judge-2, Kopargaon on 03.02.2016 below Exh.18 in Sessions Case No. 83 of 2015 is quashed and set aside.

[A.M. BADAR, J.]