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

CRIMINAL APPLICATION NO. 4059 OF 2014

Vikram s/o Bhograj Malve

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Babasaheb s/o Dhondiram Mundhe
3. Dhanu s/o Nanasaheb Mundhe
4. Balasaheb s/o Dhondiram Mundhe
5. Balu s/o Babasaheb Mundhe
6. Balasaheb s/o Trambak Malve
7. Ramesh Mundhe

..RESPONDENTS

Mr B. R. Kedar, Advocate for applicant;
Mr K. D. Munde, Addl. Public Prosecutor for respondent No. 1;
Mr S. U. Munde, Advocate for respondent Nos. 2 to 7

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2016

ORDER :

By the present application under section 439 (2) of the Code of Criminal Procedure, the applicant – complainant seeks cancellation of bail granted to respondents no.2 to 7 – accused, vide order dated 8th July, 2013 passed by Judicial Magistrate First Class, Gangakhed, below Exh.75 in Regular Criminal Case No.138 of 2008 and the order dated 24th April, 2014, passed by Additional Sessions Judge, Gangakhed, below Exh.19 in Sessions Trial No.24 of 2013, whereby order dated 8th July, 2013 has

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been confirmed.

2. Facts, as are necessary for decision of the present application, are as under :-

The applicant herein initially lodged complaint alleging that respondents no.2 to 7 have assaulted him by rod and sticks and have removed amount of Rs.54,000/- and gold ornaments from his house.

2. Perhaps, the cognizance of the aforesaid complaint was not taken, resulting into filing of a complaint under section 156 (3) of the Code of Criminal Procedure, i.e. R.C.C. No.138 of 2008. Subsequent thereto, it appears that process was ordered to be issued against respondents no.2 to 7.

3. Thereafter, learned Additional Sessions Judge, Gangakhed, pursuant to Criminal Misc. Application No.12 of 2008, moved by respondents no.2 to 7 in C.R. No.5 of 2008, registered with police station, Pimpaldari, for offences punishable under sections 143, 147, 148, 149, 452, 324, 323, 341, 504 and 506 of the Indian Penal Code, granted regular bail to them.

4. While granting bail to respondents no.2 to 7, learned Additional Sessions Judge has noted that since the investigation did not reveal commission of offence punishable under section 395 of the Indian Penal

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Code, the section was not included while granting bail.

5. It appears that, upon investigation, section 395 of the Indian Penal Code came to be added in the matter and that has prompted respondents no.2 to 7 to approach the learned Judicial Magistrate First Class with a prayer to continue their bail for offence punishable under section 395 of the Indian Penal Code, which came to be allowed on 8th July, 2013. The said order dated 8th July, 2013 was subjected to challenge by the present applicant, seeking cancellation of bail before learned Sessions Judge. Learned Sessions Judge thereafter passed an order below Exh.19, in Sessions Trial No.42 of 2013, dismissing the application preferred under section 439 (2) of the Code of Criminal Procedure. Thus, the present application.

6. Mr Kedar, learned Counsel appearing on behalf of the applicant, while trying to make out a case for cancellation of bail would urge that while alleging offence punishable under section 395 of the Indian Penal Code, specific attributions were made against respondents no.2 to 7 as regards removal of cash and gold ornaments. In view thereof, according to him, since the offence is exclusively triable by Sessions Court, learned Judicial Magistrate First Class ought not to have continued the bail to respondents no.2 to 7. He would then submit that the learned Sessions Court has also failed to consider the said aspect of the matter and has dismissed the application for cancellation of bail.

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7. Learned Addl. Public Prosecutor has assisted the Court and submitted that the Court may pass appropriate order in the matter. Learned Counsel appearing on behalf of respondents no.2 to 7 has supported the order of grant of bail and submitted that the learned Judicial Magistrate First Class and learned Sessions Judge were aware about their duty and the orders as are passed must be read down to have been passed in exercise of powers conferred upon them.

8. Having bestowed my thought to the submissions made, *prima facie* it is required to be noted that both the parties have come out with certain political rivalry as is apparent from the pleadings of the parties. Leave apart above fact, the offence came to be registered pursuant to an order passed under section 202 of the Code of Criminal Procedure. It is required to be noted that the learned Sessions Court has granted regular bail to respondents no.2 to 7, but for offence punishable under section 395 of the Indian Penal Code. It is subsequently upon addition of offence punishable under section 395 of the Indian Penal Code, the learned Judicial Magistrate First Class continued the bail. The request for cancellation of bail came to be rejected by the learned Sessions Judge as was moved by applicant.

9. In my opinion, from the investigation, it is not amply clear as to why custodial interrogation of respondents no.2 to 7 is necessary, particularly as has been alleged by the learned Counsel appearing on behalf of the applicant. It is required to be noted that the orders passed by learned

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Judicial Magistrate First Class and learned Sessions Judge in favour of respondents no.2 to 7 continuing bail in their favour has to be read down to have been exercised by the learned Sessions Judge as he has already applied his mind to the facts.

10. In view of above, no case for cancellation of bail granted to respondents no.2 to 7 is made out. Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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