

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 669 OF 2015
(For Cancellation of Bail)**

The State of Maharashtra	.Applicant
Vs.	
Amit Balasaheb Nehatrao & anr.	.Respondents

**WITH
CRIMINAL APPLICATION NO. 670 OF 2015
(For Cancellation of Bail)**

The State of Maharashtra	.Applicant
Vs.	
Vikas alias Vicky Nagnath More & anr.	.Respondents

**WITH
CRIMINAL APPLICATION NO. 671 OF 2015
(For Cancellation of Bail)**

The State of Maharashtra	.Applicant
Vs.	
Dinesh Kumar Dahihande	.Respondent

**WITH
CRIMINAL APPLICATION NO. 672 OF 2015
(For Cancellation of Bail)**

The State of Maharashtra	.Applicant
Vs.	
Akshay alias Gotya Haribhau Jomiwale & anr.	.Respondents

**WITH
CRIMINAL APPLICATION NO. 673 OF 2015
(For Cancellation of Bail)**

The State of Maharashtra	.Applicant
Vs.	
Pramod Harish Adlinge	.Respondent

WITH
CRIMINAL APPLICATION NO. 674 OF 2015
(For Cancellation of Bail)

The State of Maharashtra	.Applicant
Vs.	
Sanjay Mahadeo Mhamane	.Respondent

WITH
CRIMINAL APPLICATION NO. 685 OF 2015
(For Cancellation of Bail)

The State of Maharashtra	.Applicant
Vs.	
Bablu alias Bali Dhananjay Survase	.Respondent

Mr. S. H. Yadav, APP, for the Applicant – State in all matters
Mrs. S. S. Choudhari, Advocate, for the Respondent Nos.1 & 2 in all matters

CORAM : A.S.GADKARI, J.

DATE : 09.11.2017

P.C.

. The aforesaid Applications are filed by the State of Maharashtra, impugning the Orders on merits thereby granting bail to the Respondents in respective Applications by the learned Additional Sessions Judge, Pandharpur, District – Solapur.

2. The Respondents are accused in C. R. No. 95 of 2015 under Sections 302, 201, 120B, 143, 147 & 149 of the Indian Penal Code registered with Pandharpur Town Police Station. It is the allegation against the Respondents that the deceased Nilesh Chandrakant Mane,

who was the friend of Respondents had left their group and was not joining them. Due to the said reason, the Respondents mercilessly assaulted deceased and committed his murder.

3. The Respondents preferred Applications for bail on different dates before the learned Additional Sessions Judge, Pandharpur. For the sake of convenience and brevity, a chart indicating number of Application, name of Respondents, date of order and its page Number of the Application is reproduced hereinbelow :-

SR. NO.	CASE NUMBER	NAME OF RESPONDENT	DATE OF ORDER	PAGE NO.
1	CRI. APPLN. NO. 669/2015	Amit B. Nehatrao (Accused No.5) Manoj P. Adhatrao (Accused No.11)	07/07/15	21
2	CRI. APPLN. NO. 670/2015	Vikas N. More (Accused No.2) Sandip P. Adhatrao (Accused No.1)	21/07/15	21
3	CRI. APPLN. NO. 671/2015	Dinesh K. Dahihande (Accused No.3)	01/07/15	21
4	CRI. APPLN. NO. 672/2015	Akshay H. Jomiwale (Accused No.6) Mahesh M. Sagar (Accused No.8)	07/07/15	21
5	CRI. APPLN. NO. 673/2015	Pramod H. Adlinge (Accused No.7)	01/07/15	27
6	CRI. APPLN. NO. 674/2015	Sanjay M. Mhamane (Accused No.9)	01/07/15	21
7	CRI. APPLN. NO. 685/2015	Bablu D. Survase (Accused No.4)	07/07/15	21

4. The learned Additional Sessions Judge by the impugned orders, was pleased to release the Respondents on bail. While releasing the Respondents on bail, the trial Court in para 6 has observed as under :-

“6. In this case the father of deceased namely Chandrakant Narhari Mane in his statement recorded by the police stated that -

“ His son Nilesh died because of beating up of him by the accused persons. He do not want to give complaint against the persons beating up Nilesh. Nilesh had not died naturally or in accident. The persons appearing in footage called him from home and have beaten up him between Pandharpur to Chale road. Therefore Nilesh died because of bleeding suffered in his body. Even though my son Nilesh died. He do not want to give complaint and he do not want to have enmity with accused persons. Therefore he is not filing complaint.”

5. A bare perusal of the Order clearly indicates that, what weighed in the mind of the trial Court was the concession given by the hapless and helpless father of deceased Nilesh who surrendered to the muscle and/or money power of the Respondents. The consideration which weighed in the mind of the trial Court is not only erroneous but shrouded with extraneous consideration and irrelevant aspects.

A useful reference at this stage can be made to, two decisions of the Supreme Court in the case of (i) ***Puran Vs. Rambilas & Anr.*** reported in ***2001 AIR SCW 1935*** and (ii) ***Dinesh M.N. Vs. State of Gujarat*** reported in ***(2008) 5 SCC 66***.

The Supreme Court in the case of ***Puran vs. Rambilas (supra)*** while laying down the parameters for cancellation of bail has

held that, one such ground for cancellation of bail, would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons, such an order would be against principles of law. It is further held that the interest of justice would also require that such a perverse order be set aside and bail be cancelled. That therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected. The Supreme Court in para no.10 has held that, further it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. The Supreme Court in the case of ***Dinesh M.N. Vs. State of Gujarat (supra)*** while relying on the ratio laid down in the case of ***Puran Vs. Rambilas*** has further held that even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

6. In the present case, the learned Additional Sessions Judge has not given any reasoning on merits of the case for releasing the Respondents on bail in a crime registered under Section 302 r/w 120B of the Indian Penal Code and it is only on the basis of the aforesaid statement and/or alleged concession of the father of deceased Nilesh Mane, the trial Court has released the Respondents on bail. In view of the ratio laid down in the aforesaid decisions of the Supreme Court, it is apparent that the impugned orders suffer not only from the vice of error but also for extraneous consideration and irrelevant aspects.

7. In view of the above, the impugned Orders are hereby quashed and set aside. The Investigating Agency is directed to take steps to arrest the Respondents and to send them to judicial custody.

Applications are allowed in the aforesaid terms.

8. At this stage, the learned counsel for the Respondents submitted that the operation and implementation of the present order may be stayed for a period of three weeks from today with a view to enable the Respondents to test the correctness before the Apex Court.

For the reasons stated in the earlier part of this order, the said prayer is rejected.

(A.S.GADKARI, J.)