

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2538 OF 2016

IN

CRIMINAL APPLICATION NO. 6393 OF 2015

The State of Maharashtra

.. Applicant

Versus

- 1] Shivaji @ Manohar S/o Shankar Bhalkar,
Age : 41 Years, Occu. Agriculture,
R/o. Overgaon, Tq. And District,
Aurangabad.

- 2] Shrinath S/o Shankar Bhalkar,
Age : 47 Years, Occu : Agriculture,
R/o. As. Above.

..Respondents
(Ori. Accused)
No.1 & 3

...

*A.P.P. for Applicant-State : Mr. A.R. Kale
Advocate for respondent Nos. 1 & 2 : Mr. S.G. Ladda,*

...

CRIMINAL APPLICATION NO. 2540 OF 2016

IN

CRIMINAL APPLICATION NO. 5154 OF 2015

The State of Maharashtra

.. Applicant

Versus

- 1] Sahebrao Shankar Bhalkar,
Age : 48 Years, Occu. Agriculture,
R/o. Overgaon, Tq. And District,
Aurangabad.

..Respondent
(Ori. Accused No.4)

...

*A.P.P. for Applicant-State : Mr. A.R. Kale
Advocate for respondent No. 1 : Mr. S.J. Rahate*

...

APPLICATION FOR CANCELLATION OF BAIL NO. 18 OF 2018
IN
CRIMINAL APPLICATION NO. 6393 OF 2015

Smt. Aruna W/o Vishwas Shinde
Age : 58 Years, Occu. Household,
R/o. N-3, Plot No. 397, CIDCO,
Aurangabad.

..Applicant
(Original informant)

Versus

- 1] The State of Maharashtra
- 2] Shivaji @ Manohar S/o Shankar Bhalkar,
Age : 56 Years, Occu. Agriculture,
- 3] Shrinath S/o Shankar Bhalkar,
Age : 42 Years, Occu. Agriculture,
Both resident of Ovargaon,
Taluka and District Aurangabad.

..Respondents
(Original accused No.1 &3)

...
Advocate for Applicant : Kulkarni Rashmi S.
A.P.P. for Respondent No.1 State : Mr. A.R. Kale
Advocate for Respondent nos. 2 & 3 : Mr. S.G. Ladda
...

CORAM : MANGESH S. PATIL, J.

Judgment reserved on : 01.08.2018
Judgment pronounced on : 23.08.2018

COMMON JUDGMENT :-

Rule. Service of Rule is waived. With consent the matters are heard finally :-

- 2] These are the applications under Sub Section (2) of Section 439 of the Code of Criminal Procedure, seeking cancellation of bail granted to

the respective respondents in connection with Crime No. I-21/2015, registered with Police Station Harsul for the offences punishable under Sections 302, 143, 147, 148, and 149 of the Indian Penal Code. The first two applications have been preferred by the State seeking cancellation of bail on the ground of breach of the terms and conditions subject to which the respondents therein who are the accused No.1 and 3 in Criminal Application No. 2538 of 2016, and accused No. 4 in Criminal Application No. 2540 of 2016 were granted bail by this Court. The third application is preferred by the original informant, against accused Nos. 1 and 3 seeking cancellation of bail on the ground of breach of the terms and conditions and also for directing proceeding to be initiated under Section 340 of the Code of Criminal Procedure against them.

3] All these matters have been heard together and are being disposed of by this common Judgment and order.

4] In short, the prosecution case as can be made out from the F.I.R. is to the effect that on account of dispute over a land, all the accused persons had formed an unlawful assembly with object of killing the deceased who was the husband of the informant. On 14.03.2015 they assaulted him with a stick and blunt portion of an axe and committed his murder. It is alleged that the incident was witnessed by couple of

labourers digging well in the field by name Mangalchand Jat and Shivpal Jat. It is alleged that they had attempted to rescue the deceased but were threatened of dire consequences and therefore, they could not resist/avoid the assault.

5] It is also alleged that the deceased had not died instantaneously. After the assault he had managed to make a phone call from his cell phone to his wife informant and had told her that he was assaulted by the accused persons in the field and both his hands and legs were fractured. He also told her that he had made a call to one Valimk Patil and further told her that the accused would assault her and she should take shelter in the house of one Mr. Jadhav. Unfortunately, the deceased died the same evening while under going treatment in the Ghati Hospital, Aurangabad.

6] In respect of Criminal Application No. 2538 of 2016 filed against accused nos. 1 and 3, and in respect of Criminal Application No. 2540 of 2016 filed against accused no.4, it is alleged that they have attempted to contact the eye witness Mangalchand Jat on his cell phone, through one Anil Dadarao Devhare from his Cell No. 8888922132. Witness Mangalchand Jat had lodged report to that effect with Khultabad Police Station. A Non Cognizable Report No. 227 of 2016 is registered alleging that he was threatened of dire consequences by the accused persons.

During an enquiry with said Anil Devhare he submitted written explanation to police wherein he stated that it was accused Shivaji who had asked him to make the phone call to witness Mangalchand Jat asking him to meet him. (Exh. A). Thus, accused Nos. 1, 3 and 4 have committed breach of the terms and conditions subject to which they were granted bail by this Court by threatening witness Mangalchand Jat or making an attempt to influence him and have misused the liberty.

7] In Application for Cancellation of Bail No. 18/2018, it is alleged by the original informant that as a condition for grant of bail, accused Nos. 1 and 3 were debarred from entering into village Overgaon and were not supposed to influence the witnesses. It is alleged that accused Nos. 1 and 3 had filed application (Exh.111) before the Sessions Court where the trial is going on and sought relaxation of that condition to enable them to meet/treat their terminally ill mother. However, the learned Sessions Judge refused to relax the condition and accused Nos. 1 and 3 never sought to challenge that order. After death of their mother, they preferred Criminal Application No. 262 of 2018 in this Court. They averred that they could not attend the funeral of their mother since condition was not relaxed by the Sessions Court and sought relaxation of condition debarring them from entering into the village. It is alleged that since this application was supported by the statement of verification of the contents of the application, they are

bound by it. It is alleged that in spite of the fact that the condition debarring them from entering into the village was not relaxed, in breach of the condition accused Nos. 1 and 3 did enter into the village on the day their mother left for heavenly abode and even attended the funeral. The informant applicant submitted an application to Harsul Police Station on 14.01.2018 soliciting information as to whether these accused Nos. 1 to 3 had really entered into the village and attended the funeral. The police carried out the investigation and after enquiry with some of the villagers she was informed that indeed they had entered into the village and had attended the funeral on that day. Thus according to the informant their statement made in Criminal Application No. 262 of 2018 stating that they had never entered into the village was a false statement on oath and have obstructed administration of justice which is an offence under Section 193 of the Indian Penal Code and therefore, apart from cancelling the bail for breach of the condition an action under Section 340 of the Code of Criminal Procedure may also be initiated against them.

8] It is also alleged by the informant that this Court had relaxed the condition of not entering in the village Overgaon to enable the accused Nos. 1 and 3 to perform last rituals on 22.01.2018 and 26.01.2018, by the order dated 19.01.2018 and 23.01.2018. They were specifically directed to submit written intimation to the concerned Police about their

presence in the village as those dates. It was a condition for granting limited relaxation. But though they have availed of the liberty and had entered in the village on 23.01.2018 and 26.01.2018, they have not obeyed the condition and have not submitted any written intimation to the Police as was directed. Thereby they have breached that condition and bail may be cancelled even for this reason.

9] The learned A.P.P, submitted that since an attempt has been made by the accused Nos. 1, 3 and 4 to contact the eye witness who is resident of Rajasthan and who since has left the State, it is clear case of misuse of the liberty and the bail is liable to be cancelled.

10] The learned Advocate for the informant/applicant submitted that in Criminal Application No. 262 of 2018 a false statement on oath was made by the accused Nos. 1 and 3 stating that they had never entered into the village particularly for attending the funeral of their mother but the police have carried out the investigation and it has transpired that they had indeed entered into the village on the day their mother died and the funeral was performed. According to the learned Advocate, it is not only a case of breach of the condition but also falls in the category of an offence under Section 193 of the Indian Penal Code and since a false statement has been made on oath during the judicial proceeding filed in this Court, an action under Section 340 of the Code of Criminal

Procedure deserves to be initiated against them. She also placed reliance on the decisions of the Supreme Court in the case of *Afzal and Another Vs. State of Harayana and others (1996) 7 Supreme Court Cases 397*, and *Pritiesh Vs. State of Maharashtra and others A.I.R. 2002 S.C. 236*.

11] The learned Advocate for the accused/respondents vehemently submitted by referring to the affidavit in reply that accused have never made attempt to contact the eye witness Mangalchand Jat. The cell phone number through which he was contacted does not belong to any of the accused. He would point out that the trial is under way. Testimony of Mangalchand Jat has also been recorded. In his deposition, he has never stated about any attempt having been made to contact him or influence him. The testimony has been recorded after the alleged incident of telephonic contact. In fact this witness has stated that after the incident he was seeing the accused persons for the first time in the Court and no test identification parade was conducted.

12] The learned Advocate for the accused further submitted that except the bald allegations being levelled by the informant/ applicant, there is absolutely no material to suggest that the accused Nos. 1 and 3 had entered into the village and had attended the funeral of their mother. No statement of any villager has been recorded by the police.

Thus according to the learned Advocate, the statements made in Criminal Application No. 262 of 2018 is not incorrect and therefore, no enquiry under Section 340 of the Code of Criminal Procedure is necessary.

13] As regards the breach of the terms and condition imposed by this Court while allowing the Criminal Application No. 262 of 2018. In the orders dated 19.01.2018 and 23.01.2018, it is submitted that pursuant to such liberty granted by this Court accused Nos 1 and 3 had entered into the village for attending last rituals on 22.01.2018 and 26.01.2018. They had even approached the Police by going to the Police Station and had attempted to tender written intimation but the police with an ulterior motive refused to accept the intimation and their presence in the Police Station must have been duly recorded in the C.C.T.V. Camera fitted in the Police Station. Therefore, they had made reasonable attempt to comply with the condition imposed of giving written intimation to concerned police while entering the village on those two dates. Therefore, even they cannot be said to be guilty of committing breach of that condition.

14] Lastly the learned Advocate for the accused persons submitted that since inception the informant is bent upon to get the bail granted to the accused cancelled. After failing to procure favourable orders a lame

attempt is being made to get the bail cancelled, may be in respect of the accused Nos. 1 and 3. The trial is already part heard and prime witnesses have been examined and therefore, the bail may not be cancelled.

15] I have carefully gone through the papers with able assistance of the learned Advocates of both the sides. It is a common ground that bail has been granted to the accused persons *inter alia* subject to the condition that they shall not entered into the village Overgaon and that they shall not influence the witnesses. As far as the applications by the State are concerned, it is alleged that the accused Nos. 1, 3 and 4 have attempted to contact the witnesses Mangalchand Jat through one Anil Devhare using latter's cell No. 8888922132 and Non Cognizable Report was also filed by Mangalchand bearing N.C. No. 227 of 2016 on 08.04.2016. It is pertinent to note that these two applications by the State have been filed on 02.05.2016 seeking cancellation on that ground. However, it is also important to note that a copy of deposition of witness Mangalchand Jat as P.W. No.1 in Sessions Case No. 153/2015 shows that it had started on 29 July 2016 and concluded on 10 August 2017. He has nowhere even referred or whispered about he having been ever tried to be contacted by the accused persons and having received threats from them. If at all he had already lodged a Non Cognizable Report in that respect even before his testimony was recorded, he could

have easily referred to the fact during his testimony. The prosecution though had preferred the present application seeking cancellation of bail on that count/ground, the prosecutor in the trial Court could have easily brought this fact on record during the testimony of the witnesses and in the absence of any such opportunity having been availed of, one needs to discard the allegations regarding accused Nos. 1, 3 and 4 having tried to contact the witnesses Mangalchand or have attempted to influence him. Therefore, for want of sufficient and cogent material to conclude that they have misused the liberty on this count, the bail granted to them cannot be cancelled.

16] Now coming to the application filed by the informant, though she seems to have collected information from the concerned Police Station to substantiate her allegations that the accused Nos. 1 and 3 had entered into the village on the day of death of their mother and even had attended her funeral, except such a vague report by the police there is absolutely no material to corroborate this fact. Statements of the villagers with whom the enquiry is stated to have been made are conspicuously absent. For that matter, even the names of those villagers with whom the police had made enquiry are absent in the report. The informant herself has not stated to have seen accused Nos. 1 and 3 present in the village on the day of funeral. Under these circumstances, there being no sufficient, cogent and reliable material to clinchingly

demonstrate that accused Nos. 1 and 3 had really entered into the village and attended the funeral of their mother, the bail cannot be cancelled on mere suspicion on this count.

17] This takes me to the other circumstance regarding breach of the conditions subject to which they were granted liberty in Criminal Application No. 262 of 2018 to enter into the village on 22.01.2018 and 26.01. 2018. By the orders dated 19.01.2018 and 23.01.2018, they were allowed to enter into the village subject to the conditions that they shall in writing intimate to the concerned Police Station about their presence in the village. In affidavit in reply of accused no.1 filed on behalf of accused Nos. 1 and 2 in Application of Cancellation of Bail 18/2018 (Exh.X), they have clearly admitted that pursuant to the orders they had entered into the village on 22.01.2018 and 26.01.2018. However, according to them they had gone to the Police Station and had made an attempt to submit written intimation but the police refused to accept it. If this is the stand being taken by them, in my considered view, nothing more is required to be seen to conclude that they have indeed committed breach of the condition subject to which they were granted liberty to enter into the village on 22.01.2018 and 26.01.2018. Their defence itself is quite flimsy and is nothing but a lame attempt to save the skin.

18] If at all a written intimation tendered by them was not being accepted by the Police on 22.01.2018 one cannot understand as to why immediately they had not brought this fact to the notice of this Court. The affidavit in reply is absolutely silent in this respect. Again, if it was the state of affair on 22.01.2018, one cannot comprehend any reason as to why in spite of such experience on the earlier date, without soliciting any direction from this Court they had entered into the village on 26.01.2018.

19] It is equally important to note that assuming that they had gone to the Police Station and had made an attempt to comply with the conditions by tendering written intimation, one cannot further comprehend as to why even after 26.01.2018, they had failed to inform this Court that they were not allowed to tender the written intimation to the Police Station. For that matter, even after 26.01.2018 till they filed this affidavit-in-reply on 18.07. 2018, for a period of almost six months they did not find it convenient to approach this Court and inform that though they have availed of liberty granted by this Court and entered into the village on two dates, the Police had not co-operated them. This very conduct of their is conspicuous. By seeking liberty from this Court to enter into the village subject to the condition that they would submit a written intimation to the Police Station concerned, they have failed to obey the condition. Their conduct in coming out with an excuse which is

not reasonably acceptable is sufficient to demonstrate that, they have committed a breach of the term and condition. Taking into account the fact that the trial is already under way, their such conduct in committing breach certainly deserves a stringent consequences. This is indeed a strong supervening and overwhelming circumstance, which necessitates this Court to invoke the power under sub Section (2) of Section 439 of the Code of Criminal Procedure in respect of accused Nos. 1 and 3.

20] The informant seeking an action to be initiated against the accused Nos. 1 and 3 under Section 340 of the Code of Criminal Procedure. It is being alleged that a false statement was made on oath by them in Criminal Application No. 262 of 2018 filed by them seeking permission of the Court to enter into the village to the effect that they were not able to attend their mother when she was critical and had not attended even her funeral. The only material available with the informant is information received from the police in a reply to her query to the effect that on enquiry with the villagers it was found that accused Nos.1, 3 and 4 had entered into village had entered into the village and after attending the funeral they had left the village. However, conspicuously, this reply does not refer to any particular villager with whom the enquiry was made. Thus except this material, there is nothing which would corroborate the allegations regarding their presence in the village on the day of funeral. There is not enough material to

corroborate this allegation and therefore in my considered view, there is no sufficient reason to direct an enquiry under Section 340 of the Code of Criminal Procedure.

21] Resultantly, Criminal Applications No. 2538 of 2016 and 2540 of 2016 preferred by the State are liable to be rejected. Whereas Application for Cancellation of Bail No. 18 of 2018 deserves to be allowed only partly.

22] Criminal Applications No. 2538 of 2016 and 2540 of 2016 are rejected.

23] Application for Cancellation of Bail No. 18 of 2018 is partly allowed.

24] The bail granted to the accused Nos. 1 and 3 is cancelled. They shall immediately surrender before the Investigating Officer.

25] Application for Cancellation of Bail No. 18 of 2018 seeking an enquiry under Section 340 of the Code of Criminal Procedure is rejected.

The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)