

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 44 OF 2018

Sham S/o Tulshiram Santre,
R/o. Shankar Nagar, Old Jalna,
Jalna.

..APPLICANT

VERSUS

1] The State of Maharashtra

2] Prakash S/o Maroti Pirane,

3] Ganesh S/o Prakash Pirane,
Respondent Nos. 2 & 3 Resident of Near
Matsyodari Devi Temple, Beed Road, Ambad
Dist. Jalna.

..RESPONDENTS

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Advocate for Applicant : Mr. S. S. Tope

APP for Respondent-State: Mr. A.R. Kale

Advocate for Respondent Nos.2 & 3 : Mr. D. K. Rajput

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CORAM : MANGESH S. PATIL, J.

Date of reserving the Judgment : 30.07.2018

Date of pronouncing the Judgment : 21.08.2018

JUDGMENT :-

This is an application under Section (2) of Section 439 of the Code of Criminal Procedure by the original informant seeking cancellation of Anticipatory bail granted to respondent nos. 2 & 3 by the learned Additional Sessions Judge-4, Jalna by the order dated 07.03.2018 in connection with Crime No. 26/2018 registered with Ambad Police Station, District Jalna for the offences punishable under Sections 307, 384, 326, 324, 323, 504, 506 r.w. 34 of the Indian Penal Code.

2] In sum and substance the allegations as can be made out from the FIR are to the effect that the applicant is a Mason by occupation. He was procuring necessary building material from the respondent nos. 2 and 3 on credit. Couple of months prior to the F.I.R, they had approached him and had quarreled with him on account of payment in respect of the material supplied. He therefore, paid the money to them and cleared all the dues. He further instructed them not to supply any material to him thenceforth. Annoyed by his such attitude, they threatened him of dire consequences if he would purchase building material from anybody else. It was then alleged that having realized that he was purchasing building material from somebody else, respondent nos. 2 and 3 came to the site where he was working on 17.11.2017. They got annoyed after seeing that he had procured building material from elsewhere. They then asked him to pay them Rs. 10,000/- as a ransom for allowing him to work smoothly and further asked him to pay Rs. 40,000/- by the same evening.

3] It was then alleged that in the same evening, they again arrived at the site, demanded the money and on his refusal to pay they assaulted him with an iron rod on the head. One Akshay Pere tried to rescue him but even he was assaulted. He was then taken to the Ambad Police Station. He was referred to the Sub-District Hospital Ambad. The injury was stitched at the Sub-District Hospital and he was referred to the Civil Hospital at Jalna for radiological investigation. The applicant

was first shifted to Civil Hospital Jalna from there he was taken to a private hospital on the very next day. After 15 to 20 days of his discharge he approached the police to enquire about his complaint. He was assured to register the offence and was asked to file written complaint but in spite of his repeated attempts, the police failed to register the crime. He had even made a complaint to the Superintendent of Police, Jalna and still no steps were taken. Alleging all these facts he filed a private complaint before the learned Judicial Magistrate, First Class, Ambad who directed investigation under Section 156(3) of the Code of Criminal Procedure and thereafter the F.I.R. was registered.

4] Respondent nos. 2 and 3 preferred Criminal Misc. Petition (Bail) No. 181/2018 before the learned Additional Sessions Judge, Jalna, who by the impugned order granted anticipatory bail to them.

5] The learned Advocate for the applicant submits that the learned Additional Sessions Judge has exercised the discretion without appreciating the gravity and seriousness of the crime. He failed to take into the account the fact that the applicant had sustained head injury and had to be treated as an indoor patient for a period of eight days. He had made repeated attempts to get the offence registered by approaching Police, but since he was unsuccessful, he had to file a complaint before the Judicial Magistrate. Therefore, there were enough

circumstances to show as to why the F.I.R was being lodged belatedly. The learned Additional Sessions Judge failed to take into account these facts and granted anticipatory bail solely on the ground that there was enormous delay in lodging the F.I.R. The order is perverse and arbitrary. The learned Additional Sessions also failed to take into account that the weapon was still to be recovered and custodial interrogation of respondent nos. 2 and 3 was necessary. Thus according to the learned Advocate, the learned Judge has not exercised the discretion in a judicious manner and this Court should interfere and cancel the anticipatory bail.

6] The learned Advocate also submitted that even after their release on bail the respondents have threatened the applicant of dire consequences to pressurize him to withdraw the complaint. Non Cognizable Report No. 137/2018 was also registered by the applicant on 17.03.2018. The, respondent Nos. 2 and 3 have committed breach of the terms and conditions subject to which they were granted anticipatory bail. Therefore, even for this reason the bail may be cancelled.

7] The learned A.P.P. requested to decide the application on merits. However, he informed that the iron rod used in commission of the offence has been discovered by respondent no.3 and it has been seized.

8] The learned Advocate for the respondent nos. 2 and 3 submitted that there are no supervening and overwhelming circumstances to cancel the bail. The learned Additional Sessions Judge has used the discretion for the reasons mentioned in the impugned order. This Court cannot examine the material and re-appreciate the circumstances to arrive at an independent conclusion. Without there being any perversity or illegality in the order granting bail, it cannot be cancelled. The discretion has been exercised judiciously. The delay in lodging the F.I.R is only one of the circumstances and it was not the sole circumstance relied upon by the learned Additional Sessions Judge in granting the bail. There are no sufficient and cogent reasons for cancelling the bail on merits.

9] The learned Advocate for respondent nos. 2 and 3 would further deny that any incident had taken place as alleged about respondent Nos. 2 and 3 having threatened the informant by misusing the liberty and therefore, even the bail cannot be cancelled for the breach of the conditions.

10] I have carefully gone through the impugned order as well as the papers. The principle which govern the law regarding cancellation of the bail has been settled in a catena of decisions of the Supreme Court.

I] **Dolat Ram Vs. State of Harayana ; (1995) 1 SCC 349, Puran**

Vs. Rambilas and another ; AIR 2001 Supreme Court 2023

- II] *Kanwar Singh Meena Vs. State of Rajasthan and Another AIR*
2013 SUPREME COURT 296 ; and
- III] *State through C. B. I. Versus Amarmani Tripathi ; 2005 DGLS*
(SC) 773 etc

These are some of the decisions and the law on the point has been crystallized. With utmost respect, the law as is culled down in the case of *Kanwar Singh Meena Vs. State of Rajasthan and Another AIR*
2013 SUPREME COURT 296 in paragraph no. 10 is as under :-

"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other Courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. The Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under

Section 439(2) of the Code, the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in case where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail."

11] Bearing in mind these principles, if one examines the order passed by the learned Additional Sessions Judge, it is apparent that he has not granted anticipatory bail solely on the ground that there was delay in lodging of the F.I.R albeit it was one of the grounds which had weighed

with him. Apart from the fact that he had noted that there was delay of about one month in lodging the F.I.R, he has also considered the nature of the injuries sustained by the applicant. He has also considered that there were no criminal antecedents there was no possibility of respondents tampering with the evidence, the weapon also could have been recovered without resorting to the custodial interrogation and the presence of respondent nos. 2 and 3 could have been easily secured in future. It is important to note that as is submitted by the learned A.P.P., subsequently even the weapon i.e. an iron rod has also been recovered by the Investigating Officer which further substantiates the reasons of the learned Additional Sessions Judge, that it could have been recovered without resorting to custodial interrogation. All these circumstances clearly indicate that the learned Additional Sessions Judge had taken into consideration the relevant factors in exercising the discretion. As against this, one cannot point out as to which relevant circumstances the learned Additional Sessions Judge failed to take into account. There is no perversity or arbitrariness in his granting anticipatory bail. The order is quite legal and calls for no interference on merits.

12] As far as the ground of alleged breach of the terms and condition subject to which anticipatory bail was granted, though it appears that the applicant has lodged a Non Cognizable Report 137/2018, it is not clear as to whether any enquiry has been conducted pursuant thereto by

resorting to Section 155 of the Code of Criminal Procedure. Suffice for the purpose to refer to the decisions of the Supreme Court in the case of **Mehboob Daud Shaikh Vs. State of Maharashtra; 2004 Cri. L.J. 1359** where in it has been laid down that mere filing of such non cognizable report without there being any further investigation cannot be put forth as a ground for cancelling the bail, unless the allegations and the report is further enquired into to reach some conclusion.

13] Since there is no material to show as to what had happened after lodging of the Non Cognizable Report, in my considered view, it cannot be concluded that respondent nos. 2 and 3 have committed breach of the terms and conditions subject to which they were granted bail. Therefore, even on this count the bail granted to them cannot be cancelled.

14] The application is rejected.

(MANGESH S. PATIL, J.)

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