

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.357 OF 2018

Kalpana w/o Kachru Ratnaparkhe, (Accused No.6)
Age : 30 years, Occu. Household,
R/o Math Pimpalgaon, Tq. Ambad,
District Jalna PETITIONER

VERSUS

The State of Maharashtra,
through its Police Inspector,
Ambad Police Station, Taluka
Ambad, District Jalna RESPONDENT

AND

CRIMINAL WRIT PETITION NO.362 OF 2018
WITH
CRIMINAL APPLICATION NO.1135 OF 2018
IN
CRIMINAL WRIT PETITION NO.362 OF 2018

1. Baburao s/o Namdev Jige, (Accused No.2)
Age : 65 years, Occu. Agri.,
R/o Math Pimpalgaon, Taluka
Ambad, District Jalna
2. Ramesh @ Rameshwar s/o Baburao (Accused No.3)
Jige, Age : 35 years, Occu. Agri.,
R/o Math Pimpalgaon, Taluka
Ambad, District Jalna
3. Smt. Lanka w/o Parmeshwar Jige, (Accused No.4)
Age : 27 years, Occu. Agri.,
R/o as above
4. Smt. Chhaya w/o Rameshwar Jige, (Accused No.5)
Age : 31 years, Occu. Agri.,
R/o as above PETITIONERS

VERSUS

1. The State of Maharashtra,
through Police Inspector,
Police Station, Ambad,
Tq. Ambad, District Jalna
2. Smt.Gayabai w/o Dashrath Ratnaparkhe, **(Informant)**
Age : 65 years, Occu. Agri.,
R/o Math Pimpalgaon, Taluka
Ambad, District Jalna

RESPONDENTS**AND****CRIMINAL WRIT PETITION NO.363 OF 2018**

Parmeshwar s/o Baburao Jige,
Age : 30 years, Occu. Agri.,
R/o Math Pimpalgaon, Taluka
Ambad, District Jalna

(Accused No.1)**PETITIONER****VERSUS**

1. The State of Maharashtra,
through Police Inspector,
Police Station, Ambad,
Tq. Ambad, District Jalna
2. Smt.Gayabai w/o Dashrath Ratnaparkhe, **(Informant)**
Age : 65 years, Occu. Agri.,
R/o Math Pimpalgaon, Taluka
Ambad, District Jalna

RESPONDENTS

Mr. Shivprasad G. Jadhavar, Advocate for the petitioner
in Cri. Writ Petition No.357/2018

Mr. Narayan R. Solunke, Advocate for the petitioners in
Cri. Writ Petition Nos.362/2018 and 363/2018

Mr. S.D. Ghayal, A.P.P. for the respondent/State

Mr. Ameya N. Sabnis, Advocate for respondent No. 2
in Cri. Writ Petition Nos.362/2018 and 363/2018

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 23rd JULY, 2018
PRONOUNCED ON : 9th AUGUST, 2018

COMMON JUDGMENT :

Rule, made returnable forthwith. With the consent of the learned counsel for the parties and the learned A.P.P., heard finally.

2. The petitioner in Criminal Writ Petition No. 363 of 2018 is accused No.1, the petitioners in Criminal Writ Petition No.362 of 2018 are accused Nos.2 to 5 respectively, while the petitioner in Criminal Writ Petition No.357 of 2018 is accused No.6, in Crime No. 196 of 2017, registered in Police Station, Ambad, District Jalna for the offences punishable under Sections 302, 201, 120-B of the Indian Penal Code ("IPC", for short). The petitioners are hereinafter referred to as "accused" with their respective numbers.

3. Since these Writ Petitions have arisen out of the same crime, they are being decided by this common judgment.

4. The accused have challenged the orders dated 13th February, 2018, passed by the learned Additional

Sessions Judge, Jalna, cancelling their pre-arrest bail.

5. The deceased Kachru was the son of the informant namely Gayabai Ratnaparkhe, resident of village Math Pimpalgaon, Taluka Ambad, District Jalna. Accused No. 6 is the widow of the deceased Kachru. Accused No.2 is the father of accused Nos.1 to 3. Accused Nos.4 and 5 are the wives of accused Nos.1 and 3 respectively.

6. It is alleged that accused No.1 had illicit relations with accused No.6. The deceased Kachru left his house on 6th June, 2017, but did not come back home. The informant went to Jalna for selling brinjals on 7th June, 2017 at 6.00 a.m. She came back home at about 3.00 p.m. The deceased Kachru was not found at home. On being asked, accused No.6 told her that Kachru had gone to the land of accused Nos. 1 to 3 for doing some agricultural work. Since Kachru did not come back home, the informant Gayabai searched for him. Accused No.6 lodged a report about missing of Kachru in the Police Station. When the informant asked accused No.6 to accompany her to go to accused Nos.1 to 3 to enquire about the deceased Kachru, she avoided to accompany her. Thereafter, accused No.6 left the house of the

informant, leaving her three small kids there only and went to Aurangabad. The informant suspected that Kachru was murdered by accused No. 6 and the other accused due to the illicit relations between accused No.6 and accused No.1. On the basis of the FIR lodged by her on 10th October, 2017, the offence punishable under Section 364 read with section 34 of the IPC only came to be registered.

7. The accused persons filed applications for pre-arrest bail in the Court of the learned Additional Sessions Judge, Jalna. Accused Nos.2 to 4 were granted pre-arrest bail on 3rd November, 2017, while accused Nos.1 and 6 were granted the said relief on 18th November, 2017, in respect of the offence punishable under Section 364 of the IPC.

8. During the investigation, it was transpired that all the accused conspired to commit murder of Kachru. They called the deceased Kachru to the land block No.24 on 6th June, 2017 at about 10.30 p.m. to 10.45 p.m., made him to drink liquor and then assaulted him with stones and wooden logs. They further strangled him by means of a rope and murdered him. His dead-body was thrown into an old well in the land of

accused No.3, and thereafter, it was filled with earth. It was transpired that accused No. 3 had paid Rs.30,000/- to accused No. 6 and Rs.40,000/- to one Gajanan Khekde for not disclosing the fact of murder of Kachru to anybody. The offences punishable under Sections 302, 201 and 120-B of the IPC came to be added in the above numbered crime.

9. Consequent upon addition of the serious offences under Section 302, 201 and 120-B of the IPC, the Investigating Officer filed applications on 15th January, 2018 before the learned Additional Sessions Judge, Jalna for cancellation of pre-arrest bail granted to the accused persons for taking them into custody for further investigation.

10. The learned Additional Sessions Judge issued notices to the accused. However, they did not attend the Court. Consequently, after hearing the learned A.P.P. and perusing the papers of investigation, the learned Additional Sessions Judge allowed the applications filed by the Investigating Officer and cancelled the pre-arrest bail of all the accused vide orders dated 13th February, 2018. These orders have been challenged by the petitioners in the present Writ Petitions.

11. The learned counsel for the accused contend that the learned Judge should have served notices on the accused and should have granted them an opportunity to apply for regular bail in connection with the added offences. However, no notice was served on them. According to them, without there being exceptional and overwhelming circumstances, the learned Judge has passed the impugned orders cancelling the pre-arrest bail granted in favour of the accused. They submit that the impugned orders are not at all sustainable. Therefore, they pray that the impugned orders may be quashed and set aside. In support of their contentions, they have relied on the following cases :-

- (i) ***Gurudev Singh and another Vs.
State of Bihar and another
AIR 2000 SC 3556***
- (ii) ***Salim Khan Saheb Khan and others Vs.
State of Maharashtra 2012 ALL MR (Cri) 822***
- (iii) ***Badresh Bipinbhai Sheth Vs. State of Gujrat
2015 AIR SCW 4988***
- (iv) ***Hazari Lal Das Vs. State of West Bengal
2009 ALL MR (Cri) 3457 (SC)***
- (v) ***Abdul Basit @ Raju and others Vs.
Mohd. Abdul Kadir Chaudhary
(2014) 10 SCC 754***

(vi) ***Dolat Ram and another Vs. State of Haryana
(1995) 1 SCC 349***

12. The learned counsel for the informant supports the impugned orders. He submits that the relief of pre-arrest bail was granted to the accused persons in respect of a minor offence under Section 364 of the IPC. During investigation, it was transpired that they were involved in a graver crime under Sections 302 and 201 of the IPC. In the changed circumstances, pre-arrest bail granted in favour of the accused persons is liable to be cancelled. He further submits that the learned Judge had issued notices to the accused persons, but they did not appear before the Court. The learned counsel submits that the learned Judge rightly cancelled the pre-arrest bail granted in favour of the accused persons. In support of his contentions, the learned counsel relied on the following cases :-

(i) ***Pralhad Singh Bhati Vs. NCT, Delhi and another
(2001) 4 SCC 280***

(ii) ***State of Maharashtra Vs. Pratapsinha @
Sanjay Shankarrao Chavan and others
2006 (6) Mh.L.J. 625***

13. In the case of ***Pralhad Singh Bhati*** (supra), cited by the learned counsel for the informant, the

accused was granted pre-arrest bail in respect of the offences punishable under Sections 306 and 498-A of the IPC. After investigation, it was transpired that the accused was liable to be prosecuted for the offence punishable under Section 302 of the IPC also. The application for cancellation of the pre-arrest bail was dismissed. Thereafter, the accused approached the learned Metropolitan Magistrate for grant of regular bail. The learned Magistrate granted him regular bail. Revision Application was filed against that order. It came to be dismissed by the High Court. That order was challenged before the Hon'ble the Apex Court by way of Criminal Appeal. The said appeal was allowed and the order granting regular bail in favour of the accused was set aside with the observations that though the accused had obtained pre-arrest bail for lesser offence, that would not entitle him to grant of regular bail under Section 437 of the Code of Criminal Procedure ("the Code", for short), when later he was found to be involved in a graver offence like murder under Section 302 of the IPC. However, the Hon'ble the Apex Court permitted the accused to apply for regular bail in the Trial Court.

14. In the case of **Pratapsinha @ Sanjay Shankarrao Chavan and others** (supra), cited by the learned counsel for the informant also, initially, the accused was connected with the offences punishable under Sections 498-A and 306 of the IPC. He obtained anticipatory bail on 29th June, 2000. Thereafter, the investigation was assigned to C.I.D. and after further investigation, the C.I.D. approached the learned Magistrate for alteration of charge on 12th August, 2005 and the offence under Section 302 of the IPC was registered against him. The Sessions Court granted pre-arrest bail to the accused by order dated 13th December, 2005 in respect of the offence punishable under Section 302 of the IPC. The State of Maharashtra challenged that order and sought cancellation of pre-arrest bail granted to the accused. It was noticed that the investigation into that case was designedly defective and further investigation was immensely necessary. The conduct of the Investigating Officer right from the inception was found to be tainted or contaminated. Considering the exceptional circumstances, the order dated 13th December, 2005, granting pre-arrest bail to the accused was quashed and set aside with liberty to the accused to apply for bail only on expiry of one month after his surrender.

15. In both of the above cases, prior to cancelling the pre-arrest bail, an opportunity of hearing was given to the accused.

16. The learned counsel for the accused submit that prior to cancellation of pre-arrest bail granted in favour of the accused, no opportunity of hearing was given to them. This has caused grave injustice to them.

17. The copies of the reports of the Serving Officer in respect of accused Nos.1 to 5 show that on 22nd January, 2018, they were not found present at their house and therefore, the notices were given to their relative namely Kailas Bhanudas Jige.

18. In respect of accused No.6 Kalpana, it is reported that she was not found present at her house and therefore, a copy of the notice was affixed on the door of her house in the presence of panchas.

19. The accused have come with a specific case that as per the orders passed by the Court granting them the relief of pre-arrest bail, they were directed to attend the Police Station on every Monday between 10.00 a.m. and 11.00 a.m. until filing of the chargesheet.

Accordingly on 22nd January, 2018, they attended the Police Station. The police could have served the notices on them in the Police Station itself. However, no such notices were served on them. Moreover, it is not mentioned in the report of the Serving Officer as to whether Kailas Bhanudas Jige was an adult member of the family of accused Nos.1 to 5 and whether he was residing with them.

20. As per Section 62 (2) of the Code, every summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. The service of summons under Section 64 of the Code is permissible only where the person summoned cannot, by the exercise of due diligence, be found. In that event, the summons may be served by leaving one of the duplicates for him with some adult member of his family residing with him, and the person with whom the summons is so left shall, if so required by the Serving Officer, sign a receipt therefor on the back of the other duplicate. As per Section 65 of the Code, if service cannot by the exercise of due diligence be effected as provided in Section 62, Section 63 or Section 64, the Serving Officer shall affix one of

the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon, the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

21. In the present case, though the accused persons were present in the Police Station on 22nd January, 2018, the Serving Officer did not serve them with the notices in the Police Station, but filed a report that he went to their houses and found that they were not present there. Therefore, the copies of the notices of accused Nos.1 to 5 were given to one Kailas Jige and the copy of the notice of accused No.6 was affixed to the door of her house. No second attempt was made to serve accused Nos.1 to 6 personally. The Serving Officer did not mention any reason as to why it was not possible for him to serve notices on the accused persons under Section 62 of the Code. It is only when the person summoned cannot, by the exercise of due diligence, be found, service thereof under Sections 64 or 65 of the Code is permissible. It is, thus, clear that the notices were not duly served on the accused persons prior to

cancellation of pre-arrest bail granted to them.

22. Here, reference may be made to the judgment in the case of **Gurudev Singh and another** (supra), cited by the learned counsel for the accused, wherein the accused persons were aggrieved by the order of cancellation of their bail on the ground that before cancellation of their bail, no notice was served upon them. In that case, the Process server had indicated that there had been service of notice in as much as the accused persons refused to accept the same. It was observed that such report cannot be sacrosanct and the accused were entitled to hearing before cancellation of bail. Resultantly, the impugned order cancelling the bail order was set aside and the accused were given an opportunity of hearing prior to cancellation of their bail.

23. In my view, on the sole ground that the notices were not duly served on the accused persons, the orders cancelling pre-arrest bail of the accused persons are liable to be quashed and set aside. Therefore, the rulings cited on behalf of the accused at Serial Nos. (ii) to (v) above, which may be helpful to them while opposing the move to cancel their pre-arrest bail before

the learned Additional sessions Judge, need not be considered at this stage.

24. The accused persons being present before the Trial Court, they will have to be directed to appear before the learned Judge of the Trial Court, who, in turn, shall pass necessary orders on the application for cancellation of bail of the accused persons, after giving them an opportunity of hearing.

25. In the result, I pass the following order:-

ORDER

(A) The Criminal Writ Petitions are allowed.

(B) The impugned orders, cancelling the pre-arrest bail granted in favour of the petitioners, are quashed and set aside.

(C) The learned Judge of the Trial Court shall hear the petitioners and decide the application for cancellation of pre-arrest bail granted to them afresh on merits.

(D) The petitioners shall appear before the Trial Court on 29th August, 2018 positively.

- (E) Rule is made absolute in the above terms.
- (F) The Writ Petitions are accordingly disposed of.
- (G) In view of disposal of the Writ Petitions,
Criminal Application No.1135 of 2018 stands
disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/criwp357-362-363-2018