

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.15 OF 2018

Shahin w/o Ilyas Khan Pathan,
Age-28 years, Occu:Household,
R/o-Mahatpuri, Gangakhed,
Tq-Gangakhed, Dist-Parbhani.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Gangakhed, Tq-Gangakhed,
Dist-Parbhani,
- 2) Syed Iqbal s/o Syed Alipasha,
Age-32 years, Occu:Mechanic,
R/o-Railway Quarter, Gangakhed,
Tq-Gangakhed, Dist-Parbhani.

...RESPONDENTS

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Mr.S.S. Kazi Advocate for Applicant.
Mr.S.Y. Mahajan, A.P.P. for Respondent No.1.
Mr.A.V. Lavte Advocate h/f. Mr. S.J. Salunke
Advocate for Respondent No.2.

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CORAM: V.M. DESHPANDE, J.

DATE : 27TH MARCH, 2019

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. Heard Shri S.S. Kazi, the learned counsel for the Applicant, Shri S.Y. Mahajan, the learned Additional Public Prosecutor for the State and Shri Lavte, the learned counsel holding for Shri S.J. Salunke, learned counsel for Respondent No.2.

3. Present is the Application for cancellation of bail granted in favour of Respondent No.2 by learned Additional Sessions Judge-1, Gangakhed on 8th January, 2018, whereby the learned Additional Sessions Judge, Gangakhed exercised his powers under Section 439 of the Code of Criminal Procedure and released Respondent No.2 on bail since he was arrested in connection with Crime No.421 of 2017 registered with police

station, Gangakhed, Dist-Parbhani in C.R. No.421 of 2017 for the offence punishable under Section 302 of the Indian Penal Code and under Section 25/3 of the Arms Act.

4. After hearing the learned counsels, following emerges on record;-

A) Applicant Shahinbee is the first informant, however, she is not the eye witness to the incident in which her husband Ilyaskhan lost his life. The First Information Report is lodged on 6th November, 2017. The deceased was working as a driver on motor vehicle owned by Municipal Councillor Shri Raju Sawant. According to the First Information Report, on 6th November, 2017, deceased came from Pune and thereafter at 8.30 a.m. he went to Gangakhed on a vehicle.

In the noon time First Informant's neighbour by name Monsinabee, wife of Shaikh Salim, informed her that her husband was lying in injured condition in a ground of Saraswati primary school and somebody has assaulted on him by means of deadly weapons. Accordingly, the first informant and her relatives went ultimately to the hospital just to notice the dead body. Therefore, the First Information Report was lodged against unknown persons.

B) During the investigation, according to the investigator, the role of Respondent No.2 was revealed since he is having the past enmity and he was arrested on 7th November, 2017. The entire case of prosecution, when it was considered by the learned Judge of the

Court below for bail, was based on the disclosure statement of Respondent No.2 alone. The learned Judge thereafter considering the investigation papers, granted regular bail in his favour on the conditions as enumerated in the said order.

5. Today, at the time of hearing, it was revealed to this Court by Shri S.Y. Mahajan, the learned Additional Public Prosecutor, that the investigation is already completed and the Investigating Officer has already filed the charge-sheet in the Court of learned jurisdictional Magistrate on 3rd February, 2018. During the course of the submissions, it is also revealed to this Court that the State filed application for cancellation of bail in favour of Respondent No.2 before the Court below and the said was registered as Criminal M.A. No.16 of

2018, on the ground that Respondent No.2 has violated the conditions imposed on him. Learned counsel for Respondent No.2 placed on record, during the course of the submissions, the order passed by the learned Additional Sessions Judge-1, Gangakhed, dated 10th January, 2019, whereby the learned Judge was pleased to reject the application for cancellation of bail. The application along with the order passed by the learned Judge of the Court below, is taken on record and is marked as Exhibit "X" for the purposes of identification, collectively.

6. Though, according to the prosecution as found in the final report, the incident was witnessed by one Shivaji Ghogre, however his statement is recorded belatedly. In that view of the matter, there is no merit in the Application. Consequently, I pass following order:-

O R D E R

(I) The Application is dismissed.

(II) Rule is discharged.

[V.M. DESHPANDE, J.]

asb/MAR19