

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPLICATION FOR CANCELLATION OF BAIL
NO.69 OF 2018**

Shaikh Sarvar Shaikh Nur,
Age-34 years, Occu-Service,
R/o-Varphal, Tq. Partur,
Dist. Jalna. **.. APPLICANT**

VERSUS

1. State of Maharashtra
Through Senior Police Inspector
Police Station Aashti
Tq. Partur, Dist. Jalna.
2. Shivaji s/o. Kathalu @ Kalalu
Solanke,
Age- 50 Years, Occu:Labour,
R/o.Sirasgaon, Tq.Partur,
Dist. Jalna. **.. RESPONDENTS**

...
Mr.A.S.Usmanpurkar, Advocate for the
applicant
Mr.S.Y.Mahajan, Addl.P.P. for the respondent
no. 1 - State
Mr.P.P.More, Advocate for respondent no.2.

...

CORAM: V.M.DESHPANDE, J.
DATE : 05.04.2019

ORAL JUDGMENT:

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

2] Heard Shri A.S.Usmanpurkar, learned counsel for the applicant, Shri S.Y.Mahajan, learned Additional Public Prosecutor for the respondent-State and Shri P.P.More, learned counsel for respondent no.2.

3] By the present Application, the applicant, who is the first informant, is seeking cancellation of the bail granted by the learned Additional Sessions Judge-3, Jalna, in favour of respondent no.2 on 22nd March, 2018 in Criminal Misc. Petition [Bail] No.231/2018.

4] On the basis of report lodged by the present applicant, Shaikh Sarvar Shaikh Nur,

an offence was registered with Ashti Police Station, District Jalna, on 10th February, 2018. offence was registered against one Ramesh Tayade and Angad and other unknown persons, vide Crime No.10/2018, for the offences punishable under Sections 302, 323 r/w.34 of the Indian Penal Code.

5] The first informant – present applicant is the brother of the deceased Munwar. From the First Information Report, it is clear that he is not eye witness and he got information that Munwar was in the company with the main accused, namely, Ramesh Tayade, and they had drinking session and in that certain dispute arose. The First Information Report is completely silent about the presence of respondent no.2. Even, Mauli, a friend of the deceased, who gave information about the drinking session and altercation between the deceased and others,

does not disclose the name of the present respondent no.2.

6] The respondent no.2 was arrested on 10th February, 2018, and he was in police custody for 10 days i.e. till 20th February, 2018. Thus, the custodial interrogation was completely done when he was in the custody of the police. Thereafter, he was taken in the magisterial custody remand.

7] After respondent no.2 was taken in the magisterial custody remand, he moved an application for bail. The learned Judge of the trial Court, by the impugned order, found that during the course of custodial presence, the entire investigation *qua* respondent no.2 was already over and there is no direct evidence against respondent no.2. It appears that the said weighed in the mind of the learned Judge of the trial Court and in my

view, correctly, and released the respondent no.2 on bail. However, while releasing respondent no.2 on bail, the Court below has imposed certain conditions upon respondent no.2 and those conditions are not flouted, since it is not the case of the applicant that respondent no.2 has committed any breach of the said conditions.

8] The learned counsel for the applicant invited my attention to the Objection Petition filed by the present applicant before the Court below at the time of consideration of the Bail Application filed by respondent no.2. Perusal of the said would show that the bail was primarily opposed on the ground that if the respondent no.2 is released on bail, then, there is every possibility that he will tamper with the prosecution case and will cause harm to the prosecution witnesses and the present

applicant. The apprehension in the mind shall have to be certain foundation. There being no foundation, in my view, the sole factor of apprehension cannot be a ground for canceling the regular bail. Further after release of respondent no.2, till today, no untoward incident has occurred at the hands of respondent no.2. Consequently, there is no merit in this Application and the Application is rejected. Rule is discharged.

[V.M.DESHPANDE]
JUDGE

DDC