

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

904 CRIMINAL WRIT PETITION NO.1245 OF 2019

Bhushan s/o Vasudeo Sonawane,
Age 35 years, Occ. Business,
R/o. Rameshwar Colony, Jalgaon,
District Jalgaon.

... **Petitioner.**

VERSUS

The State of Maharashtra,
Through M.I.D.C. Police Station,
Jalgaon, Tq. & Dist. Jalgaon.

... **Respondent.**

...

Senior Advocate for Petitioner : Mr. R. N.Dhorde,
h/f Mr. Vikram R. Dhorde
APP for Respondent : Mr. P.K.Lakhotiya.
Advocate for Assist to APP : Mr. M.R. Bhokarikar.

CORAM : MANGESH S. PATIL, J.

DATE : 13/09/2019

JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned APP waives service of notice for respondent/State. With the consent of both sides the matter is heard finally at the stage of admission.

2. The petitioner who is one of the accused in Sessions Case No. 127/2008 undergoing trial before the Additional Sessions Judge, Jalgaon has approached this Court in this Writ Petition being aggrieved

and dissatisfied by the order cancelling his bail, by invoking powers under section 439(2) of the Code of Criminal Procedure, dated 10.06.2019.

3. The learned Senior Advocate Mr. Dhorde for the petitioner submits that the circumstances for grant of bail and the one for its cancellation stand on different footings. Law is well settled and has been summarized in the case of **X Vs. State of Telangana, (2018) 16 Supreme Court Cases 511**. It is only when there is same supervening circumstance that a bail can be cancelled. There was no such supervening circumstance except registration of a Crime No. 371/2019 for the offence punishable under section 307 etc. of the Indian Penal Code. In fact, the crime in the present case was committed in the year 2008 and since thereafter till the crime was registered in the year 2019 at no point any grievance was made about petitioner having committed breach of the terms and conditions subject to which the bail was granted. It is only because of some political rivalry and with some ulterior motive a false case was filed and a crime was registered while the trial was under way. In fact, it was the petitioner who was apprehending danger to his life and even the fact was brought to the notice of the Additional Sessions Judge. Therefore, merely because the crime was registered at the instance of the original complainant who

was yet to step into the witness box, no inference could have been drawn by the Additional Sessions Judge about he having committed breach of terms and conditions.

4. The learned senior advocate further pointed out that in fact, no sooner Crime No. 371/2019 was registered, the petitioner had filed Anticipatory Bail Application No. 448/2019 and it was pending before this Court. It was listed before this Court on 11.07.2019 and a request was made to the learned Additional Sessions Judge to defer the hearing of the application for cancellation of bail filed by the prosecutor beyond 11.07.2019. However, the application was placed before the Sessions Court on 10.07.2019 and the impugned order cancelling his bail was passed. As a result, he had no other alternative but to withdraw the application for anticipatory bail. The petitioner is ready to surrender even tomorrow before the Investigating Officer. Considering all these aspects, the impugned order directing the bail to be cancelled be set aside with whatever conditions.

5. The learned APP strongly opposes the petition. He submits that the petitioner was granted bail subject to certain conditions inter alia on the ground that he shall not threaten the complainant or do any act detrimental to the life and liberty of the complainant and prosecution witnesses. The petitioner was also put to notice by a

specific condition that if it was noticed that he had indulged in such act of threatening the complainant, the bail would be cancelled. In spite of such conditions, the petitioner indulged in the act wherein he allegedly threatened the complainant at the point of a revolver. Accordingly, the complainant filed the F.I.R. and Crime No. 371/2019 came to be registered. The learned APP would submit that irrespective of whether and in what circumstances the petitioner was required to withdraw his application for anticipatory bail, the circumstance is sufficient enough to draw an inference as has been correctly drawn by the learned Additional Sessions Judge that there has been breach of the terms and conditions subject to which he was granted bail.

6. I have carefully gone through the papers. It is necessary to note that in the affidavit-in-reply filed by the State some reference has been made to the criminal antecedents of the petitioner and the latter has refuted those by filing an affidavit in rejoinder. Since the bail granted to the petitioner has been cancelled only on the ground of breach of the terms and conditions, in my considered view it would be absolutely irrelevant to go into the details as to the criminal antecedents.

7. Admittedly, Crime No. 371/2019 has been registered wherein the complainant has alleged about the petitioner having threatened

him of dire consequences at the point of revolver. The investigation will take its own course. At this juncture, in the absence of any other material to prima facie show that the F.I.R. was lodged with some ulterior motive, no fault can be found with the observations and conclusions of the learned Additional Sessions Judge in holding that there was a breach of terms and conditions subject to which the bail was granted. It is pertinent to note that the trial was part heard and at that stage the latest crime came to be registered.

8. The law as to the cancellation of bail has been well settled. The decisions in the case of **Dolat Ram Vs. State of Haryana (1995) 1 SCC 349**, **Kanwar Singh Meena Vs. State of Rajasthan, (2012) 12 SCC 180**, **Neeru Yadav vs. State of U.P., (2016) 15 SCC 422**, **State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178**, and the latest decision summarizing all these cases in the case of **‘X’ Vs. State of Telangana (supra)** lay down the complete law. It is trite that a bail once granted can be cancelled inter alia when there is a supervening circumstance or a breach of the terms and conditions subject to which it is granted.

9. As is demonstrated by the learned Additional Sessions Judge, during the course of the Trial, the complainant who is also an important witness in the trial has been threatened by the petitioner

who is facing the charge of murder which has led to registration of a crime under section 307 of the Indian Penal Code in the month of June 2019. The material before the Additional Sessions Judge was sufficient enough to conclude that there has been a breach of terms and conditions subject to which the bail was granted and that was sufficient to cancel the bail.

10. As far as the happenings before the Sessions Court is concerned, true it is that the petitioner had filed an application for anticipatory bail before this Court which was listed for hearing on 11.07.2019. However, as can be seen, he had filed application (Exhibit 217) before the Sessions Court seeking personal exemption. Simultaneously, he had also filed application (Exhibit 219) requesting to list the hearing of the application for cancellation of bail beyond 11.07.2019. It appears that both the applications were simultaneously heard by the learned Additional Sessions Judge. The order on the application (Exhibit 217) clearly reads that the learned advocate for the petitioner had submitted that he would remain present on 10.07.2019 and that is how the matter was kept on 10.07.2019 and the impugned order was passed. Since this was the order passed on application (Exhibit 217) , on the application (Exhibit 219) whereby the petitioner had requested to keep the hearing of the application for

cancellation of bail beyond 11.07.2019 was disposed of as infructuous. Therefore it is not that the petitioner was not aware that the application seeking cancellation of his bail was kept for hearing on 10.07.2019. Needless to say that on that day after hearing both the sides the impugned order was passed. Therefore, he cannot be allowed to make capital of such happenings.

11. It is equally important to note that although the petitioner withdrew his application for anticipatory bail on 11.07.2019, till date he has not surrendered before the Investigating Officer. It is important to note that irrespective of the decision of the present Writ Petition it was imperative for him to have appeared before the Investigating Officer once his application for anticipatory bail was withdrawn. This reflects his conduct as well.

12. Be that as it may, I do not find any sufficient and cogent reason to quash and set aside the order cancelling petitioner's bail. The Writ Petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

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