

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 31 OF 2019

State
Through Officer Incharge, (major)
Mapusa Police Station,
Mapusa, Goa. ... Applicants

Versus

Mr. Vikram Manik,
20 years of age,
C/o. Mrs. Savitri Marudkar,
residing at Limavado,
Porvorim, Bardez, Goa,
n/o. H.No.478, Pharsabahar,
Farsabahar, Kunkuri,
Jashpir, Chattisgarh. ... Respondent

Shri S.R. Rivankar, Public Prosecutor for the Applicants.
Shri G. Teles, Advocate for the Respondent.

Coram: NUTAN D. SARDESSAI, J.

Reserved on : 22nd April, 2019
Pronounced on : 24th April, 2019

ORDER :

Heard Shri S.R. Rivankar, learned Public Prosecutor
for the applicants and Shri G. Teles, learned Advocate for the
respondent.

2. The State seeks the cancellation of bail of the
respondent accused under Section 439(2) read with 482 Cr.P.C.
against the order dated 01/08/2018 passed by the Additional
Sessions Judge, North Goa, Mapusa.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State contended that the offence was registered on 07/03/2018 wherein an 85 year old woman was assaulted with a heavy object on her neck and thereafter she was robbed of her gold ornaments and also those of her daughter. The old lady had expired on the same night who had before that given her statement to the Police and there were other statements on record indicating the crime. He referred to the Autopsy Report wherein he pointed out to the injury inflicted on the neck of the deceased and the report in its totality. A reference was also made to the complaint which was lodged on the same day and registered at 12.20 hrs. apart from the statement of the eyewitness.

4. It was further his contention that the impugned order was fraught with illegality inasmuch as the learned Additional Sessions Judge had missed out on the seriousness of the offence and passed an order which was totally illegal and could not stand the test of legal scrutiny. The learned Additional Sessions Judge had adopted a casual approach while passing the order of bail and had not even discussed the material which had come forth on record which would have disintitiled the

respondent to the benefit of bail. He placed reliance in **Puran V/s. Rambilas & Anr. [AIR 2001 SC 2023]** and once again submitted that the learned Additional Sessions Judge had failed to discuss the material evidence on record and to see that the case of the prosecution fell within the predicates of Section 300 IPC. This was a fit case to cancel the bail granted in favour of the respondent as otherwise the continuance of the order passed by the learned Additional Sessions Judge would continue to be a travesty of justice.

5. Shri G. Teles, learned Advocate for the respondent submitted that the respondent was placed under arrest on the very same day and charge sheet was filed against him on 04/06/2018 while bail was granted to him on 01/08/2018. The State had filed the application for the cancellation of bail on 25/10/2018 which came to be registered only in 2019 and came up for consideration on 06/02/2019. No urgency was shown by the State to approach the Court. Besides, till date charge had not been framed against the accused. It was his contention that the parameters in the matter of grant of bail and the cancellation of bail were totally different and in that context placed reliance in **State of Punjab V/s. Jagjit Singh Chahal**

[(2016) ALL MR (Cri.) Journal 103]. No ground whatsoever had been made out for the cancellation of bail and pressed for the dismissal of the application.

6. Shri G. Teles, learned Advocate for the respondent next adverted to the impugned order and submitted that the learned Additional Sessions Judge had taken the medical records into consideration. He also referred to the statement of Hiralal and the Autopsy Report and submitted that it was not at all a fit case to cancel the bail granted in favour of the respondent. No jurisdictional error was committed by the Trial Court and therefore the application had to be dismissed. He placed further reliance in **Abdul Basit alias Raju & Ors. V/s. Mohd. Abdul Kadir Chaudhary & Anr. [(2014) 10 SCC 754]** as also that in **Atmaram V/s. State of U.P. & Anr. [2014 (1) ACR 617 (SC)]**.

7. i would consider their submissions, the material on record, the judgments relied upon (supra) and in that backdrop decide the application appropriately. First and foremost, coming to the order under challenge, the learned Additional Sessions Judge had briefly narrated the case of the applicant, the

objections filed on behalf of the State and after considering some judgments, the learned Additional Sessions Judge was primarily swayed by the fact that an earlier bail application at the instance of the respondent was rejected as the charge sheet was yet to be filed and which had not been challenged by him before this Court and thereafter had hastily concluded that the apprehension of the State could be put at rest by imposing suitable conditions. The learned Additional Sessions Judge had gone off at a tangent also to conclude that there was no mens rea on the part of the respondent to commit the offence of murder, that the death of the senior citizen was most unfortunate and proceeded to set him at liberty by imposing certain terms and conditions.

8. The learned Additional Sessions Judge had failed to assess the material on record namely the various statements and more particularly the Autopsy Report apart from the statement of the injured, since deceased, and her daughter and ordered his release on bail. The learned Additional Sessions Judge had failed to consider the Autopsy Report and hastened to secure the respondent with the order of bail on the premise that the apprehension of the State could be taken care of by putting

him to terms and that there was no mens rea on the part of the respondent to commit the offence. How at all the learned Additional Sessions Judge could conclude so at the prima facie stage is beyond comprehension.

9. It was shown by the learned Public Prosecutor from the records that the respondent was allowed entry in the house of the deceased to carry out some cleaning work and that he had sought her benevolence and stayed in her residence. It was taking advantage of the age of the lady in question that he had strangled her and thereafter banged her head on a hard object followed by an assault with a weapon causing injuries on her head and robbed her of her gold bangles and gold chain. He had also entered the bedroom of the complainant's daughter, caught hold of her mouth and neck forcibly and thereafter snatched the gold chain from her neck and due to her resistance it broke and a part of it remained in her hand and thereafter he had fled from the spot carrying the gold items with him. A cursory perusal of the statement of the complainant, since deceased, reveals that she had allowed entry to the respondent in her house being known to her and at his instance had allowed him to stay in the residence during the night time.

10. The complaint indicates that during the early morning hours the respondent had entered her bedroom, assaulted her with some heavy object on her head, then pushed her to the ground and snatched her gold chain from her neck and then forcefully removed two gold bangles from her hands. The respondent had threatened her daughter and decamped with her gold chain and gold bangles for which the complaint was lodged against the respondent and an offence registered initially under Section 394 IPC at 12.20 hrs. and upon the demise of the complainant was Section 302 added to the crime. The statement of the injured daughter of the complainant indicates that the respondent had come to their house on the evening of 06/03/2018. He had sought the permission of the complainant to stay overnight and the complainant had permitted him to stay in the house by sleeping in the hall. During the early morning hours of 07/03/2018 she sensed that somebody was trying to remove the gold chain from her neck and on waking up noticed that the respondent was trying to snatch her gold chain.

11. The respondent tried to catch hold of her mouth as she had raised an alarm and then caught hold of her neck forcibly inflicting nail injuries on her neck. Though she had

resisted, he had still managed to snatch the gold chain from her neck due to which it broke and a part of the gold chain remained in her neck. Thereafter, the respondent had run towards the rear door of the house. She had tried to catch him but he had managed to push her to the ground and escaped from the house with his bag. She had seen her mother lying on the floor when she went to her room and who too narrated to her that the respondent had caught hold of her neck and tried to strangle her and thereafter when she had tried to resist, he had banged her head on some hard object and assaulted her with a hard object and robbed her of her gold bangles and gold chain.

12. The material statement of the victim was not at all taken into consideration by the learned Additional Sessions Judge, who was more swayed by the broad principles governing the grant of bail and in a very casual manner concluded that there was no mens rea on the part of the respondent to commit the offence of murder. In the face of the statement of the complainant, since deceased, and the victim, there was no reason for the learned Additional Sessions Judge to hold so and yet he did so in a very casual manner amounting to a

jurisdictional error in passing the bail order. The Autopsy Report on the examination of the complainant, since deceased, reveals that she had suffered a bruise over the back of the neck and over the nape of the neck with spine injury which was caused by a blunt weapon and antemortem in nature. There were other injuries noticed on her person which could reconcile with her version that her head was banged by the respondent due to which she had suffered those injuries on her body. Besides, unlike the contention of Shri G. Teles, learned Advocate for the respondent a scalp hematoma was noticed over the right parietal region. Besides, the Doctor opined that the cause of death was due to cervical spine injury vide the injury no.1 caused by a hard, blunt object or surface impact which was antemortem and fresh at the time of death and fatal in the ordinary course of nature in a person with injuries over face and neck.

13. The statement of the jeweller too indicates that one person had approached him in the morning of 07/03/2018 carrying a shoulder bag alongwith another and who had handed over a gold chain to him and requested him to weigh it. He had weighed the gold chain and handed it over back to him

informing that he was not purchasing old gold ornaments from anybody. He had later identified the said person after seeing his photograph in the newspaper and learnt that he had assaulted an elderly lady and robbed her of her gold ornaments. Moreover, his statement also indicates that he was having CCTV camera in his shop and that he was having a footage of the incident which he had tendered to the Police.

14. Hiralal, another person had occasion to see the respondent who had visited him at his residence on the morning of 06/03/2018 and who disclosed to him that he had been called by the deceased to pesticide her room. He had told him to do the job in his bedroom and after finishing the same the respondent had assured to come back in the evening after visiting the house of the deceased. On 07/03/2018, his son had woken him up and informed him that the victim had come and informed him that the respondent has assaulted the complainant. He had visited the complainant and noticed that she was lying on the floor and blood was seen on the head and on inquiring she had disclosed that the respondent who had come to pesticide the room had taken away her gold ornaments and assaulted on the rear side of her head with some hard

object and for which she was getting extreme pain. He was instrumental in contacting the Police and taking her to the District hospital. The victim too had disclosed to him that the respondent had assaulted her apart from her mother and decamped with their gold ornaments. These vital aspects of the case had not been taken cognizance of by the learned Additional Sessions Judge while granting bail to the respondent by erroneously concluding that there was no mens rea despite the assault on the complainant with a hard blunt object on the vital part of her body namely her head and then robbing her of her gold ornaments apart from inflicting injuries and decamping with the gold ornaments of her daughter.

15. In **Puran** (supra), the Hon'ble Apex Court relying in an earlier judgment in **Ram V/s. State of Haryana [(1995) 1 SCC 349]** held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted had to be considered and dealt with on a different basis. It was held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. It was held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due

course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is however, to be noted that this Court had clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring the material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against the principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It further held at paragraph 10 that it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

16. In **Jagjit Singh Chahal** (supra), the Division Bench of the Punjab and Haryana High Court observed at paragraph 20 that a conjoint reading of the cited case-law doubtlessly sets at rest that the High Court shall not exercise its power under Section 439(2) re. cancellation of bail on an assumed expanded

jurisdiction where it can (i) reappraise and re-appreciate the evidence/material which was taken into consideration while granting the bail; (ii) the grounds like gross misrepresentation of facts, misleading the Court or indulging in fraud while securing the bail order, would amount to seeking review of the bail order which is impermissible in view of the express bar created under Section 362 Cr.P.C.; (iii) the parameters to be followed while cancelling a bail are different than those to be observed while granting bail; and (iv) the High Court will not invoke its powers under Section 439 (2) and cancel the bail even if a second view is possible. Conversely, the High Court would be justified in cancelling the bail granted, if it is brought to its notice that (i) the accused had resumed illegal activities and thus misused his liberty, (ii) he had interfered with the course of investigation, (iii) there are attempts to tamper with the evidence or witnesses, (iv) the accused threatens witnesses or attempts to hamper smooth investigation, (v) there is likelihood of his fleeing to other country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are indeed illustrative only and not exhaustive.

17. The judgment in **Jagjit Singh Chahal** (supra), is clearly distinguishable on facts and does not advance the case of Shri G. Teles, learned Advocate for the respondent to resist the cancellation of bail when as held in **Puran** (supra), it is clearly demonstrated that the learned Additional Sessions Judge committed an error and caused a travesty of justice by securing the respondent with bail by observing that there was no mens rea and that the death of the complainant was unfortunate. The learned Additional Sessions Judge at the cost of repetition had clearly ignored the statement of the complainant herself, the victim apart from the Autopsy Report and hastily granted bail to the respondent thereby committing a jurisdictional error and passing the order which is per se bad and cannot stand the test of legal scrutiny.

18. In **Abdul Basit** (supra), a two Judge Bench of the Hon'ble Apex Court reiterated the principles in the matter of the cancellation of bail being (i) where the accused misused his liberty by indulging in similar crime activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with the evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v)

there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc.

19. A point was canvassed by Shri G. Teles , learned Advocate for the respondent that although the bail was granted to the respondent as early as 01/08/2018, the application for the cancellation of bail was moved on 25/10/2018 which came to be registered only in 2019 and came up for hearing on 06/02/2018. There was no urgency shown by the prosecution to approach the Court and therefore on that count too this application was not tenable. The records bear out that the application for the cancellation of bail was moved on 25/10/2018. It further came to be registered only in 2019 and came on the Board on 06/02/2019 when notice was made returnable to the respondent by registered post A/D in addition to the regular mode and humdast. On that premise alone it cannot be countenanced that an order passed which is fraught with jurisdictional error and otherwise cannot stand the test of legal scrutiny should be allowed to stand. This plea raised on behalf of the respondent will also not weigh with this Court while

deciding the application for the cancellation of bail. Unlike the contention of Shri G. Teles, learned Advocate for the respondent that there was no jurisdictional error committed by the Trial Court it was shown to the contrary by the learned Public Prosecutor on behalf of the State that the learned Additional Sessions Judge had completely lost track of the matter, had omitted to discuss the material on record including the statement of the complainant, since deceased, and the victim apart from perusing the Autopsy Report and the other vital statements on record which linked the respondent with the commission of the crime.

20. Therefore, in the circumstances, i find merit in the application moved on behalf of the State for the cancellation of bail and as a result thereof pass the following

O R D E R

- (i) The application is allowed and the order granting bail is cancelled.
- (ii) The respondent shall surrender to custody forthwith.

NUTAN D. SARDESSAI, J.

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