

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 484 OF 2018

Mr. Juber Ibrahim Chaudhary. ..Applicant.

V/s.

State of Maharashtra & anr. ..Respondents.

Mr. Umesh R. Mankpure, advocate for applicant.

Mr. Kuldeep U. Nikam, advocate for respondent No. 2.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 4, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application filed under section 439(2) of the Code of Criminal Procedure, 1908 seeking cancellation of bail of the respondent. The respondent was enlarged on bail by the Additional Sessions Judge, Sangli vide order dated 3rd April, 2018. The applicant herein had filed an application seeking cancellation of bail. By order dated 4/7/2018, this Court had observed that "the order granting bail to Amir and Naushad cannot be said to be perverse. The application stands rejected." However, the respondent No. 2 shall not reside in Sangli Miraj and Kupwad Corporation till 30th October, 2018 and that the respondent No.

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2 shall not reside in Miraj till conclusion of the trial.

3 On 20/8/2018 the respondent No. 2 i.e. Naushad Shaikh lodged FIR at Vishram Baug Police station alleging therein that on 20/8/2018 he was assaulted by unknown person. However, his supplementary statement was recorded and he alleged that he was assaulted by Arif Chaudhary, Raju Patel and Abid Shaikh. According to the complainant, the incident had occurred on the road facing from Miraj to Sangli. According to the complainant, he was driving his auto rickshaw. When he was stopped by passenger, he was assaulted by all these person. Pursuant to the said FIR dated 20/8/2018, the alleged accused persons namely Raju A. Patel and Abid Shaikh were arrested on 20/8/2018 and 21/8/2018. They were taken into police custody and thereafter, they were enlarged on bail after incarceration of 20 days.

4 It is pertinent to note that Raju A. Patel and Abid Shaikh are the witnesses in Crime No. 26 of 2017 registered at Mahatma Gandhi Chowk Police Station, Miraj in which Ibrahim i.e. the father of Arif Choudhary was killed by the present respondent and others as they are charge-sheeted for the same. Arif Ibrahim Choudhary was granted pre-arrest bail in Crime No. 306 of 2018 registered at the behest of the present respondent.

5 It is pertinent to note that in fact, the applicant herein had challenged the order granting bail and the same was rejected by an order dated 4/7/2018, in which certain conditions were imposed upon the respondent. He was directed not to enter into Sangli Miraj and Kupwad Corporation area. Apparently, there is a breach of the said order. The learned Counsel for the respondent submits that the respondent would tender unconditional apology for the same.

6 The basic fact remains that it is not only breach of order, but there is false implication of Arif Choudhary, Raju Patel, as the police had filed report under section 169 of the Code of Criminal Procedure, 1973 against two accused in Crime No. 306 of 2018. The report shows that Raju Patel was at Nexa Show Room, Amrai, Sangli at the relevant time when the incident had occurred and Arif Choudhary was at home at the time when the incident had occurred and that he had visited one Shri Sanjay Bajaj for offering bouquet of flowers, for being elected as President of their political party. The charge-sheet is filed against one of the accused in Crime No. 306 of 2018.

7 It is a sorry state of affairs that Arif has to rush to the Court to seek pre-arrest bail, whereas Raju Patel had suffered incarceration for 20

days. Moreover, the Court cannot be oblivious of the fact that the police machinery had to spend their valuable time in tracing the whereabouts of the two accused, who have been released under section 169 of the Code of Criminal Procedure, 1973. It is apparent that since they are witnesses in the case against the respondent, they have been falsely implicated.

8 It is seen from the records that Sessions Case No. 117 of 2017 is being adjourned for framing of charge since 21/8/2018. The roznama shows that on more than 3 occasions the respondent herein had filed an application seeking exemption. The application seeking exemption was filed on 19/1/2019 also.

9 It is in these circumstances that this Court is of the opinion that this is a fit case for cancelling the bail granted vide order dated 3rd April, 2018. The applicant is entitled to make an application seeking enlargement on bail after charge is framed. The learned Sessions Court shall frame charge on or before 20/2/2019. The respondent shall surrender to police custody on 6/2/2019 before 5 p.m. The application is allowed in the above terms and stands disposed of accordingly.

10 Learned Sessions Court is hereby directed that for the purpose of framing of charge, he shall not grant any unwarranted

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adjournment either to the prosecution or to the defence since pendency of bail application cannot be construed as a stay to the trial. In any case, the respondent is entitled to file an application seeking enlargement on bail by 27/2/2019.

11 The observations are restricted to the present application and shall not be taken into consideration at the time of trial in Sessions Case No. 117 of 2017.

[SMT. SADHANA S. JADHAV, J.]