

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

**APPLICATION FOR CANCELLATION OF BAIL NO.59 OF 2020**

Smt. Jamunabai w/o Asaram Salve

... Applicant

Versus

1. State of Maharashtra
2. Ganesh s/o Vilas Khandre

... Respondents

.....  
Mr. S. S. Jadhavar, Advocate for applicant.

Mr. A. M. Phule, APP for respondent No.1 – State.

Mr. S. S. Dixit, Advocate for respondent No.2.  
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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 9<sup>th</sup> October, 2020**

**ORDER :**

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancelling the bail granted to respondent No.2 by learned Additional Sessions Judge, Ahmednagar vide order dated 06-03-2020 passed in Criminal Miscellaneous Application No.211 of 2020. Respondent No.2 is an accused in Crime No.I-1722 of 2019 registered with Tophkhana Police Station, Ahmednagar for the offences punishable under Sections 306, 323, 504, 506 read with Section 34 of Indian Penal Code. The applicant is the informant. Deceased Sujata was the daughter of the present applicant. Sujata was medical practitioner.

Her marriage was solemnized with one Namdeo Karpe, however, since 1996 Sujata was residing separately from her husband. Sujata is having daughter by name Shweta. Shweta's marriage was performed with respondent No.2 on 18-05-2017. At that time, respondent No.2 was working at Mumbai. Shweta and respondent No.2 – Ganesh residing at Mumbai, however, due to education purpose, Shweta was residing at Pune. She delivered a child on 14-11-2018 and after few days, she joined company of respondent No.2 at Mumbai. Respondent No.2 left service at Mumbai in March 2019 and returned to Ahmednagar, however, Shweta was still residing at Mumbai. Respondent No.2 had asked her to go directly to her parents house i.e. the informant's house. Shweta came to Ahmednagar. Thereafter, applicant, Shweta and other family members had gone to the house of respondent No.2 and asked when Shweta would be taken to Mumbai. Respondent No.2 with his parents and brother asked deceased Sujata to transfer the Bungalow, standing in her name, in the name of respondent No.2. The applicant and other family members of the applicant were beaten by respondent No.2 and his family members. Thereafter, respondent No.2 along with his brother had gone to the house of applicant and repeated the demand for transfer of Bungalow. They had threatened the applicant and the family members. Since April 2019, Shweta was residing with her mother Sujata. Respondent No.2 and his brother Vijay had even gone to the office of Sujata and threatened her of dire consequences, if she fails to transfer the Bungalow in the name of respondent No.2.

Accused Vijay had then threatened Sujata by giving a phone call on 22-09-2019. Sujata had then lodged non cognizable complaint with Tophkhana Police Station in respect of that incident. The informant further states that respondent No.2 and his family members were continuously harassing Sujata on the count that she should transfer the Bungalow, standing in her name, in the name of respondent No.2. Sujata got fed up due to the harassment and illegal demand and committed suicide on 02-12-2019. The informant and her son had tried to register the complaint to the Police Station, however, it was not got registered. Therefore, they were required to approach the office of the Superintendent of Police. After the communication from the office of Deputy Superintendent of Police, the FIR of the applicant was taken and offence was registered. The applicant further submits that even after death of Sujata, respondent No.2's brother had threatened Shweta on 03-12-2019. He gave threat to kill, if the complaint is filed against them. Thereafter, the threats are given to the applicant and her grand daughter Shweta for transfer of the house property in the name of respondent No.2.

2. After the offence was registered, his parents and brother had moved application for anticipatory bail, which was rejected by learned Sessions Judge. Vijay came to be arrested and was remanded to police custody and, thereafter, to the magisterial custody. The anticipatory bail application filed by the parents of respondent No.2 was, however, allowed. Thereafter, respondent No.2 filed

application for seeking anticipatory bail. When applicant came to know about the same, she appeared in the matter and opposed the application. The said application came to be allowed on 06-03-2020. This order is now challenged in this application and the applicant has prayed for cancellation of the said bail.

3. Heard learned Advocate Mr. S. S. Jadhavar for applicant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. S. S Dixit for respondent No.2.

4. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge allowed the application filed by respondent No.2 on the ground that the custodial interrogation of the applicant was not necessary and it would on the basis of the fact that Vijay was already arrested. This approach was wrong. In fact, Vijay's application was for regular bail which was later on allowed, but his earlier application for anticipatory bail was rejected. The learned Additional Sessions Judge failed to consider that respondent No.2 had harassed Sujata as well as Shweta. The custodial interrogation of the applicant was necessary and in order to have check on the criminal activities, the said application ought not to have been allowed. Even after Sujata had committed suicide, respondent No.2 has indulged in threatening Shweta and still insist that the house standing in the name of Sujata should be transferred to him. The present applicant has also lodged report against respondent No.2 on 18-01-2020

which was treated as NC complaint by police. Shweta had lodged NC complaint on 09-11-2019. With the background that respondent No.2 is tampering with the evidence and continuing his threat, his bail deserves to be cancelled.

5. Learned APP has supported the applicant.

6. Affidavit-in-reply has been filed by respondent No.2 and it is stated that the story put forward by the informant is imaginary. No threat was given by present respondent No.2 or by his brother to the applicant, Sujata or Shweta. In fact, he has been false involved in the said offence. Ingredients of offence under Section 306 of Indian Penal Code are not at all attracted. The learned trial Judge has rightly considered that there was 13 days delay in lodging the report. The non cognizable offences registered by Shweta and applicant are based on concocted story, as they just want to see respondent No.2 behind bar.

7. At the outset, it can be seen that a detailed order has been passed by learned Additional Sessions Judge, Ahmednagar, when he allowed the anticipatory bail application filed by present respondent No.2 on 06-03-2020. The delay of 13 days in lodging the report was also considered. When the said order was passed by learned Additional Sessions Judge, the objections, those were raised by the present applicant, were on record and it has to be presumed that the concerned Court had dealt with those objections. It appears that, at that time, no such fact,

about the threat by respondent No.2 and it had resulted in any criminal complaint, was pointed out to learned Additional Sessions Judge. On the basis of material that was placed, he had come to the conclusion that the custodial interrogation of respondent No.2 is not required. The bail application cannot be rejected simply on the ground that the offence is serious. It might be one of the criteria to consider the bail application, however, it cannot be the sole ground. The other parameters for releasing an accused on anticipatory bail were required to be seen by the concerned Court and it appears that those considerations resulted in grant of anticipatory bail to respondent No.2.

8. Perusal of the FIR would give an impression that Sujata was harassed by respondent No.2 . Sujata was mother-in-law of respondent No.2. At no point of time, Shweta had ever lodged any report regarding subjecting her to cruelty by the husband and in-laws. Sujata was medical practitioner, therefore, it is hard to believe that she had no means to approach police, when she was allegedly threatened to kill for not transferring the house in the name of respondent No.2. Whatever NC complaint was filed by her appears to be against the brother of respondent No.2. No further legal action was taken by her, when her complaint was treated as NC complaint. Sujata committed suicide on 02-12-2019. Shweta has filed NC complaint on 09-12-2019 and the present applicant has filed the NC complaint on 18-01-2020. The tenor is almost same stating that respondent No.2

had threatened to kill them, if the house is not given in the name of accused. Lodging of these NC complaints will not *ipso facto* lead us to infer that respondent No.2 will not abide by the terms of the bail. When the investigation is over and nothing remain to be recovered, the grant of anticipatory bail was justified and, now, no such case has been made out to cancel the bail granted by the Court. In ***State Through Delhi Administration vs. Sanjay Gandhi [1978 AIR 961]***, it has been observed by the Hon'ble Apex Court :-

*“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.”*

9. In ***Sanjay Gandhi's*** case (Supra), the Hon'ble Apex Court has further observed :-

*“Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court to Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an*

*extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done.”*

10. The fact that is more important is that though Sujata had committed suicide, there was no immediate lodging of report. Further, the learned Additional Sessions Judge has specifically observed that Shweta had never filed any complaint for taking action for the offence punishable under Section 498-A of the Indian Penal Code against husband and/or against in-laws. The basic factor that weighed by the learned Additional Sessions Judge was whether the custodial interrogation of the applicant is required or not. When the application was allowed on 06-03-2020, at that time, the NC complaint lodged by Shweta on 09-10-2019 and present applicant on 18-01-2020, was already within the knowledge of the applicant. But, it appears that, that was not brought to the notice of the learned Additional Sessions Judge and when the necessary material itself was not produced by the applicant, though she accepts that she had appeared in the matter and objected the application filed by respondent No.2, she will have to blame herself. Now, as an appeal, she cannot submit that the learned

Additional Sessions Judge erred in granting bail to respondent No.2. Therefore, there is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

**[SMT. VIBHA KANKANWADI, J.]**

SCM