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

CRIMINAL WRIT PETITION NO.1202 OF 2020

Kiran s/o Shankarrao Tambolkar = PETITIONER

VERSUS

The State of Maharashtra = RESPONDENT/S

WITH

CRIMINAL WRIT PETITION NO.1249 OF 2020

Ganesh s/o Pundlik Gutte = PETITIONER

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.Rupesh Jaiswal, Advocate for Petitioner/s;]

Mrs.RP Gour & Mr. SW Mundhe, APPs for Respondent-State (in respective matters.)

WITH

CRIMINAL APPLICATION NO. 1091 of 2020

Lala s/o Ranjan Bhosale = APPLICANT

VERSUS

The State of Maharashtra
and Ors. = RESPONDENT/S

Mr.KB Jadhav, Ad. h/for Mr. AD Shinde, Advocate for Applicant;

Mr.AM Phule, APP for Respondent No.1-State;

Mr. KM Nagarkar, Adv. For Resp.Nos. 2 & 3.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 15th & 19th October, 2020.

PRONOUNCED ON: 3rd November, 2020

COURT'S ORDER :-

1. Since all these matters involve common question and, therefore, I deem it appropriate to decide them by common reasoning.

2. The petitioners and applicant respectively were released on bail by the concerned Additional Sessions Judges in view of the decision of the Hon'ble Apex court in Suo Motu Writ Petition (Criminal) No.1/2020, thereby issuing directions to release accused/prisoners, who are in jail, considering the outbreak of COVID-19 and the parameters laid down by the High Power Committee of the State of Maharashtra. Now, in all the aforesaid matters, the concerned Additional Sessions Judges have cancelled the bail granted to the respective petitioners/applicant.

3. The petitioners in Criminal Writ Petition Nos.1202/2020 and 1249/2020 intend to invoke the constitutional powers of this Court, under Article

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226 and 227 of the Constitution of India; whereas the applicant in Criminal Application No.1091/2020 wants to challenge the order passed under Section 482 of Cr.P.C.

Facts, giving rise to Cri.WP Nos.1202/2020 & 1249/2020,-

a) The respective petitioners are accused, facing trial in Sessions Case Nos.45/2016 and 10/2014, pending before the Additional Sessions Judge, Udgir, for the offences punishable under Sections 302, 498A etc of IPC.

b) The cases appear to be part-heard. However, on the applications filed by the respective petitioners, in the aforesaid background and the directions given by the respective authorities, they were granted interim bail on 22.5.2020. The said interim bail came to be rejected/not continued by order dated 4.9.2020 and 5.9.2020, contending that the petitioners had failed to move an application for continuing interim bail on 6.8.2020 as the duration of the

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bail granted to them on 22.5.2020 was for 45 days only.

Facts, giving rise to Criminal Application
No.1099/2020 :-

i. Applicant in this case is facing trial in Sessions Case No.39/2018 pending before the 2nd Additional Sessions Judge, Kopargaon for the offences punishable under Sections 302, 307, 226, 341, 504, 506 and Section 212 of IPC. He was granted temporary bail on 19.5.2020. However, thereafter, Respondent Nos.2 and 3 in this case filed an application before Additional Sessions Judge at Exh.53 for cancellation of the temporary bail. It will not be out of place to mention here that it appears that they have used a wrong word as 'Parole', when, in fact, it ought to have been bail since till date, present applicant-accused is not convicted.

ii. It was contended in the said application that at the time of releasing the accused on temporary bail, the State had objected on the ground that criminal background of the applicant;

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yet he was released on bail. However, thereafter on 22.5.2020, the accused went under the influence of liquor to the house of witnesses, i.e. Respondent Nos.2 and 3 and threatened them to kill. They have lodged a report about the said incidence with Loni Police Station, which has been registered as non-cognizable case.

iii. Present applicant filed say to the said application at Exh. 54. He denied that he had gone to the place where the witnesses reside, under the influence of liquor and threatened them. After he was released, he went to his village, however, it was found by him that his wife and mother were not residing in the village. Therefore, he stayed with his relatives. Respondent Nos. 2 and 3 went, along with mob of 100-150 people. They barged into the house of relative of the accused and damaged the household articles. His relative has lodged report against those persons. In fact, the testimony of Respondent Nos.2 and 3 has been recorded and now the trial is at its fag end. The application has been filed with malafide intention to pressurize the court.

iv. After hearing both sides, learned Additional Sessions Judge cancelled the temporary bail granted to the present applicant. Hence, he is before this Court.

4. Heard learned Advocate Rupesh Jaiswal for the petitioners in both the writ petitions and learned Advocate Shri KB Jadhav holding for Advocate AD Shinde for the applicant in Cri.Appln.No.109/2020. Heard learned APPs Ms. RP Gour; Shri SW Mundhe and Shri AM Phule in respective matters. Further, heard learned Advocate Shri KM Nagarkar for Respondent Nos. 2 and 3 in the Criminal Application.

5. It has been argued by learned Advocate Mr. Jaiswal that in view of the directions issued in Suo Motu Writ Petition (Criminal) No.1/2020, the Hon'ble Apex court, having regard to Article 21 of the Constitution of India, had given various directions in relation to over-crowding of persons and Remand Homes. Directions were issued to State High Power Committee to lay down parameters for

release of the prisoners in the outbreak of Corona Virus (COVID-19).

. Now, when the Court had eaerlier granted temporary bail with specific order that the duration of interim bail/temporary bail would remain in force for a period of 45 days or till such time, i.e. till the State of Maharashtra withdraws the Notification under the Epidemics Diseases Act, 1897, whichever is earlier, and admittedly, the said Notification is still in operation till 30th November, 2020, it was not directed that after the period of 45 days, the applicant/accused/prisoner shall have to get the said period of temporary bail extended. When the purpose for which the said arrangement was made and it is still persisting, then the learned Judge ought not to have insisted that the petitioners/accused should come to the Court again and get the said period of the temporary bail extended. It ought to have been an automatic extension of temporary bail period.

. The learned Advocate relied on the decision of this Court at Principal seat in the

case of Vikas Borade and Ors. Vs. State of Maharashtra (LDVC/OCR/237/2020) with companion matters, decided on 5th October, 2020, wherein, in similar cases, interim bail was granted in pending Sessions Case by the learned Extra Joint Additional Sessions Judge, Barshi and the application was then rejected as there was no extension in between. Further reliance was placed upon the judgment of Division Bench of this Court in the case of Faruk s./o Mustak Khan Vs. State of Mah (Criminal Application No.1524/2020 in WP No.685/2020 with other connected matters, decided on 14th September, 2020), wherein it was held that, there would be automatic extension. The Minutes of the High Power Committee dated 11th May, 2020, Para 5(i) thereof, were not considered by the learned Additional Sessions Judge. Therefore, those orders are wrong and erroneous and deserve to be set aside.

6. Per contra, learned APPs, opposing the Writ Petitions, submitted that though the High Power Committee had given directions in its Minutes dated 11th May, 2020 in respect of under-trial prisoners for such offence/s for which maximum

sentence is above seven years; yet the Division Bench of this Court headed by Hon'ble the Chief Justice with Justice KK Tated in the case of Peoples Union Civil Liberties & Anr. Vs. State of Maharashtra and Ors. (PIL-CJ-LD-VC-2 OF 2020 with connected matters, dt. 26th May, 2020), had opined that the relevant Courts are not supposed to act as mere post offices and allow application/s without application of mind. The learned Additional Sessions Judge, Udgir had absolutely not applied his mind when he had granted the temporary bail. Both the writ petitioners were facing the trial for the offence punishable under Section 302 etc. of IPC, wherein prescribed punishment is either death or imprisonment for life and it appears that both the cases are part-heard; the petitioners are in jail since more than five years, which pre-supposes that their earlier bail applications were rejected and, therefore, the said order, releasing them on temporary bail, itself was illegal and, therefore, it could not have been extended without application of mind. Further, if the wordings of the order, of which they want to take benefit, are read as they are, then it says that the interim bail will remain

in force for a period of 45 days or till such time the State of Maharashtra withdraws its Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. Under such circumstance, there ought to have been an application for extension of that period on 6.8.2020. However, they have not filed any such application and, therefore, there cannot be automatic extension of period of temporary bail.

7. Learned Advocate Mr. KB Jadhav appearing for the applicant in the Criminal Application, vehemently submitted that merely on the basis of non-cognizable complaint lodged by Respondent Nos. 2 and 3, the learned Judge has cancelled the bail granted. The applicant was released on bail in view of the directions given by the Hon'ble Apex court and High Power Committee. It does not contemplate any cancellation of bail. The story put forward by respondent Nos.2 and 3 was false. Further, when the testimonies of Respondent Nos.2 and 3 have already been recorded, there was no question of giving threats to them. In fact, the story, that has been put-forth by Respondent Nos.2

and 3, appears to be concocted as they got knowledge about release of the applicant on temporary bail. The application filed by them was with malafide intention, which ought not to have been considered by the learned Trial Judge. The impugned order, cancelling the bail is wrong and, therefore, deserves to be set aside.

8. Learned APP Mr.Phule appearing for State as well as learned Advocate Mr. Nagarkar, representing Respondent Nos.2 and 3, strongly opposed the application, reiterating the fact that in the decision delivered by the Hon'ble the Chief Justice and Justice KK Tated, it has been observed that applications will have to be considered on merits. The merits were not at all considered. Serious offence has been committed by the applicant. If the said order of releasing him on bail dated 19.5.2020 is considered, then it can be seen that the learned Additional Sessions Judge had not touched the merits. After coming out of the jail, the applicant alleged to have threatened Respondent No.2 & 3 and they have taken precaution by lodging report. Definitely, there is threat to

their lives. There is breach of terms of conditions imposed in the order of bail granted to the applicant and, therefore, the order of cancellation of bail, in view of the conduct of the applicant, is perfectly legal and correct.

9. At the outset, it will have to be observed that in all the aforesaid matters, the learned Additional Sessions Judges have not considered merits of the cases before releasing the accused persons on temporary bail. It was the concern, which was expressed in PIL in the case of Peoples Union Civil Liberties & Anr. Vs. State of Maharashtra and Ors. (PIL-CJ-LD-VC-2 OF 2020 with connected matters, filed before the Hon'ble the Chief Justice and Justice KK Tated. It has been specifically observed, -"Even though High Power Committee has delineated categories of under-trial prisoners, who would be entitled to release on temporary bail, we are of the opinion that the relevant Courts are not supposed to act as mere post offices and allow the applications without application of mind. We have no doubt in our mind that in the light of the guidelines issued by High

Power Committee, the relevant Courts, to the best of its ability and with the resources available at its disposal, have seen striving to take appropriate steps to dispose of as many applications for bail as possible in accordance with law and in the light of the guidelines of the High Power Committee. No direction, as such, would be required to be made since we hope and trust that no application for bail shall be kept pending unnecessarily." Thus, whatever was to be done by the respective Courts in regard to grant of temporary bail to the under-trials, was after due application of mind and in accordance with law.

10. Further, this Court at principal seat in LDVC Bail Application No.49/2020 along with companion matters in the case of Mahesh B.Patil Vs. State of Maharashtra decided on 15th May, 2020, after taking into consideration the merits of the matter, had rejected the application for temporary bail.

11. Further, in *Bail Application No.573/2020 (Ajay s/o Santosh Gaikwad Vs. The State of*

Maharashtra decided on 3rd August, 2020) and Bail Application No. 588/2020 (Rasul Pirahemad Palav Vs. The State of Maharashtra decided on 23rd July, 2020) this Court has also rejected the bail applications for temporary bail on merits.

12. Now, fact is, rightly or wrongly the Additional Sessions Judges have granted bail in all the three matters. In view of the fact that in the writ petitions, temporary bail order used the word "whichever is earlier" and, therefore, it appears that when there was no application for extension of the period of the bail by the applicants, the subsequent application filed by them have been rejected. Here, it is to be noted that when the learned Additional Sessions Judge, Udgir decided the temporary bail application and was inclined to release the accused, then he ought to have followed all the directions. He could not have molded or altered the wordings as per his own convenience or wish. He has not referred as to which Minutes of the High Power Committee were considered by him. But certainly, when the order was passed in both the matters, the Minutes of meeting dated 11.5.2020

were issued and circulated to the concerned. Attention is, therefore, drawn on Para 5(i) of the said Minutes, which reads as under, -

" 5
(i) All under-trial prisoners booked/charged for such offences for which maximum sentence is above 7 years shall be favourably considered for release on interim bail (except those falling the categories enumerated below) on personal bond of such amount as may be determined for a period of 45 days or till such time as the State Government withdraws the Notification under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, every 30 days..."

Therefore, his order ought to have been subjected to those directions, which requires, initial period of 45 days, will have to get extended periodically in Blocks of 30 days each till such time the said Notification is issued (in the event said Notification is not issued within first 45 days).

Therefore, it implied that the High Power Committee was in favour of an automatic extension. It was not contemplated that the concerned person/accused should go to the Court after lapse of that particular duration and then get the time extended. AS aforesaid, still the Notification under the Epidemics Diseases Act is in operation. Here, it can be seen that though reliance has been placed by learned Advocate Mr. Jaiswal on the decision dated 14.9.2020 of the Division Bench of this Court in the case of Farooq Mustafa passed in Criminal Application No. 1524/2020(supra); yet it can be seen that it was in respect of parole and not bail. Therefore, when in fact the application ought not to have been allowed; it was allowed, though wrongly, now when the State Government has not challenged those orders, then benefit thereof should go to the petitioners. The constitutional powers are, therefore, required to be exercised in favour of those petitioners.

13. Now, turning towards the Criminal Application, it can be said that though the order of granting bail to the applicant was wrong and

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erroneous; yet cancellation of that order is on different ground. The bail was granted to the applicant on 19.5.2020. But then, present Respondent Nos.2 and 3 contended that on 22.5.2020, the accused-applicant had gone to the village of Respondent Nos. 2 and 3 and under the influence of liquor, he had abused and threatened them to kill. The applicant is already facing the trial under Sections 302, 307 etc of IPC. The fear and apprehension in the mind of Respondent Nos.2 and 3 can be seen. Further, they have immediately lodged the report with the police which has been unfortunately treated as non-cognizable. The applicant had filed his say that, in fact, Respondent Nos.2 and 3, along with 100-150 people, had assaulted him and caused damage to the household articles of his relative. Surprisingly, he has not given name and address of his relative and he has not explained as to why he himself or his relative had not approached the police to lodge the report. Absolutely no documentary or oral evidence was produced by the applicant in support of his say. The said relative, who had nothing to do with the dispute between Respondent Nos.2 and 3

and present applicant, would not have quietly accepted the alleged damage that would have been caused by 100-150 people. The story put forward by Respondent Nos.2 and 3, appears to be appealing and, therefore, based on the NC case No.356/2020 registered by Respondent No.2, the learned Additional Sessions Judge has invoked his powers under Section 439(2) of Cr.P.C., which is perfectly justifiable. When the applicant, by taking support of the order/decision passed by the Hon'ble Apex court in the aforesaid suo motu petition, by which protection of life and liberty enshrined in Article 21 of the Constitution of India, was tried to be protected; the applicant cannot encroach upon the life and liberty granted to present Respondent Nos. 2 and 3. The rights of the witnesses are definitely required to be protected and in such situation they are more important than the alleged rights of accused.

14. No fault can be found in the order of cancellation of bail by the learned Additional Sessions Judge Kopargaon. Case is not made out to exercise powers of this Court under Section 482 of

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Cr.P.C. The Criminal Application deserves to be rejected.

15. For the aforesaid reasons, following order is passed, -

ORDER

i) Criminal Writ Petition Nos.1202/2020 and 1249/2020, are hereby allowed.

ii) The order dated 4.9.2020 passed below Exhibit-91 in SC No.45/2016 and order dated 5.9.2020 passed below Exh. 194 in SC No.10/2014 both by Additional Sessions Judge-2, Udgir, stand set aside.

iii) The Bail granted to the petitioners in view of order dated 22.5.2020 below Exhibit-87 in Sessions Case No.45/2016 and below Exh. 190 in Sessions Case No.10/2014, both passed by Additional Sessions Judge-2, Udgir, stand revived and the said order is extended periodically in the Blocks of 30 days

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each till such time the said Notification, under the Epidemics Diseases Act, 1897, is issued. In other words, in the event the said Notification under the Epidemics Diseases Act, 1897, comes to an end, the petitioners shall surrender before the concerned Court.

iv) The Criminal Application stands rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV