

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.61 OF 2020

Sambhaji s/o Vitthalrao Ptil Dongaonkar

... Applicant

Versus

1. The State of Maharashtra
2. The Police Inspector,
Police Station, Shillegaon,
Tq. Gangapur, Dist. Aurangabad
3. Pradip s/o Suresh Sarowar
4. Abasaheb s/o Suresh Sarowar

... Respondents

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Mr. M. S. Karad h/f Mr. S. S. Thombre, Advocate for applicant.
Mrs. R. P. Gaur, APP for respondent Nos.1 and 2 – State.
Mr. N. S. Ghanekar, Advocate for respondent Nos.3 and 4.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th 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 Nos.3 and 4 by learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad on 03-07-2020 in Criminal Bail Application No.129 of 2020. Respondent Nos.3 and 4 are accused in connection with Crime No.170 of 2020 registered with Shillegaon Police Station, Tq. Gangapur, Dist. Aurangabad for the offences punishable under

Sections 395, 143, 147, 323, 504, 506, 149 of Indian Penal Code. Present applicant is the informant.

2. The applicant had contended in his first information report that he resides at Dongaon, Tq. Gangapur, Dist. Aurangabad. He is the office bearer of agricultural produce market committee. He is the owner of land Gut Nos.104 and 105. He has kept a piece of land for storage of agricultural equipments and to tie cattle. There is a well in his land. He states that present respondent Nos.3 and 4 with one Kantaram Banderao Sarowar and Babu Banderao Sarowar approached his land and erected a shade in iron sheet. The informant had filed a complaint application against them for threatening him on 16-06-2020. Thereafter, when he had reached his house, at about 5.30 p.m., he found present respondent No.3 in front of his house. Respondent No.3 started asking him as to why he has given complaint application. He was abused and assaulted. Thereafter, he says that the other accused persons came i.e. nine in numbers and then he was again assaulted by those persons. He was separated by other villagers. Thereafter, the applicant says that when he started to go towards Aurangabad at about 6.30 p.m. in his car, at that time, present respondent No.4 came by abusing the informant and pull out the informant from his car. He found that the other accused persons were rushing towards his car. He again assaulted. In that process, present respondent Nos.3 and 4 had forcibly taken away gold chain from his neck weighing two Tolas valuing Rs.70,000/-. The informant has

then lodged report.

3. After the offence was registered, present respondent Nos.2 and 3 were arrested. They filed abovesaid application under Section 439 of the Code of Criminal Procedure. After hearing the learned Advocate for the applicants and learned APP, learned Additional Sessions Judge, Vaijapur allowed the said application on 03-07-2020. Now, the informant has filed present application under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

4. Heard learned Advocate Mr. M. S. Karad holding for learned Advocate Mr. S. S. Thombre for applicant, learned APP Mrs. R. P. Gaur for respondent Nos.1 and 2 – State and learned Advocate Mr. N. S. Ghanekar for respondent Nos.3 and 4.

5. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge has wrongly allowed the application. He failed to consider that the gold chain which was snatched by present respondent Nos.3 and 4 has not at all recovered. Some of the accused persons are still absconding though the offence is stated to be under Section 395 of Indian Penal Code. When there is no recovery, that Section would become meaningless. When the law gives discretion to allow the bail, that cannot be used in such a way. In clear terms, it appears that present respondent Nos.3 and 4 had not corroborated with the investigation. Therefore, their application ought not to

have been allowed. He prayed for the cancellation of bail.

6. It has been vehemently submitted by the learned Advocate for respondent Nos.3 and 4 that it was the regular bail which was allowed by the learned trial Judge. There was ample opportunity to the Investigating Officer to investigate. When nothing is found from present respondent Nos.3 and 4, their bail application has been allowed, which need not be cancelled at the whims of the applicant.

7. Perusal of the record would show that present respondent Nos.3 and 4 surrendered before Magistrate on 25-06-2020 at about 14.45 hours. The Investigating Officer was called, who prayed for police custody for three days. After considering the record, police custody was granted till 26-06-2020. The further remand report dated 26-06-2020 would show that on the ground that the accused persons are not corroborating, their magisterial custody was prayed for 14 days. Accordingly, they were sent in magisterial custody till 08-07-2020. However, it is to be noted that before production of those accused persons, search of the house of the accused was taken by the Investigating Officer at about 9.30 a.m. They could not find anything. After respondent Nos.3 and 4 were remanded to the magisterial custody, they filed the said bail application under Section 439 of the Code of Criminal Procedure. It will not be out of place to mention here that the attempt of respondent Nos.3 and 4 to seek anticipatory

bail was not fruitful and, therefore, they appeared to have surrendered before the Court. Now, after taking into consideration all the aspects, the learned Additional Sessions Judge had granted the regular bail. Attendance to the police station has also been given. So it is not a blanket order. Now, merely because the gold chain is not recovered at the instance of respondent Nos.3 and 4, their bail cannot be cancelled. The said point was raised before the learned Additional Sessions Judge regarding the non recovery of the stolen article and in spite of that, the said order has been passed regarding grant of regular bail. Cancellation of bail cannot be on the ground that some other accused persons are absconding. 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.”

8. 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.”

9. The investigation appears to be still going on. Respondent Nos.3 and 4 have been directed to remain present before the police station and cooperate with the Investigating Officer, so there is still scope for the recovery. The discretion while granting bail under Section 439 of the Code of Criminal Procedure has been judiciously exercised and, therefore, grounds are not made to cancel the bail under Section 439(2) of the Code of Criminal Procedure. Therefore, application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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