

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.103 OF 2020

Komal w/o Mahavir Jadhav

... Applicant

Versus

1. Annasaheb s/o Bhagwan Nikam
2. Uttam s/o Bhagwan Nikam
3. Navnath s/o Bhagwan Nikam
4. Hanumant s/o Dagadu Shinde
5. Punam @ Rohini w/o Pandit Jadhav
6. The State of Maharashtra

... Respondents

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.104 OF 2020

Komal w/o Mahavir Jadhav

... Applicant

Versus

1. Mahavir s/o Yashwant Jadhav
2. Pandit s/o Yashwant Jadhav
3. The State of Maharashtra

... Respondents

.....

Mr. U. M.Maske and Mr. G. A. Kulkarni for applicant in both matters.
Mr. S. W. Munde, for respondent – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 4th November, 2020

ORDER :

. Both the applications have been filed under Section 439(2) of the Code of Criminal Procedure to challenge the order dated 10-09-2020 passed by

the learned Additional Sessions Judge, Kandhar Tq. Kandhar, Dist. Nanded in Miscellaneous Criminal Application No.157 of 2020 and 163 of 2020, thereby granting anticipatory bail to respondent Nos.1 to 5 in first application and respondent Nos.1 and 2 in second application.

2. The applicant is the original informant. Respondent Nos.1 to 5 in first application and respondent Nos.1 and 2 in the other are the original accused persons. Respondent No.1 – Mahavir Yashwant Jadhav in second application got married to the informant on 12-02-2020. She has lodged the first information report on 08-08-2020 alleging that all the accused persons have committed offences punishable under Sections 498-A, 323, 326, 504, 506 read with Section 34 of Indian Penal Code. Respondent Nos.1 to 5 in first application have been granted anticipatory bail, whereas respondent Nos.1 and 2 in another application have been granted regular bail.

3. Heard learned Advocate Mr. U. M Maske and Mr. G. A. Kulkarni for applicant and learned APP Mr. S. W. Munde for respondent – State . It is not even necessary to issue notice to respondent Nos.1 to 5 in first application and respondent Nos.1 and 2 in second application.

4. It has been vehemently submitted on behalf of the applicant – informant that the learned Additional Sessions Judge has erred in granting bail to the respondents. He did not consider the manner in which the offence has

been committed. There is absolutely no consideration for the same in his order. Within three months of the marriage, the husband had started raising suspicion over the character of the informant. He had started ousting her. All the accused persons were harassing her to bring amount of Rs.4,00,000/- for purchasing a tractor. She was assaulted and hot oil was poured on her person on 27-05-2020. She has sustained severe burn injuries to her hands, neck, face and back. In spite of such treatment given to the informant, yet, the accused persons have been let free. Therefore, the order is erroneous and deserves to be set aside.

5. At the outset, it can be seen as to what was the contention of the informant in her FIR. The informant says that she got married with accused Mahavir on 12-02-2020 and then it is stated that on 27-05-2020, between 9.00 a.m. to 10.00 a.m., husband started saying that her character is not proper and, therefore, started ousting her. He then started to say that she should bring amount of Rs.4,00,000/- from her mother and sisters. She was abused and, thereafter, other accused persons joined him. It is her contention that all of them were instigating the husband to pour hot oil on her person. Accordingly, the husband went, brought hot oil and threw it on her person. It appears that husband and brother-in-law by name Pandit Yashwant Jadhav were arrested on 02-08-2020. They had filed application for bail under Section 439 of the Code of Criminal Procedure for regular bail, whereas the other accused persons filed application under Section 438 of the Code of Criminal Procedure for anticipatory

bail. In both the orders, practically same reasons have been assigned with some variation. It has been stated that investigation is almost complete. As regards those accused persons seeking regular bail, it was stated that nothing is left to be recovered at their instance. For all the accused persons, it is stated that there are no criminal antecedents. They are agriculturists. Age of one of the accused person has been taken into consideration, which was 72 years. Further, it was also considered that there is no possibility of accused getting absconding and if they are let free, then they will not hamper the investigation. Therefore, on these reasons, the bail came to be granted to the accused persons. There is no reason to doubt the order or reasoning part of the same. Merely because now the applicant has a desire to see the accused persons behind the bar, the present application appears to have been filed. A bail granted to any accused cannot be cancelled on the vengeance of the other side. Another important point to be noted is that in both the applications, present applicant – original informant had taken written objection by filing affidavit. She had the opportunity to put all the facts before the concerned Court and it will have to be presumed that the Court had taken note of those objections. The reasoning appears to be dealing with those objections and, therefore, absolutely there is no ground available for the applicant to get the said order set aside.

6. In *Myakala Dharmarajam and others etc. Vs. State of Telangana and another*, (2020 CRI. L. J. 1457 : AIROnline 2020 SC 5), it has been observed that,

“the factors are to be considered while granting bail have been considered by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, the certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is any prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.” Therefore, it was not necessary for the learned Judge to go into each and every allegation, consider the evidence that was collected uptill now. Only overview of the evidence collected ought to have been taken.

7. The Hon’ble Supreme Court in ***Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)*** has held that, *“it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out”*. The principles laid down in ***Daulatram Vs. State of Haryana, (1995) 1 SCC 349*** have been reiterated, those are as follows :-

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already

granted, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

8. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to

allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

9. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, “*when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner.*”

10. Since no error has been committed by the learned Additional Sessions Judge while granting regular bail as well as anticipatory bail to the respondents and also care has been taken to impose necessary conditions, there is no need to invoke the powers of this Court under Section 439(2) of the Code of Criminal Procedure. Hence, the applications stand rejected.

[SMT. VIBHA KANKANWADI, J.]

scm