

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.113 OF 2020

Komal Rahul Chordiya

... Applicant

Versus

1. The State of Maharashtra
2. Bhavarlal Shantilal Chordiya
3. Sunita Bhavarlal Chordiya
4. Shubham Bhavarlal Chordiya

... Respondents

.....
Mr. R. A. Tambe, Advocate for applicant.

Mr. S. W. Munde, APP for respondent No.1 – State.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th October, 2020

ORDER :

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to present respondent Nos.2 to 4 by order dated 22-09-2020 passed by the learned Additional Sessions Judge, Shrirampur in Criminal Bail Application No.177 of 2020.

2. Present applicant is the original informant who had lodged report against present respondent Nos.2 to 4 vide Crime No.I-1665 of 2020 registered with City police Station Shrirampur, Dist. Ahmednagar, for the offences punishable under Sections 406, 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code.

3. Present respondent Nos.2 and 3 are the parents-in-law of the applicant and present respondent No.4 is the brother-in-law of the applicant.

4. Heard learned Advocate Mr. R. A. Tambe for applicant and learned APP Mr. S. W. Munde for respondent No.1 – State. It is not even necessary to issue notice to the respondent Nos.2 to 4.

5. It has been submitted on behalf of the applicant that the order of granting pre-arrest bail in favour of respondent Nos.2 to 4 is perverse. Those accused persons had harassed and subjected the informant to cruelty. Further, she has made specific allegations that her ornaments have been forcibly taken and kept by those accused persons, rather they had converted it to their own use. Streedhan of about 30 *Tolas* gold in the form of ornaments were given to her. The articles and the cash which was given to the accused persons were different and the value of the same might come to amount of Rs.15,45,000/-. The respondents have refused to give them back. All the efforts to resolve the dispute and start the cohabitation with the husband have failed. Perusal of the order would show that there was no appreciation of the evidence that was produced before the Additional Sessions Judge and a mechanical order appears to have been passed. The findings in paragraph Nos.16 and 18 touching to the merits of the report were uncalled for, when the investigation is in progress. The learned Judge ought not to have read the things between the lines. The observations in paragraph No.19 would show that there is no clarification as to who had taken the ornaments. Therefore, when those

ornaments are required to be recovered, the custodial interrogation of the respondents was necessary. The learned Judge was erred in granting anticipatory bail, which deserves to be set aside and the original application deserves to be rejected, sending respondent Nos.2 to 4 to custody.

6. At the outset, it is to be noted that before filing the first information report there were exchange of notices between spouses. Though the informant is coming with the case that 30 *Tolas* of gold was given to her, so also the other articles. All of them have not been accepted by her husband. It definitely requires evidence. Further, she has efficacious remedy under Domestic Violence Act to recover the articles. The offences, at this stage, registered against present respondent Nos.2 to 4 are under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code. The husband is not before this Court as she has not arrayed him as party. She had raised the objection before the learned Judge that she had arrayed that Streedhan is to be recovered. The learned Additional Sessions Judge has dealt with the point that though some of the observations could have been avoided by the learned Judge, it does not give a right to the present applicant to get the bail granted to respondent Nos.2 to 4 cancelled.

7. 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.

8. 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.”

9. 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.”

10. 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.*”

11. Taking note of the law on the point, it can be seen that merely because the applicant has not secured her Streedhan, it is not necessary that respondent Nos.2 to 4 should be sent to jail. The learned Judge has put a condition that respondent Nos.2 to 4 should attend the police station as and when required and, therefore, still if the Investigating Officer desires to have investigation in respect of those ornaments, he can call respondent Nos.2 to 4 and make inquiry. For that purpose, it is absolutely not necessary that they should be in custody of police. When the personal liberty has been restored in a limited way by grant of the bail, it need not be curtailed on the wish of the applicant. No case is made out to cancel the bail under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm