

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.120 OF 2020

Shriram s/o Raosaheb Jogdand

... Applicant

Versus

- | | | |
|----|---------------------------------------|-----------------|
| 1. | The State of Maharashtra | |
| 2. | Balu @ Balasaheb s/o Arun Jogdand | |
| 3. | Arun s/o Uttamrao Jogdand | |
| 4. | Ramesh s/o Arun Jogdand | |
| 5. | Sushil s/o Arun Jogdand | |
| 6. | Ramprasad @ Rambhau s/o Achut Jogdand | ... Respondents |

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Mr. R. D. Khadap, Advocate for applicant.

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

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 2nd November, 2020

ORDER :

1. 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 6 by order dated 09-09-2020 passed by the learned District Judge-1 and Additional Sessions Judge, Ambajogai in Criminal Bail Application No.366 of 2020.

2. Present applicant is the original informant who had lodged report against present respondent Nos.2 to 6 i.e. Crime No.333 of 2020 registered with

Kaij Police Station for the offences punishable under Sections 306, 504, 506 read with Section 34 of Indian Penal Code.

3. Present respondent Nos.2 to 6 are the original accused persons. Accused persons are in relation with the informant.

4. Heard learned Advocate Mr. R. D. Khadap for applicant and learned APP Mr. S. W. Munde for respondent No.1 – State. It is not even necessary to issue notice to respondent No.2 to 6.

5. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge, Ambajogai while allowing Criminal Bail Application No.366 of 2020 on 09-09-2020 has not considered the facts in proper perspective. Present respondent Nos.2 to 6 had abetted the commission of the suicide by the father of the applicant. The applicant, in the FIR, specifically narrated about the earlier dispute that had taken place. Though the allegations were specific, yet, it has been observed that no specific role has been attributed. The applicant had produced on record the criminal antecedents by way of filing affidavit, yet, those were not considered. A cryptic order has been passed. So also, it was not considered that there is every possibility of tampering with the evidence of the prosecution and pressurizing the present applicant as well as the witnesses in the matter. Learned Advocate, therefore, prayed for cancellation of bail.

6. Here, in this case, the informant had lodged the FIR stating that his father Raosaheb Shesherao Jogdand was an agriculturist. Respondent No.2 has agricultural land adjacent to the land belonging to the informant. He states that there were disputes about 1 ½ month ago between his family and respondent Nos.2 to 6. The matter was then reported to the police station. Deceased had gone to the agricultural land at about 2.00 p.m. on 21-08-2020 alone. Respondent No.3 went there and asked the father of the informant that he should not cut the grass. The deceased was abused. Thereafter, the deceased came home and narrated the incident to the informant and his mother. It is his say that by picking up some or the other reason, respondent Nos.2 to 6 were raising dispute. Deceased had formed an opinion that after the lock-down is over, he would file case in the Court against respondent Nos.2 to 6. The informant also persuaded his father in the same way. Informant further states that when he was proceeding towards a shop to purchase sago at about 7.00 p.m., he found his father laying on the ground near the house. He found the bottle of poison near his father. His father was unconscious and there was a strong smell. He, therefore, called his relatives and they shifted his father to hospital. While under treatment, his father expired on 25-08-2020. Informant says that due to the continuous abuses by respondent Nos.2 to 6, his father has committed suicide, thereby he states that there was abetment or instigation by present respondent Nos.2 to 6 to commit the offence by deceased.

7. While granting the anticipatory bail, the learned Additional Sessions Judge has considered the allegations in the FIR. It has been specifically stated that there are allegations of abuse and criminal force against the deceased and except those allegations, there are no other allegations against the applicants – accused persons or no other role is attributed. It was also observed that the FIR is silent regarding the role attributed to each and every accused, however, the supplementary statement contains more particulars, but then it was observed that the custodial interrogation is not necessary. There is no legal or factual defect that has been left by the learned trial Judge. Mere use of the word instigation or abetment is not sufficient. The catena of judgments by the Apex Court as well as this Court would suggest that the said instigation or abetment should be continuous and immediate. Though the FIR is not an encyclopedia, yet, there is no account of activities by respondent Nos.2 to 6 between 1½ month prior to 21-08-2020 till the FIR dated 26-08-2020. Further it can be seen that the father of the informant expired on 25-08-2020 and the FIR has been lodged on 26-08-2020. Yet, those particulars are missing. Taking into consideration the offence under Section 306 of Indian Penal Code, there was nothing to be seized at the instance of present respondent Nos.2 to 6. In ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra – (2011) 1 SCC 694***, following factors and parameters have been laid down by the Hon'ble Apex Court which are required to be taken into consideration while dealing with anticipatory bail application.

They are as follows :-

- “(I) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) The possibility of the applicant to flee from justice;*
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences;*
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

8. In the present case the exceptional circumstances were seen by the learned trial Judge. It was also seen that present respondent Nos.2 to 6 are having a fixed place of abode and there is no chance of fleeing away. Under such circumstance, when a well reasoned order has been passed, it does not require any kind of interference.

9. 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.

10. 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 or 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.”

11. 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.”

12. 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.”

13. Therefore, taking into consideration the abovesaid reasons, it can be said that no case is made out to cancel the bail granted to respondent Nos.2 to 6 under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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