

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.138 OF 2020

Siddharth s/o Kerba Munge

... Applicant

Versus

1. The State of Maharashtra
2. Shivkumar s/o Dattatray Tumwad

... Respondents

.....
Mr. Y. R. Barhate, Advocate for applicant.

Mr. S. R. Yadav, APP for respondent No.1 – State

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-12-2020

ORDER :

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure by the original informant for cancellation of bail granted to respondent No.2 by learned Ad-hoc District Judge-1 and Additional Sessions Judge, Jalna in Criminal Bail Application No.1453 of 2020 on 20-10-2020.

2. Heard learned Advocate Mr. Y. R. Barhate for applicant and learned APP Mr. S. R. Yadav for respondent No.1 – State. It is not even necessary to issue notice to respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge had not considered the gravity of the offence. In fact, the applicant as well as respondent No.2 are professors. Applicant is Associate Professor, whereas respondent No.2 is Assistant Professor in Nirmal Krida and Samaj Prabodhan Trust, Arts, Science and Commerce College, Badnapur, Dist. Jalna. The brother of the applicant also works as professor in the same college. Respondent No.2 is in the habit of filing applications under Right to Information Act (hereinafter referred to as 'RTI Act') to the college and unnecessarily, he is collecting information in respect of the colleagues as well as other persons who are working in the college. Respondent No.2 had given a call to the brother of the informant on 17-09-2020 stating that he has given application under RTI Act to get information regarding the increase in the salary of the applicant and his brother. He also stated that if they pay him amount of Rs.2,00,000/-, then he will take back that application. So also, he is having certain photographs and documents in respect of the private life of the applicant and his brother and he would destroy their family life by placing those photographs on social media. When such act is being done by respondent No.2, though he is in novel profession, that seriousness has not been considered by the learned Additional Sessions Judge, when he granted anticipatory bail. The learned Advocate for the applicant pointed out and taken this Court through all the applications which are stated to have been filed by respondent No.2 under

RTI Act. It is stated that respondent No.2 is blackmailing the applicant and his brother by means of using the provisions of RTI Act. The custodial interrogation of the applicant was necessary, yet, the bail has been granted and, therefore, it deserves to be cancelled. Further, in spite of lodging the report against him, respondent No.2 has not stopped his activities. Another colleague of the applicant has lodged report against respondent No.2.

4. At the outset, it can be seen that while granting anticipatory bail, a detailed order has been passed by the learned Additional Sessions Judge. Apart from taking note of the contents of the FIR and the factual situation, the legal position has also been considered, which has been enumerated by the citations relied on.

5. The contents of the FIR would show the allegations regarding misuse of the provisions under RTI Act by respondent No.2. The various applications, which are more than 40 in number, would show the conduct of respondent No.2. However, those applications were filed with the college authority, who could have dealt with those applications. Now, it is alleged in the FIR that taking disadvantage of filing such application, respondent No.2 has tried to extort money. It is not the case of the applicant that they had parted with the property i.e. amount as per the demand of respondent No.2. Therefore, taking into consideration the contents of the FIR, it appears that it was an attempt and

not a complete act. There was nothing to be recovered at the instance of respondent No.2. Now, as regards the allegation that respondent No.2 gave threat to the applicant and his brother that he has saved certain photographs of the applicant and his brother in respect of their private life in his laptop and then gave threat to make it viral on social media; offence under Indian Penal Code in respect of these contents or offence under Information and Technology Act has not been registered against respondent No.2. Learned Advocate for the applicant has expressed anxiety that respondent No.2 would delete that data and it will be then difficult to recover the same. When, in fact, no offence has been registered under the relevant Sections, the said anxiety or apprehension cannot be appreciated.

6. The order that has been passed by learned Additional Sessions Judge shows proper application of mind and it is perfect, which requires no interference. As regards any subsequent event is concerned, it would be for the police authorities to take note of it and if such offence is subsequently registered against respondent No.2, then fact about the registration of this offence and release of respondent No.2 in this case would be a relevant fact. Further, if the applicant intends to say that there is breach of terms of condition by respondent No.2, then he should approach the same Court for that purpose. Cancellation of bail by superior Court in that respect cannot be a relief.

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 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.”

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. Since no error has been committed by the learned Additional Sessions Judge while granting anticipatory bail to respondent No.2 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 application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm