

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925. APPLICATION FOR CANCELLATION OF BAIL NO. 44 OF 2021

Mr. Ravindra S/o. Baliram Dhawale,
Age 25 years, Occup. Labour,
R/o. Shivajinagar, Hudco, Tuljapur,
Tq. Tuljapur, District Osmanabad. **...Applicant.**

Versus

1. The State of Maharashtra,
Through In charge Police Station
Tuljapur Police Station,
Osmanabad.
2. Yogesh Vilas Dalvi,
Age 38 years, Occu. Business,
R/o. Vishvasnagar, Hudco,
Tuljapur, Tq. Tuljapur,
District Osmanabad. **....Respondents.**

...

Mr. A.B. Jagtap, Advocate for applicant.
Mr. V.S. Badakh, Advocate for respondent No. 1/State.
Mr. S.J. Salunke, Advocate for respondent No. 2.

...

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 45 OF 2021

Mr. Ravindra S/o. Baliram Dhawale,
Age 25 years, Occup. Labour,
R/o. Shivajinagar, Hudco, Tuljapur,
Tq. Tuljapur, District Osmanabad. **...Applicant.**

Versus

1. The State of Maharashtra,
Through In charge Police Station
Tuljapur Police Station,
Osmanabad.

2. Vishal Vijaykumar Chatre,
Age 34 years, Occu. Pujari,
R/o. Khatkal Gale, Shikurwarpeth,
Tuljapur, Tq. Tuljapur,
District Osmanabad.

....Respondents

...

Mr. A.B. Jagtap, Advocate for applicant.

Mr. V.S. Badakh, Advocate for respondent No. 1/State.

Mr. S.J. Salunke, Advocate for respondent No. 2.

...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 47 OF 2021

Mr. Ravindra S/o. Baliram Dhawale,
Age 25 years, Occup. Labour,
R/o. Shivajinagar, Hudco, Tuljapur,
Tq. Tuljapur, District Osmanabad.

...Applicant.

Versus

1. The State of Maharashtra,
Through In charge Police Station
Tuljapur Police Station,
Osmanabad.

2. Jyotiba S/o. Anandrao Zadpide,
Age 39 years, Occu. Labour,
R/o. Shikurwarpeth, Kane Galli,
Tuljapur, Tq. Tuljapur,
District Osmanabad.

....Respondents.

...

Mr. A.B. Jagtap, Advocate for applicant.

Mr. V.S. Badakh, Advocate for respondent No. 1/State.

Mr. S.J. Salunke, Advocate for respondent No. 2.

...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 48 OF 2021

Mr. Ravindra S/o. Baliram Dhawale,
Age 25 years, Occup. Labour,

R/o. Shivajinagar, Hudco, Tuljapur,
Tq. Tuljapur, District Osmanabad.

...Applicant.

Versus

1. The State of Maharashtra,
Through In charge Police Station
Tuljapur Police Station,
Osmanabad.
2. Vinod @ Pintu S/o. Vilasrao Gangane,
Age 41 years, Occu. Pujari,
R/o. Jijamata Nagar, Tuljapur
Tq. Tuljapur, District Osmanabad.

....Respondents.

...

Mr. A.B. Jagtap, Advocate for applicant.

Mr. V.S. Badakh, Advocate for respondent No. 1/State.

Mr. S.J. Salunke, Advocate for respondent No. 2.

...

CORAM : **PRAKASH D. NAIK, J.**
RESERVED ON : 06/12/2021.
PRONOUNCED ON : 23/12/2021

ORDER :

. These applications are preferred by the original complainant under section 439 (2) of Code of Criminal Procedure (for short 'Cr.PC.'), challenging the order dated 3rd February 2021, granting anticipatory bail to the respondents/accused in respective applications.

2. The First Information Report (for short 'FIR') was registered on 18th January 2021 vide Crime No. 22/2021 at the instance of applicant/complainant for offences under sections 307,

143, 147, 148, 149, 504, 506 of Indian Penal Code (for short 'IPC').

3. The case of the prosecution is that the complainant had acted as panch and witness in connection with the case relating to Tuljapur Yatra Anudan Scam. Since he was panch and witness, there was deadly attack on him. Offence was registered with Tuljapur Police Station. On 10.1.2021 at about 5.45 p.m. the complainant (applicant) was proceeding on his motorcycle towards his residence at Hadco, Shivaji Nagar. While on the way, he was accosted by the persons who came on 4 to 5 motorcycles. Vishal Chatre got down from the motorcycle and he assaulted the complainant by sickle on his back. Vinod Gangne was armed with sharp sickle and he chased the complainant. He ran away to save his life. Accused Vinod Gangne confronted him and assaulted with iron sickle by giving blow on his head. Jyotiba Zadpide assaulted him with sickle. Prashant Kamble assaulted him with sickle. Ganesh Kale assaulted with iron rod. Sadik Shaikh assaulted with iron rod. Yogesh Dalvi and Manoj Dalvi assaulted with stones in their hand.

4. Yogesh Dalvi (accused No. 7) is respondent No. 2 in ACB No. 44/2021; Vishal Chatre (accused No. 1) is respondent No. 2 in

ACB No. 45/2021; Jyotiba Zadpide (accused No. 3) is respondent No. 2 in ACB No. 47/2021 and Vinod alias Pintu s/o. Vilasrao Gangane (accused No. 2) is respondent No. 2 in ACB No. 48/2021.

5. Accused Yogesh Dalvi preferred application for anticipatory bail before the Court of Sessions on 21st of January 2021. The bail application was numbered as Bail Application No. 51/2021. The learned Prosecutor filed an application before the Court on 29th of January 2021 seeking time to file say. Say was filed by learned Prosecutor on 2.2.2021. On 3.2.2021 another application was preferred by the learned Prosecutor, seeking adjournment to enable him to take instructions regarding antecedents of accused. The learned Additional Sessions Judge disposed of the said application on 3.2.2021. It was observed that anticipatory bail application is required to be heard as expeditiously as possible. Throwing application for adjournment and remaining absent by learned PP, simultaneously pressing hard for grant of anticipatory bail application by Advocate for accused is nothing but bringing the Court in crunch situation. The Advocate for complainant pointed out that his assistance to PP was not accepted by PP. This is a fit case where discretion of giving opportunity to Advocate for complainant needs to be granted as held

by High Court in case of **Vinay Poddar V/s. State of Maharashtra**. Thus, the application for adjournment is disposed of. Even then, if learned P.P. makes statement that accused would not be arrested in the period of adjournment sought by him, adjournment as prayed by him will be granted. If P.P. fails to make it clear, a written submissions of learned Advocate for complainant will be considered noting the absence of learned P.P. and with this observation, application was disposed of. Accused Vishal Chatre preferred application for anticipatory bail which was numbered as Bail Application No. 49/2021. The said application was filed on 21.1.2021. Similar application for adjournment was filed by Prosecutor on 29.1.2021. It was allowed. Say was filed on 2.2.2021. Prosecutor preferred similar application for adjournment on 3.2.2021 which was disposed of with identical order on 3.2.2021. The other accused preferred application for anticipatory bail and similar applications were filed by P.P. with identical order by Court on 3.2.2021.

6. The complainant filed affidavits before the Sessions Court opposing the applications for anticipatory bail. The affidavits referred to role of accused and their antecedents. The learned Sessions Judge by order dated 3rd February 2021 allowed the application for

anticipatory bail preferred by the respondents/accused. While allowing the said application, it was observed that the learned PP had sought adjournments by sending the applications and the advocate for the accused had pressed for relief. Learned PP had not accepted the material placed by the advocate for the complainant. It is further observed that the informant states that he is the panch and material witness in fraud of Tuljapur Yatra Anudan Scam. Prosecution resisted the application with general contention that offence is serious. Main contention is that accused had committed breach of the conditions. The Court further observed that the photographs were examined. First informant was admitted in hospital at Solapur. He has been discharged. He did not produce medical case papers. It is necessary to note the absence of Investigating Officer. He did not appear. There is battle of litigation amongst accused persons and the informant. The case is doubtful. The first informant had filed bunch of litigation. Hence, accused are entitled for anticipatory bail.

7. Learned advocate for the applicant/complainant submitted that the order is perverse. The offence is of serious nature. The order passed by the Sessions Court granting anticipatory bail deserves to be set aside. The accused were armed with dangerous weapons. The

complainant was assaulted in broad day light. The accused have no fear of law. Respondent Yogesh Dalvi (accused No. 7) was armed with stone. He had assaulted the injured along with the other accused. Accused Vishal Chatre was armed with weapon sickle and he assaulted the complainant with sickle. Accused Vinod Gangane had assaulted the informant mercilessly. Accused Jyotiba Zadpide had assaulted with sickle. Medical evidence supports the prosecution case. The learned Judge has ignored seriousness of offence. The criminal antecedents were overlooked. He relied on decisions of Supreme Court in the case of Narendra Amin V/s. State of Gujrat, Kanwar Singh Meena V/s. State of Rajasthan and Anr. and Puran V/s. Rambilas.

8. Respondents accused in respective applications have filed affidavit in reply. It is submitted that the learned Sessions Judge has rightly granted anticipatory bail to the accused. There is no evidence to establish that the offence was under section 307 of IPC. Investigation is completed and chargesheet is filed. The accused are falsely implicated in other crimes. The Prosecutor sought repeated adjournments. The Court had no other alternative to proceed with matter. The Court had perused documents on record and granted relief. The question of liberty of accused was involved. The I.O. was

not present. The Court heard counsel for complainant. No ground is made out for cancellation of bail. There are no overwhelming circumstances to cancel bail granted to accused. Learned counsel relied on several decisions laying down parameters for cancellation of bail, such as :-

- (i) Bhagirathsinh Judeja V/s. State of Gujrat,
- (ii) Dolat Ram V/s. State of Haryana,
- (iii) State of Maharashtra V/s. Vashishtha Rambhau Andhale and
- (iv) Siddaram Mhetre V/s. State of Maharashtra.

9. The evidence on record would indicate that the offence is of serious nature. Specific role has been attributed to the respondents/ accused. Report of the prosecution would indicate that there are several cases registered against accused Vishal Chatre. Procedure mentioned under Cr.P.C. and N.C. complaints filed against him. The prosecution now submitted that accused did not cooperate. Two cases were registered against Jyotiba Zadbide and five cases were registered against Yogesh Dalvi. Deadly weapons were used by the accused. The learned Sessions Judge has not considered the magnitude and gravity of the offence. The assault was brutal. Taking into consideration the seriousness of the offence, the accused should have been subjected to

custody. The injury certificates supports the case of prosecution. The learned Judge has harped on attitude of Prosecutor and absence of I.O. The learned Judge has overlooked affidavit of complainant giving role of accused and antecedents. The learned Judge has observed that, if, prosecutor makes statement about protection to accused adjournment would be granted. The Court could have used its discretion calling for investigation papers. The complainant was heard. Say was filed by the prosecution. Even if the prosecutor was absent, the learned Judge ought to have scrutinize the documents on record and reply filed by the State and affidavit of complainant. The offence was serious. Material on record, contentions of FIR indicated seriousness and magnitude of offence. Attack was brutal. Powers under section 438 are to be exercised in genuine case.

10. As far as the respondent No. 2 Yogesh Dalvi in ACB No. 44/2021 is concerned, role attributed to him is that he was armed with stone in hand and allegedly assaulted the complainant. He was not armed with any deadly weapon. In the light of factual aspects and overtacts of respondent No. 2 Yogesh Dalvi, liberty granted to him may not be curtailed. The order granting anticipatory bail to him need not be set aside. However, owing to the evidence, seriousness of offence,

the respondents/accused in ACB Nos. 45, 47 and 48 of 2021, order granting anticipatory bail to them has to be set aside.

ORDER

- i. ACB No. 44/2021 is rejected.
- ii. ACB Nos. 45, 47 and 48 of 2021 are allowed. The order dated 3rd February 2021, granting anticipatory bail to the respondents/accused is set aside and anticipatory bail granted to them stands cancelled.
- iii. The respondents/accused in ACB Nos. 45, 47 and 48 of 2021 are directed to surrender before the Investigating Officer within a period of four weeks from the date of uploading this order.
- iv. The applications stand disposed of.

[PRAKASH D. NAIK, J.]

ssc/