

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 53 OF 2021

Sambhaji s/o Nivrutti Bocharé

...Applicant

Versus

1. Digambar s/o Narayan Bocharé
2. Mahesh s/o Kanta Bocharé
3. Ganesh s/o Haribhau Bocharé
4. State of Maharashtra

...Respondents

...

Advocate for the Applicant : Mr.S. R. Andhale
APP for Respondent – State : Mr. A. V. Deshmukh
Advocate for Respondent Nos. 1 to 3 : Mr. S. S. Tope

...

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 29th NOVEMBER, 2021
PRONOUNCED ON : 23rd DECEMBER, 2021

PER COURT :-

1. This is an application for cancellation of bail preferred under Section 439(2) of the Code of Criminal Procedure.
2. The applicant is the first informant in Crime No. 482/2020 registered with Gondi Police Station, District Jalna for offences under Sections 307, 143, 147, 148, 149, 323, 325, 504, 506 of IPC. The respondent Nos. 1 to 3 are original accused. It is alleged that on 30.11.2020, at about 08.30 a.m., uncle of complainant Kanta Bocharé was feeding birds. Navnath

Bochare, quarrelled with Kanta. The complainant and his younger brother Sadashiv were abused by Kanta Ramji Bochare. He was told by the complainant not to abuse them. At that time Kanta Ramji Bochare caught hands of Sadashiv and Digambar Narayan Bochre (respondent No.1) assaulted him with piece of tile on his head. Sadashiv suffered injury to head and fell down. Mahesh Kanta Bochare (respondent No.2) gave blow of iron rod on head of Sadashiv and thigh of complainant. Wife of complainant Rukmin Bochare, mother Parwatibai Bochare, sister-in-law Jyoti Bochare and Dada Tarachand Bochare intervened. Ganesh Bochare (respondent No.3), Bhagwat Bochare and Haribhau Bochare came to the spot. Ganesh assaulted Rukmin by giving kick blow on her stomach. Haribhau assaulted Jyoti by fist blow. Bhagwat assaulted Parvatibai. She fell down. She suffered fracture to her hand.

3. Ganesh Bochare, Bhagwat Bochare, Haribhau Bochare, Digambar Bochare, Kanta Bochare and Mahesh Bochare were impleaded as accused Nos. 1 to 6. Accused Nos. 2, 3 and 5 were arrested on 05.12.2020.

4. On 29.12.2020 the respondent Nos. 1 to 3 filed application for anticipatory bail. The said application was

rejected by order dated 13.01.2021. On 29.01.2021 the respondent Nos. 1 to 3 preferred another application for anticipatory bail before the same Court. The said application was allowed by order dated 06.02.2021.

5. The order dated 06.02.2021 is challenged by the applicant / informant in this application.

6. Learned Advocate for the applicant submits that the order granting anticipatory bail is illegal. The offence is of serious nature. The injured Sadashiv Bochare was hospitalized for long period. He has not fully recovered. The accused are habitual offenders. They were harassing the complainant and his family. Non cognizable complaints are registered against the accused. The second application for anticipatory bail is not maintainable. There was no change in circumstances. The injured was assaulted with intention to kill. Proper investigation was required to be carried out. The weapon was not seized. Sadashiv was in Hospital at Aurangabad. He is not fully recovered. The medical case papers dated 30.11.2020 from private hospital opines that there is linear undisplaced fracture of parietal bone on right side. He was admitted in Phoenix Hospital and operated for right extra dural hematoma

The family of complainant and complainant has filed several complaints against accused. The accused are threatening complainant to withdraw complaint.

7. Learned Advocate for the applicant has relied upon the decisions of the Supreme Court in the case of ***Puran Vs. Ramvilas AIR 2001 SC 2023, Gajanan Agrawal Vs. State of Orissa reported in AIR 2006 SC 3248, Gulabrao Baburao Dewekar Vs. State of Maharashtra 2013 DGLS (SC) 1024 and Hariram Khambi Vs. Satyanarayan and another reported in 2021 DGLS (SC) 700.***

8. Learned Advocate for the respondent submits that the learned Sessions Court has considered the material and granted anticipatory bail to the accused. There is no evidence against the respondent Nos. 2 to show his involvement. Custodial interrogation of the respondents was not necessary. No case is made out for cancellation of bail. Bail once granted cannot be cancelled mechanically. The respondents are falsely implicated in this case. The application is silent in respect of overwhelming circumstances and cogent reasons for cancellation of bail. Anticipatory bail was granted to respondent Nos. 1 and 3 by order dated 06.02.2021. The

reasons were assigned for granting relief. The FIR is after thought. There is delay of two days in registering FIR. Respondent No.1 is agriculturist. He is injured person. The injured was fully recovered. While allowing application, the Court noted change in circumstances. On completing investigation charge sheet is filed. The respondents filed affidavit in reply. Respondent No.2, Mahesh Bocharé was the student of Engineering College. He has completed degree of engineering. He has no criminal antecedents. After granting anticipatory bail, no complaint is lodged against him. Respondent No. 3 Ganesh Bocharé is the student of BA. He has no criminal antecedents. Respondent No. 1 Digambar is the agriculturist. He was injured. He was admitted in hospital from 30.11.2020 to 15.12.2020. His statement was recorded but no offence was registered. The discharge card of Sanjivani Multispeciality Hospital is annexed to reply, wherein it is mentioned that respondent No.1 was admitted on 10.12.2020 and discharged on 16.12.2020. The history mentioned therein refers to assault 10 days back and admission in Civil Hospital at Jalna, 10 days back. The applicant and accused are relatives. Civil dispute is going on between them. Sadashiv is fully recovered from injuries. Investigation is complete and charge sheet is filed, hence, custody of respondent Nos. 1 to 3

is not necessary. The respondents have not committed breach of conditions.

9. The incident of assault had occurred on 30.11.2020 at 08.30 a.m., the First Information Report was registered on 02.11.2020 at 22.28 p.m. The respondent Nos. 1 to 3 are accused. The application for anticipatory bail was preferred by them before the Sessions Court at Jalna on 29.12.2020. The application was opposed by the complainant by filing affidavit dated 06.01.2021. In the affidavit filed by the complainant, it was stated that the injured had suffered head injury and he has been admitted in Hospital. The condition of the injured is critical. Injured is taking treatment at Primary Health Centre at Pachod. The application for anticipatory bail was rejected by the Sessions Court by order dated 13.01.2021. While rejecting said application the Court has referred to affidavit of complainant, case diary and FIR. It was observed that Sadashiv has suffered head injury. The Court perused objections alongwith photographs. It was further observed that injured is taking treatment at Primary Health Centre at Pachod. There is tension amongst both the groups. Prima-facie, it appears that injured has suffered serious head injury. Investigation is in progress and injured is taking treatment.

Grampanchayat elections are there and there is likelihood of law and order problem. Hence the application was rejected on 13.01.2021.

10. The respondents preferred another application for anticipatory bail on 29.01.2021. In the said application it was stated that their previous application was rejected by the Court. The injured had suffered minor injuries. While rejecting the previous application it was observed that the injured is taking treatment and the complainant has filed affidavit taking strong objection for grant of anticipatory bail. In the affidavit dated 06.01.2021 it was stated that the injured is taking treatment in Primary Health Centre at Pachod. The injured had treated himself at Primary Health Centre and left the Centre after dressing. Except 16.12.2020 the injured has not visited Primary Health Centre. The relatives of applicant had applied for information through RTI in which the aforesaid information was provided. The complainant had filed false affidavit before the Court and mislead the Court which is evident from the information received through RTI. The reason assigned for rejecting the application for anticipatory bail does not exist. Investigation is complete. Two other accused were arrested by the police. They were granted regular bail. Nothing is to be

recovered. The accused Digambar Bocharé is taking treatment, the accused Mahesh Bocharé and Ganesh Bocharé are taking education. There was no chances that the accused would abscond.

11. The application was opposed by prosecution by prosecution by 'say' dated 06.02.2021. Sambhaji Nivrutti Bocharé (applicant) filed affidavit dated 03.02.2021 opposing the application for anticipatory bail. In the say filed by investigating officer it was stated that, accused had played role in assault. Investigation is in progress. Custodial interrogation is necessary. Injured is still hospitalized. In the affidavit of complainant, it was stated that the injured is still under going treatment. He is admitted in Phoenix Hospital at Aurangabad on 28.01.2021. The accused are threatening. N.C. Complaint has been registered against them. Health of injured is critical.

12. Learned Additional Sessions Judge allowed the said application for anticipatory bail by order dated 06.02.2021. While allowing the said application the Court has noted the submissions of respondent accused that previous application of accused was rejected on 13.01.2021. The Court had drawn inferences that the injured is still taking treatment in the

Hospital. The complainant had strongly objected application and filed affidavit stating that injured Sadashiv is taking treatment at Primary Health Centre, Pachod and submission in that regard, were made by the Advocate representing complainant and considering these aspects the Court had given reference of grampanchayat elections and rejected previous application for anticipatory bail. Sadashiv Bocharé was suffering from minor injuries. He had taken treatment at Primary Health Centre at Pachod and left the Hospital after dressing. He did not visit said Hospital thereafter. The affidavit filed by the complainant stating that injured is taking treatment in said hospital is totally false. The accused has received information in that regard through RTI, which is placed before Court. There is delay in lodging the FIR. The accused was injured. Accused Bhagwat and others were arrested and granted bail. Recovery is complete. Hence second application be considered. The Court also considered the reply filed by the prosecution wherein it was contended that there are eye witnesses to the incident. The accused have assaulted the injured with iron rod, fist / kick blows and tile. The Court consider the objection raised by the prosecution and the complainant. The Court also noted the fact that the submission of the complainant is that the injured

is taking treatment and threats were issued to the complainant. He is admitted in hospital after analyzing the factual aspects, in paragraph No. 6 of the impugned order it was observed that the injured and the accused are related to each other. They are neighbours. Injured had suffered head injury. He has undergone surgery. In the previous affidavit opposing previous anticipatory bail, the complainant has stated that NC complaint of threats, were filed against accused and that injured is taking treatment at Primary Health Centre at Pachod. The accused had received information through RTI. That, Sadashiv Bocharé is not admitted at Primary Health Centre, Pachod. He has visited the Hospital in OPD Department on 16.12.2021 and he left the Hospital after dressing. He did not visit Hospital thereafter. The complainant has again filed affidavit and contended that the injured has undergone second surgery on 28.01.2021 and produced certificate issued by Phoenix Hospital at Aurangabad. The question is how much reliance can be placed on such certificate. The previous affidavit was contrary to circumstances. The applicants (accused) had contended that the photograph produced by complainant in previous application is false. The complainant has not given any clarification and therefore there is reason to believe that the

complainant is injured trying to pretend that treatment is still taking and his health is critical. The incident is of 30.11.2020. More than two months has been passed. Nothing is to be recovered from the accused. The applicant Nos. 2 and 3 are taking education. There are no criminal antecedents. Although it was second application for anticipatory bail, since truth was revealed in the affidavit it is possible to entertain application in view of change in circumstance.

13. The law related to grant of anticipatory bail, cancellation of bail, maintainability of successive application for anticipatory bail is well. The settled principles are enunciated in the decisions relied by the learned Advocate for the applicant. The learned Judge in detail assigned reasons for entertaining second application for anticipatory bail. The submissions of both sides were considered. The State has not preferred application for cancellation of bail. The learned Sessions Judge in detail has analysed the fact that the previous application was rejected and the facts brought on record by preferring second application for anticipatory bail and reasons are assigned for entertaining and granting the second application for anticipatory bail. The impugned order indicate that the previous application was rejected primarily on the

basis of the contentions of the complainant about the health condition of the injured reflected in affidavit filed by him. The Court noted falsity in previous affidavit on the basis of information received through RTI. The Court noted the fact that the complainant had tried to pursue that the injured was admitted in Primary Health Centre at Pachod and taking treatment and the RTI information discloses otherwise. The complainant has now relied upon the other documents with regard to the treatment of the injured. It is pertinent to note that the Court has meticulously considered the factual aspects of the matter and distinguished the circumstances in which the previous application was rejected and the change in circumstances after rejection of the previous application. On completing investigation charge sheet has been filed on 15.03.2021. In these circumstances there is no reason to set aside the order granting anticipatory bail passed by the learned Sessions Judge. Hence, the order :

ORDER

Application for Cancellation of Bail No. 53 2021 stands rejected and disposed of.

(PRAKASH D. NAIK)
JUDGE

shp/-