

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

APPLICATION FOR CANCELLATION OF BAIL NO. 83 OF 2021

Balaprasad s/o Mohan Agrawal, ... **Applicant**
Age 35 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur
Dist. Aurangabad

VERSUS

1. Sukhdeo s/o Pundlik Jagdale, ... **Respondents**
Age 67 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur,
Dist. Aurangabad
2. State of Maharashtra
Through Police Station Shivoor,
Tq. Vaijapur Dist. Aurangabad

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 84 OF 2021

1. Balaprasad s/o Mohan Agrawal, ... **Applicant**
Age 35 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur
Dist. Aurangabad

VERSUS

1. Bhaskar s/o Dashrath Lokhande ... **Respondents**
Age 37 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur,
Dist. Aurangabad
2. Dnyaneshwar s/o Pundlik Jagdale
Age 36 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur
Dist. Aurangabad
(Dnyaneshwar s/o Uttam Jagdale
as per FIR Crime No.1-319-2020)
3. State of Maharashtra
Through Police Station Shivoor,
Tq. Vaijapur Dist. Aurangabad

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 86 OF 2021

Balaprasad s/o Mohan Agrawal, ... **Applicant**
Age 35 years, Occu: Agri.
R/o Janephal, Tq. Vaijapur
Dist. Aurangabad

VERSUS

1. Rameshwar s/o Nanasaheb Lokhande, ... **Respondents**
Age 30 years, Occu: Agri.
2. Akash s/o Nanasaheb Lokhabnde
Age 24 years, Occu: Agri
3. Vasant s/o Kacharu Lokhande
Age 31 years, Occu: Agri.
4. Nanasaheb s/o Dashrath Lokhande
Age 60 years, Occu: Agri
5. Bhaurao s/o Bhaskar Lokhabnde,
Age 50 years, Occu: Agri.
6. Sainath s/o Kashinath Thorat
Age 48 years, Occu: Agri

All R/o Janephal, Tq. Vaijapur,
Dist. Aurangabad
7. State of Maharashtra
Through Police Station Shivoor,
Tq. Vaijapur Dist. Aurangabad

Mrs S. D. Tambat- Dhumal, Advocate for the applicants,
Mr. S. B. Narwade, A.P.P. for the State.
Mr. A. S. Radikar, Advocate for respondents accused.

CORAM : PRAKASH D. NAIK, J.
DATE : 25th October, 2021

ORDER:

1. All these applications are preferred by the applicant/original complainant under section 439 (2) of the Code of Criminal Procedure challenging the order granting anticipatory bail to the respondents/accused in the respective applications.

2. The First Information Report (for short "FIR") bearing Crime No. I-319/2020 was registered on 23.11.2020 with Shivoor Police Station, District Aurangabad for the offences punishable under sections 395, 324, 323, 506 of the Indian Penal Code. The complainant has alleged that on 21.10.2020, while the complainant and other family members were at home, Vasant Kachru Lokhande, Nanasaheb Dashrath Lokhande, Rameshwar Nanasaheb Lokhande, Bhaskar Dashrath Lokhande, Bhaurao Bhaskar Lokhande, Sainath Kashinath Thorat, Sukhdeo Pundlik Jagdale and Dnyaneshwar Uttam Jagdale had come to the residential premises of the complainant. They started removing angles installed before the residence for the purpose of fencing. Wife of the complainant questioned them about their behaviour. The complainant also reached the spot. The accused assaulted the brother of complainant by stick and stone. Sister-in-law of the complainant intervened but she was also assaulted. Gold ornament from her person was snatched. The parents of the complainant intervened. They were intimidated. Hence the FIR was lodged for the offences as aforesaid.

3. Respondents accused approached the Court of sessions seeking anticipatory bail. Learned Sessions Judge vide orders dated 22.03.2021 (ACB No. 83/2021), 24.03.2021(ACB No.84/2021) and 06.04.2021 (ACB No. 86/2021) granted anticipatory bail to the respondents/accused.

4. The aforesaid orders granting anticipatory bail to the respondents/accused are under challenge before this Court.

5. The learned Advocate for the applicant submitted that the order dated 22.03.2021 passed by the learned Sessions Judge, Vaijapur was passed without considering the merits of the case. The learned Sessions Judge had not considered the evidence collected during the course of investigation and without assigning proper reasons, the applications were allowed. The learned Sessions Judge was influenced by the fact that there has been delay of 33 days in lodging the FIR. The Court did not take into consideration the fact that immediately after the incident, the complainant was required to follow up with the police authorities his grievance against the accused. Repeated complaints were made to the Police which are part of these applications and ultimately, the first information was lodged on 23.11.2020. No fault can be found with the complainant for registering of the FIR belatedly. The offence is of serious nature. Specific role has been attributed to the accused. The impugned orders also suffer from serious infirmities. Learned Sessions Judge, while granting anticipatory bail to the accused,

has not considered the overt act attributed to the accused, nature of offence against them and nature of the act committed by them. Custodial interrogation of the respondents/ accused is necessary. Serious offence under section 395 IPC was committed by the accused. Gold ornament of the wife of the complainant was taken away by the accused which was to be recovered. Offence under section 395 IPC is a serious offence. The Sessions Judge ought not to have exercised powers under section 438 Cr.P.C. while granting bail to the respondents/ accused.

6. Learned counsel for the respondents/accused in respective applications submitted that although there are no detail reasons in the order dated 22.03.2021 granting anticipatory bail to Sukhdeo Pundlik Jagdale, the other orders under challenge which are passed by the Same Court refers to reason as to why the accused are admitted to anticipatory bail. Invocation of Section 395 IPC is based on the concocted version of the complainant. There is no element of robbery or dacoity in this case. Custodial interrogation of the respondents/ accused was not necessary pursuant to the grant of anticipatory bail. The investigation proceeded and the charge sheet is filed against the accused on 15th July, 2021. Thereafter, in view of the relief granted by the Court under section 438 Cr.P.C., the accused had executed Bail Bonds before the Trial Court and proceedings are pending before the said Court.

7. Learned A.P.P. submitted that there is evidence against the accused/respondents. They are involved in serious offence. The weapon used in the crime and the ornament of the wife of the complainant are not recovered. It is further submitted that there are statements of witnesses recorded during the course of investigation which supports the prosecution. There is evidence showing involvement of the respondents/accused in this offence.

8. I have perused the documents on record. I have also perused the copy of charge sheet. Incident had occurred on 21st October, 2020. It appears that the complainant had forwarded complaints to the police of which cognizance was not taken immediately. Apparently, the complaints made by the complainant were not before the Sessions Court. From the tenor of FIR it is apparent that allegation relating to offence under section 395 IPC appears to be exaggerated. Order granting anticipatory bail to Sukhdeo Pundlik Jagdale refers to the fact that there was delay of 33 days in lodging the FIR. There is no explanation for delay in the FIR. The order granting anticipatory bail in respect to co-accused, which is subject matter of ACB No.84/2021 was passed on 24.03.2021. In the said order, it was observed that there has been delay in lodging the FIR in respect to the incident of snatching gold ornament of sister-in-law and mother of the informant. While granting anticipatory bail to the respondents/accused in ACB No.86/2021, it has been observed that there has been delay in lodging

the FIR. There is omnibus allegation against the accused. The FIR appears to be counterblast to the case filed by one of the accused.

9. I have perused the first information report. The allegations appears to be of vague nature. Pursuant to the grant of anticipatory bail, investigation is completed and charge sheet has been filed before the concerned court. Thus, the question of subjecting the respondents/accused to custodial interrogation is ruled out.

10. In light of factual matrix of the case, nature of allegations and considering the submissions of both the sides, I do not find any reason to interfere with the impugned orders granting anticipatory bail to the respondents/accused. Hence, I pass following order:

ORDER

Application for Cancellation of Bail Nos. 83/2021, 84/2021 and 86/2021 are rejected and stand disposed of.

(PRAKASH D. NAIK, J.)

JPC