

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

APPLICATION FOR CANCELLATION OF BAIL NO. 148 OF 2021

Vijay Kisan Murtadak, ... **Applicant**
Age 50 years, Occu: Agriculture
R/o Murpur, Tq. Sangamner,
District Ahmednagar

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Station Officer,
Sangamner Taluka Police Station,
Sangamner, District- Ahmednagar
2. Shiva @ Shivaji Bhima Telang
Age 31 years, Occu : Agri. & Business
3. Bhagwan Bhima Telng,
Age 32 years, Occu: Agri. & Business

Mr. Vinod Y. Bhide, Advocate for the applicant,
Mr A. S. Shinde , A.P.P. for the State.
Mr. K. N. Shermale, Advocate for respondent No.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 29th November, 2021

ORDER:

1. This is an application for cancellation of bail under section 439(2) of the Code of Criminal Procedure.
2. Applicant is informant First information report bearing Crime No.264 of 2021 registered with Sangamner Taluka Police Station, Sangamner, District Ahmednagar for the offence punishable under sections 326, 354(1)(i), 427, 504, 506 r/w 34 of the Indian Penal Code (for short 'IPC'). Subsequently section 307 IPC was added.

3. The case of prosecution is that the complainant is guarantor for loan obtained by Sushilabai Bhima Telang from Gagangiri Maharaj Credit Society, Sangamner. Since the borrower did not repay the loan, the credit society had levied encumbrance on the agricultural land of the complainant. The complainant was insisting the borrower to repay the loan. On 16.06.2021, Bhima Telang, Maruti Telang, Bhagwan Telang and Shivaji Telang were standing on the road. Wife of complainant told them to repay the loan borrowed by them to clear the agricultural land of the complainant from encumbrances. At that time, Shivaji Telang caught hand of complainant's wife. Maruti Telang pulled her blouse and tore it on shoulder. He pressed chest of the complainant's wife. The complainant intervened. Bhima Telang and Bhagwan Telang assaulted him with iron rod by giving blow on his head. The complainant and his wife returned home. They informed about incident to their children. Son and nephew of complainant visited shop of Bhima Telang. The complainant followed them. There was quarrel between complainant's son, nephew and children of Bhima Telang. At that time, Bhima Telang, Maruti Telang abused and threatened the complainant. Bhagwan Telang, Shivaji Telang assaulted complainant's son - Ashwin by iron rod by blow near his eyebrow and legs. The nephew of the complainant Dattatray was assaulted on his head, legs, back and abdomen. Ashok and Yogesh suffered injuries. The complainant intervened. He was assaulted by iron rod. Wife of the complainant lost her Mangalsutra. They were taken to hospital.

4. Respondent No.2 and 3 were arrested on 23.6.2021. They were produced for remand on 23.6.2021. They were remanded to police custody till 25.6.2021. On 25.6.2021, the Police requested for Magisterial custody. They were remanded to MCR. They preferred application for bail before the court of Sessions. On 25th June, 2021, learned Sessions Judge, by order dated 16th July, 2021, granted bail to respondent No.2 and 3 on certain conditions.

5. Learned Advocate for the applicant submitted that the offence is of serious nature. Learned Sessions Judge has committed error in granting bail to them. The allegation was sufficient to bring home charge under section 307 IPC. Injuries were of grievous nature. Injured were indoor patients. Nephew of the complainant was indoor patient from 16.06.2021 to 22.06.2021. Complainant was also indoor patient from 16.06.2021 to 22.06.2021. Learned Judge has overlooked seriousness of injuries. Recovery of weapon was sufficient to infer the role of Accused. Crime No.141/2016 was registered against respondent Nos. 2 and 3. They are habitual offenders. Two persons are still absconding. The accused have outraged modesty of witness. They were armed with dangerous weapons. There are injured eye witnesses to incident. Injury certificate support version of witnesses. The injuries were grievous. There was attempt to commit murder.

6. Learned APP submitted that there was sufficient evidence against accused. They are named in the first information report. Overt

act is attributed to them. The offence is of serious nature. Crime No.141/2016 was registered with Sangamner Taluka Police Station for the offence punishable under section 307, 143, 147, 148, 149, 323, 504, 506, 325, 427 IPC against respondents. Crime No. 146/2016 is registered against them with same police station under section 307 IPC. Ashok had sustained head injury due to assault. Due to financial constraint, he was discharged from the Hospital. He was readmitted in the hospital. It is proposed to seek cancellation of bail granted to accused who has been released on bail by High Court.

7. Learned counsel for respondent Nos. 2 and 3 has submitted that there is no illegality in the order passed by the Court granting bail. There is no ground for cancellation of bail. The co-accused were granted anticipatory bail by this Court vide order dated 29th July, 2021. Charge sheet is filed. Statement of Ashok was not recorded by taking disadvantage of the fact that the complainant has alleged that Ashok is not in position to give statement to the police. He was utilizing his cell phone. He was avoiding to give statement. There is no breach of conditions. The learned counsel relied upon the decision of Supreme Court in the case of Prabhakar Tewari Vs. State of U.P. and others in Criminal Appeal No.152/2020. Myakala Dharmarajam and others etc. vs. The State of Telangana and others (2020) AIR (SC) 317 and several other decisions.

8. I have perused the order passed by learned Sessions Judge granting bail. It was observed that it is prima facie seen that injured Ashok has sustained grievous hurt. He was discharged from Hospital and again readmitted in the Hospital. There is no possibility of attracting more serious offence. Enmity is double edged weapon. It may cause implication by making false allegation. Whether the offence under section 307 is applicable in the present case or otherwise is debatable question. The applicants were in custody. Weapon is recovered.

9. Respondent Nos. 2 and 3 were arrested. They were produced for remand. Initially, police custody was granted. Thereafter, they were remanded to MCR. They were in custody from 22.6.2021. Regular bail was granted to them on 16.7.2021. They were granted regular bail. Maruti Telang and another accused preferred application for anticipatory bail before this Court which has been allowed by order dated 29th July, 2021. It was observed that Bhagwan Telang and Shivaji Telng had inflicted blows of iron rod on the head of Ashok and Yogesh. Primary evaluation of FIR conveys that there is dispute between two families over loan/financial transaction. Co-accused Bhagawan Telang and Shivaji Telang were arrested and granted bail.

10. Further custody of respondent No.2 and 3 was not necessary. They were already subjected to custody. Charge sheet has been filed. Hence no case is made out for setting aside the order granting bail. Hence, I pass the following order:

ORDER

Application for Cancellation of Bail No. 148 of 2021 is rejected and disposed of.

(PRAKASH D. NAIK, J.)

JPC