

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

APPLICATION NO FOR CANCELLATION OF BAIL NO. 155 OF 2021

Laxman s/o Bhimraj Adsare, ... **Applicant**
Age 45 years, Occu: Agri.
R/o Shevgaon Road, Tisgaon,
Tq. Pathardi, District Ahmednagar

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Inspector/I.O.
Police Station Pathardi,
District Ahmednagar.
2. Gayabai w/o Radhakisan Narwade,
Age 53 years, Occu: Household
R/o Narwadi Vasti, Tisgaon,
Tq. Parbhani, District Ahmednagar

Mr. Rajendra P. Phatke, Advocate for the applicant,
Mr. V. S. Badakh, A.P.P. for the State.
Mr. Chaitanya Deshpande h/for Mr. Ganesh P. Darandale, Advocate for
respondent No.2

CORAM : PRAKASH D. NAIK, J.
DATE : 22nd November, 2021

ORDER:

1. This is an application under section 439 (2) of the Criminal Procedure Code seeking cancellation of bail granted to respondent No.2., vide order dated 11th August, 2021 passed by the learned Sessions Judge, Ahmednagar in Criminal Application No.1160/2021. Applicant is the first informant who had set the law into motion by registering the first information report.

2. In the First Information Report dated 5th July, 2021, the complainant had alleged that relations between respondent No.2 accused and her husband (deceased) were strained on account of dispute over the property. In the past the respondent-accused had transferred the property in her name which was in the name of deceased. On 4th July, 2021, at about 3.30 p.m. he came to know from the members of public that his cousin Radhakisan (deceased) is being assaulted near his house. The informant proceeded to the place of incident. The victim was tied to a tree and his wife Gayabai (respondent No.2), Sandip Dhale, Meera Sandip Dhale, Anita Ashok Zirpe were assaulting the victim with wooden log and stone. Applicant/complainant intervened and requested the accused not to assault him. He was abused and was told not to intervene in the quarrel. He left the place. At about 8.00 p.m. on the same day, the informant, his aunt and villagers went to the place of incident and noticed that the victim was unconscious due to assault. Police had visited the spot, victim was taken to the hospital for treatment. He was declared dead by the Doctors. The first information was lodged on 05.07.2021 at about 20.57 p.m. for the offence under section 302, 342, 504,506, 34 of the Indian Penal Code.

3. Respondent No.2 was arrested on 10th July, 2021. Co-accused Sandip Dhale was arrested on 06.07.2021 and accused No.3 was arrested on 18.08.2021. Investigation proceeded. Respondent No.2

preferred an application for bail which was allowed by the Court of Sessions.

4. Learned Advocate for the applicant submitted that learned Sessions Judge has mechanically granted bail to respondent no.2 without taking into consideration the nature of offence against the respondent accused. The only ground for granting bail which was considered by the learned Sessions Judge is that there has been delay in lodging the first information report. The learned Judge has not taken into consideration the seriousness of the offence. There was strained relationship between respondent No.2 and the deceased. Dispute was on account of property. Respondent No.2 had a motive to commit crime. The applicant is the cousin of the deceased. He was threatened when he intervened. In the circumstance, only on the ground that the applicant did not approach police immediately, the learned Sessions Judge ought not to have granted bail. The injured had sustained several injuries as a result of assault. The first informant/applicant has attributed overt act to respondent No.2. Offence was registered under section 302 IPC. Victim succumbed to the injuries sustained by him.

5. Learned counsel for respondent No.2 submitted that respondent No.2 has been falsely implicated in this case. The complainant did not approach police immediately. If the applicant had seen the incident of assault, it was expected that he would have

approached the police immediately. His conduct shows that he had not seen the incident of assault. The learned counsel submitted that no case is made out by the applicant to interfere in the impugned order granting bail. Except the complainant, there is no other eye witness to the incident. The order granting bail assigns reason.

6. The learned A.P.P. submitted that the learned Sessions Judge, while granting bail to the accused has failed to take into consideration the seriousness and magnitude of the offence. He also submitted in fairness that other than the complainant there are no eye witnesses to the incident. Statements of other witnesses were recorded. Their statements are hearsay. They have deposed in accordance with the information given by the first informant. The offence is of serious nature. Complainant is eye witness to the incident and the learned Judge ought not to have granted bail to respondent No.2.

7. On perusal of the first information report, it can be seen that respondent No.2 is wife of the deceased. The case of the prosecution is that relationship between respondent No.2 and deceased was not cordial on account of dispute over the property which was allegedly transferred in her name by respondent No.2. The said incident had occurred about 10 years ago. According to the complainant, on learning about the assault on victim, he reached the spot at about 3.30 p.m. He had allegedly intervened but he was threatened by the accused

and he left the place. According to him, the victim was tied to the tree and accused were assaulting him by wooden log and stick. Learned Sessions Judge had rightly observed that the complainant was silent after seeing the incident and did not approach the police for lodging the complaint. According to the complainant he reached the spot again on the same day at 8.00 p.m. and noticed that victim was unconscious. Surprisingly, there are no other eye witnesses to the incident. The injured had sustained several injuries. The question is who is the author of the injuries. The question arises for consideration at this stage is whether there is cogent material to establish participation of respondent No.2/accused in the alleged crime and whether the bail granted to her can be cancelled. I do not find any supervening circumstance to set aside the order passed by the learned Sessions Judge. No case is made out to interfere in the impugned order. Hence, I pass the following order:

ORDER

Application for Cancellation of Bail. No.155 of 2021 is rejected and disposed of.

(PRAKASH D. NAIK, J.)

JPC