

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 106 OF 2017

Vivek Mahadev Yadav	 Applicant
v/s.	
The State of Maharashtra and ors.	 Respondents

Mr. Nilesh Tribhuvan i/b. White & Brief for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Aashish Satpute i/b. Mr. Vikas B. Shivarkar for R.Nos.2 to 7.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th SEPTEMBER, 2021.

P. C. :-

. This is an Application under Sub-section 2 of Section 489 of Cr.Pc. for cancellation of bail granted to Respondent Nos.2 to 7 by Sessions Judge, Pune vide order dated 09/02/2017 in Criminal Bail Application Nos.4099/2016, 4230/2016 and 4516/2016.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for Respondent Nos.2 to 7. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. Chetan Yadav, the brother of the injured – Vivek Yadav, had lodged the first information report alleging that on 15/09/2016, the Respondent Nos.2 to 7 and the other co-accused who were armed with deadly weapons, formed an unlawful assembly with the common object of causing death of Vivek Yadav. In prosecution of the common object, one of the members of the unlawful assembly fired the pistol and cause firearm injury to Vivek Yadav. Based on the said FIR, C.R.No.158/2016 came to be registered with Lashkar Police Station against Respondent Nos.2 to 7 and other co-accused for offences under Section 143, 147, 148, 149, 307 of the Indian Penal Code and Section 3/25 of Arms Act and Section 37(1)/135 of Bombay Police Act.

4. The records prima facie indicate that on 15/09/2016, there was a procession of Ganesh Visarjan (immersion of idol of Lord Ganesh). It is alleged that the Respondent Nos.2 to 7 and some other persons had joined the procession. The case of the prosecution is that the co-accused – Vishnu Gavali had a pistol in his hand and that he opened fire and thus caused firearm injuries to Vivek Yadav. It is stated that there was stampede on account of the said incident. Said Vivek was taken to Ruby Hall Clinic hospital and was operated.

5. The Respondents who were named in the FIR came to be arrested in the said crime. The Bail Applications filed before the Sessions Court were allowed mainly on the ground that the firearm injury was caused by Vishnu Gavli. The learned Judge has observed that there is no prima facie material to indicate that Respondent Nos.2 to 7 were armed with any kind of weapon or that they had caused injury to any of the persons participating in the said procession. The learned Judge has also observed that except for the presence in the procession, there is nothing on record to show the involvement of these Respondents in commission of the crime.

6. The learned Judge has relied upon the decision of the Apex Court in *Maulana Mohammad Amir Rashadi v/s. State of U.P. 2012(2) Mah.L.J. Cri. 412* and held that bail cannot be denied merely on the basis of criminal antecedents. The learned Judge has also observed that except C.R.No.157/2014, all other offences are of the year prior to 1995. The learned Judge has also observed that investigation was completed and charge sheet has been filed and that the presence of Respondent Nos.2 to 7 was not required for the purpose of interrogation. Based on these findings, the learned Judge allowed the Application and enlarged the Applicants on bail.

7. Mr. Nilesh Tribhuvan, learned counsel for the Applicant submits that Respondent Nos.2 to 7 have violated the conditions of the bail. He contends that the learned Judge was not justified in releasing the Respondent Nos.2 to 7 on bail in view of their criminal antecedents. He further contends that the Respondents have threatened some of the witnesses who are residing in the same locality and that this conduct itself is a sufficient ground for cancellation of bail. He has relied upon the decisions of the Apex Court in *Younus Bin Omer Yafail alias Younus Bhai and ors. v/s. State of Andhra Pradesh (2013) 1 SCC 365* ; *Ash Mohammad v/s. Shivraj Singh alias Lalla Babu and another (2012) 9 SCC 446* ; *Neeru Yadav v/s. State of Uttar Pradesh and another (2014) 16 SCC 508* ; *State of Maharashtra v/s. Sitaram Popat Vetal and another (2004) 7 SCC 521* ; *Ram Pratap Yadav v/s. Mitra Sen Yadav and another (2003) 1 SCC 15* ; *Kishore Baliram Baru v/s. The State of Maharashtra 2015 SCC OnLine Bom 2787* . He further states that the State had also filed an Application before the Sessions Court for cancellation of bail on a similar ground.

8. I have perused the records and considered the submissions. It is well settled that parameters for grant of bail are entirely different from cancellation of bail. In *Myakala Dharmarajam and ors. v/s. The State*

of Telangana and anr. (2020) 2 SCC 743, the Apex Court has observed thus :-

“ 6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7. In Raghbir Singh v. State of Bihar this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered

that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in canceling the bail. ”

9. In the instant case, the material on record indicates that the co-accused Vishnu Gavli was armed with a pistol and he had caused firearm injury to Vivek Yadav. The Respondent Nos.2 to 7, who had participated in Ganesh Immersion procession, were not armed with weapons and had not inflicted injury on any person. In the absence of any material to indicate that they shared the common object, they cannot be prima facie held to be the members of the unlawful assembly. Consequently, they cannot be held vicariously liable for the acts of Vishnu Gavli. Hence, the observations of the learned Judge that there is no prima facie material to show the involvement of the Applicant in commission of the crime cannot be said to be perverse

resulting in miscarriage of justice.

10. The Applicant has also sought cancellation of bail in view of the crimes registered against Respondents over 25 years ago. No doubt criminal antecedents is one of the factors to be considered in the matter of bail, when there is prima facie material to link the accused to the crime. In the absence of such material, bail cannot be declined or cancelled solely on the ground of criminal antecedents. In the instant case, as noted above, there is no material to prima faice indicate that these Respondents were the members of an unlawful assembly. Hence, the bail cannot be cancelled solely on the ground of criminal antecedents.

11. The bail granted to the Respondents also cannot be cancelled on a vague allegation of threat to the complaint or the witnesses. Moreover, it is on record that the Application for cancellation of bail filed by the State on similar grounds has been dismissed by the Sessions Court and there is no challenge to the said order.

12. Having gone through the records, in my considered view, the order is not perverse and does not suffer from any infirmity. On the

contrary, the order is well reasoned and the discretion has been exercised judiciously. There is nothing on record to indicate that the Respondents have misused the liberty and/or thwarted the course of justice. It is stated that the charge sheet has already been filed and that the case is pending trial. Under the circumstances, in my considered view, there is absolutely no merit in the Application and is accordingly dismissed.

**PREETI
H JAYANI**

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(SMT. ANUJA PRABHUDESSAI, J.)