

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APPLN) NO. 30 OF 2021

(Sharda w/o Krishna Mamidi vs. State of Maharashtra and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Saurabh Chaudhari, Advocate for applicant.
Ms. T. H. Khan, APP for respondent No.1 State.
Ms. Nupur h/f. Mr. R. M. Tahliyani, Advocate for
respondent No.2.

CORAM : MANISH PITALE J.

DATE : 17/08/2021

This is an application filed under Section 439(2) of the Cr.P.C. seeking cancellation of bail granted to respondent No.2. The allegation against respondent No.2 is that he caused the death of the sister of the informant by assaulting her with a wooden log.

2. The Sessions Court in its order dated 01/03/2021, observed that although it appeared that the role attributed to the respondent No.2 in the incident in question was made out by the material on record including the postmortem report, nature of

head injury caused by the victim and the recovery of the wooden log allegedly used in the incident. Yet, bail was granted merely on the ground that the respondent No.2 did not have any criminal antecedents and that the respondent No.2 was ready to abide by terms and conditions that would be imposed by the Court.

3. Mr.Chaudhari, learned counsel appearing for applicant submits that the order granting bail is bereft of any reasons. The seriousness of the offence was not taken into consideration in the proper perspective. It was further submitted that there was at least one offence registered in the year 2017 against the respondent No.2, again at the behest of the victim, which ought to have been taken into consideration.

4. On the other hand, Ms. Nupur, learned counsel appearing for the respondent No.2 further submitted that the question regarding criminal antecedents was correctly appreciated by the Sessions Court for the reason that respondent No.2 is not a person habitually involved in criminal activities. Even the earlier offence registered against the respondent No.2 was at the behest of the victim herself. The record demonstrated that the respondent

No.2, as well as the victim were involved in an extra marital affair and that the incident was required to be appreciated in that backdrop. It was submitted that the respondent No.2 is ready to abide by any further condition that may be imposed to address the apprehension expressed on behalf of the applicant regarding threat to her and her minor child.

5. Ms.T.H.Khan, learned APP appeared on behalf of respondent No.1 State and submitted that that the Sessions Court ought to have imposed appropriate conditions while granting bail to respondent No.2, for the reason that the record shows that the applicant has a minor son and that her husband being a driver is out on duty and there is every possibility of the applicant being threatened by the respondent No.2.

6. In the present case there is no dispute about the fact that investigation has been completed and charge-sheet is filed. Bail was granted to the respondent No.2, on 01/03/2021. There is no material on record to indicate that any incident has occurred after grant of bail to the respondent No.2. Insofar as the reasons mentioned in the order granting bail are concerned, there is some substance in the contention raised on behalf of the applicant

that detailed reasons ought to have been given, but, the real apprehension on the part of the applicant appears to be threat to herself and her minor son from the respondent No.2, since the husband of the applicant is a driver, who is most of the time on duty. The apprehension expressed on behalf of the applicant can be addressed in an appropriate manner. Insofar as the grant of bail to the applicant is concerned, the incident has to be appreciated in the backdrop of the alleged extra marital relationship between the victim and the respondent No.2. At this stage, it does not appear that the respondent No.2, is a habitual criminal. Even the earlier offence registered against him in the year 2017, was at the behest of the victim herself and that too has to be appreciated in the backdrop of the relationship allegedly existing between the two.

7. Therefore, this Court is of the opinion that no case is made out for cancellation of bail, but, the Sessions Court ought to have imposed appropriate conditions, so as to address apprehension expressed on behalf of the respondent No.2.

8. In view of the above, the present application is disposed of by confirming the order of bail dated 01/03/2021, granted by the Court of

Additional Sessions Judge, Chandrapur, by imposing the following additional conditions on the respondent No.2 :

(A) The respondent No.2 shall not enter jurisdiction of Police Station, Ram Nagar, District Chandrapur during the pendency of the trial.

(B) The respondent No.2 shall attend proceedings before the Trial Court on each date of listing.

9. Application stands disposed of.

JUDGE