

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

APPLICATION FOR CANCELLATION OF BAIL NO. 9 OF 2022

Sangitabai W/o. Dipak Shelar

... Applicant.

Versus

1) The State of Maharashtra

2) Mukesh Ramesh Sonawane (Mistri)

... Respondents.

. . .

Mr. P. B. Patil, Advocate for Applicant.

Mr. A. M. Phule, APP for Respondent No.1-State.

CORAM : SMT. VIBHA KANKANWADI, J.

DATED : 17th FEBRUARY, 2022.

PER COURT :

1. Present application is filed by applicant - original informant for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), granted to the respondent No.2 by the learned District Judge-4 & Additional Sessions Judge, Jalgaon, in Criminal Bail Application No.856 of 2021 on 12.11.2021.

2. Present applicant - original informant lodged C.R. No. 143/2021 with Pimpalgaon Hareshwar Police Station, Tq. Pachora, Dist. Jalgaon for the offences punishable under Sections 302, 304-B, 498-A, 120(B), 323, 504, 201, 506 read with 34 of the Indian Penal Code (for short, "IPC").

Respondent No.2 is the son-in-law of the applicant. Deceased

Ashwini, who was the elder daughter of the present applicant was married to respondent No.2 on 14.05.2019.

3. Respondent No.2 had filed second Regular Bail Application under Section 439 of Cr.PC. and that came to be allowed on 12.11.2021, which is the impugned order.

4. Heard learned Advocate Mr. P. B. Patil for the applicant and learned APP Mr. A. M. Phule for respondent-State.

5. After the FIR was lodged by the present applicant, investigation was carried out. Respondent No.2 came to be arrested on 02.07.2021 and as aforesaid the bail order was passed on 12.11.2021, that means for about four months he was in jail. Charge-sheet was filed on 24.09.2021, that means on the date when the application came to be allowed, there was charge-sheet before the learned Additional Sessions Judge. Perusal of the order would show that the learned Judge has considered the entire evidence that was before her in the charge-sheet. It is to be noted that, Ashwini expired on 23.05.2021. Post Mortem Report gives 15 injuries in column No. 17 and the probable cause of death is stated as head injury.

6. Now the statements of witnesses are required to be seen. Most of the witnesses have stated as regards the date on which Ashwini expired. It was informed by the present applicant that there is accident to their vehicle and after witnesses went there, they found that the dead body has been lying

on the ground at the spot and she had sustained injury to her head and face. Statement of witness Mr. Vishal Kumawat would show that he had seen Toyota Etios vehicle in turtle position. Now on this point, learned Advocate for the applicant, by pointing out the photographs of the vehicle which appeared to be on the spot i.e., the turtle position submits that there was no much damage to the vehicle yet as per the respondent No.2 it was an accident. This fact has not been considered by the concerned Court and observations have been made that there is no material evidence, *prima facie*, against respondent No.2. These observations ought to have been avoided.

7. Courts are not required to investigate the facts, it is their duty to consider as to whether there is proof produced to support the facts. There appears to be no eye witness to the incident as the incident had taken place at night time. Respondent No.2 appeared to be driving the vehicle but he being the accused has a right to keep silence. Therefore, the circumstances were the only things which could be taken into consideration. Whatever observations have been made by the learned Judge are *prima facie* and they do not have any weighing on the trial. Only on the basis of those statements or observations the bail cannot be cancelled. There is no merit in the present application, it deserves to be rejected. Accordingly it is rejected.

(SMT. VIBHA KANKANWADI, J.)