

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

APPLICATION FOR CANCELLATION OF BAIL NO.18 OF 2022

Kushabai W/o. Balaji Munde ... Applicant.

Versus

1) The State of Maharashtra
2) Shankar S/o Balaji Kendre ... Respondents.

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Mr. V. B. Dhage, Advocate for Applicant.

Mrs. Vaishali Patil-Jadhav, APP for Respondent-State.

Mr. R. D. Thorat h/f. S.P. Chate, Advocate for Respondent No.2.

CORAM : SMT. VIBHA KANKANWADI, J.

DATED : 21st FEBRUARY, 2022.

PER COURT :

1. Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure, 1973, for cancellation of bail granted by learned Additional Sessions Judge, Kandhar, Dist. Nanded in Miscellaneous Criminal Application (Bail) No.164/2021 on 04.12.2021 to respondent No.2.

2. Heard learned Advocate Mr. V. B. Dhage for the applicant and learned Advocate Mr. R. D. Thorat h/f. S.P. Chate for respondent No.2. They both have vehemently supported their respective contentions. Submissions on behalf of learned APP have also been heard.

3. The informant want to challenge the order passed by the learned

Additional Sessions Judge on two counts; one on merits i.e., taking into consideration the facts and circumstances of the case bail ought not to have been granted and secondly it is in respect of breach of condition imposed by the learned Additional Sessions Judge, Kandhar.

4. In respect of the merits of the case, it is to be noted that the learned Judge had considered the contents in the FIR, affidavit of the informant who had appeared *suo motu* objecting grant of bail to the respondent No.2 and also perused the police papers. Offence under Sections 307, 452, 323 read with 34 of IPC came to be registered with Malakoli Police Station, Dist. Nanded, vide C.R. No.83 of 2021 on the basis of FIR lodged by the present applicant. Allegations in the FIR were to the extent that the accused persons had unauthorizedly entered the house of the informant, the respondent No.2 assaulted her and caught hold of her hair. Thereafter, it is stated in the FIR that co-accused Renuka had poured poisonous substance contained in the bottle in the mouth of informant and therefore, it was observed by the learned Judge that there are no allegations in the FIR that the accused before him had poured poison in the mouth of informant. He concluded that Section 307 without the aid of Section 34 of IPC cannot be attracted against the accused. He was correct in his observation no doubt contents of the FIR may give impression that respondent No.2 was a facilitator for co-accused Renuka to pour poisonous substance in the mouth of informant,

but for that act the applicant before the said Court need not to have been send behind the bar. It is correctly observed that, the custodial interrogation of the accused is not required. Therefore, there is no substance in the contention of the present applicant that there is illegality committed by the concerned Court while granting bail to respondent No.2.

5. Now, turning towards the second ground regarding breach of condition, documents have been produced to state that the applicant is being threatened by the respondent No.2 and others. However, it is to be noted that we are concerned with those alleged acts which could have been there, after the order granting bail to respondent No.2 on 04.12.2021. All those documents regarding the alleged acts of four persons including the respondent No.2 are prior to 04.12.2021 and therefore, it cannot be said that after the impugned order was passed there is any breach of the conditions by him. No doubt, it appears that the illiterate old lady is being harassed, but it is for the applicant to take appropriate legal course. She could file the criminal complaint if at all there is any such act amounting to offence committed by respondent No.2. Since there is no evidence about violation of the condition imposed enumerated in the bail, the application fails on this ground also.

6. For the reasons stated above, the application stands rejected.

(SMT. VIBHA KANKANWADI, J.)