

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 APPLICATION FOR CANCELLATION OF BAIL NO.8 OF 2019

SACHIN S/O. CHANDRAKANT PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicants : Mr. Jadhav h/f Mr. Lomte Arun S.
APP for Respondent No.1 – State : Mr. B. V. Virdhe
Advocate for Respondent Nos.2 to 7 : Mr. Abdul Quadar Auti h/f
Mr. Salunke Sudarshan J

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21.02.2022

ORDER :-

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent Nos.2 to 7 by learned Additional Sessions Judge under Section 438 of the Code of Criminal Procedure on 08.01.2019 in Criminal Miscellaneous Application No.786 of 2018.

2. Heard learned Advocate Mr. Jadhav holding for learned Advocate Mr. A. S. Lomte for the applicant, learned APP Mr. B. V. Virdhe for respondent No.1 – State and learned Advocate Mr. Auti holding for learned Advocate Mr. S. J. Salunke for respondent Nos.2 to 7. In order to cut short, it can be said that all of them have made submissions in

support of their respective contentions.

3. Present applicant is the informant who lodged the said report, however, the history that can be taken note of is that according to the informant, the incident had taken place on 24.10.2016 and he had gone to police station to lodge the report, however, police had not recorded FIR and, therefore, he made complaint application to District Superintendent of Police, Parbhani. So also, he had sent the complaint application through R.P.A.D. to Police Inspector, Pathri Police Station. Thereafter also when offence was not registered, it appears that he filed application before the learned Judicial Magistrate First Class, Pathri for taking action under Section 156(3) of the Code of Criminal Procedure. The said application came to be allowed and Police Inspector, Pathri Police Station was directed to investigate into the above crime, as a result of which the FIR was noted down and registered on 13.11.2016.

4. The informant alleges that the respondents - accused are having agricultural land adjoining to the agricultural land of the informant. Informant is stated to be the minor aged 16 years residing with his parents and it also appears that the application, which he had filed before learned Judicial Magistrate, First Class, Pathri was through his guardian. He had alleged that all the accused persons had barged into

his house on 24.10.2016 and had slapped and assaulted the informant by kicks and fists blows. He was asked as to where he has kept the amount of the cotton which he had stolen earlier day from their agricultural land. Respondent No.2 had then taken a box from the house of the informant and thereafter, the other accused persons had opened it by damaging it with stone. They had taken away amount of Rs.5,000/- from that box. While going, they gave threats and also stated that they should withdraw the cases which they have filed against the accused persons. It is then stated that the accused persons had also taken away motor starter, cable wires as well as fuse and according to them, Rs.5,000/- which they had collected, was not equivalent to the price of cotton, which according to them, the informant had stolen.

5. The learned Advocate for the applicant submits that learned Additional Sessions Judge has not applied his mind properly and has not given detailed reasons. It is to be noted from the reasons those have been given by the learned Additional Sessions Judge while granting the discretionary relief under Section 438 of the Code of Criminal Procedure that he had taken note of the FIR which was filed by present respondent No.2 against the informant and his father and brother. The copy of the said FIR has been made available by respondent No.2 along with his affidavit-in-reply. It is to be noted that the said FIR came to be

registered vide Crime No.352 of 2016 on 23.10.2016. It was under Sections 379, 504, 506 read with Section 34 of Indian Penal Code. Taking into consideration the fact that the police had filed 'B' Final Summary, as the investigating officer could not find any evidence, in fact, there was no question of recovery and, in that connection, the learned Additional Sessions Judge went on the probability that when FIR was lodged by respondent No.2 belatedly on that day i.e. around 16.12 hours, it is hard to believe that on the next day itself, he along with co-accused persons would have gone to the house of the informant and took away things. The reasons might not be appealing to the informant, but the fact remains that what was before the learned Additional Sessions Judge, was that the accused – applicant before him had already filed the report stating that his article i.e. cotton was stolen by the informant and others. Therefore, coupled with the delay, it appears that the application was allowed. It was also connected to the fact that when in the report that was filed by respondent No.2, 'B' Summary was filed in the connecting FIR, how there could be any substance would have been in the mind of the Court.

6. As regards the alleged recovery of articles is concerned, the Court had put conditions while granting anticipatory bail and the respondents have produced on record the evidence to effect that they have attended

the police station as per the terms of the bail. Police had the opportunity to recover or discover the articles and, therefore, the grounds canvassed for cancellation of bail granted to respondent Nos.2 to 7 cannot be said to be justifiable to take away the liberty that has been granted under the orders of the Court. There is no merit in the application. It deserves to be dismissed. Accordingly, it is dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm