

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

APPLICATION FOR CANCELLATION OF BAIL NO.14 OF 2020

Vijay Subodh Patil

...APPLICANT

VERSUS

- 1) The State of Maharashtra
- 2) Shubham Rajendra Patil

...RESPONDENTS

...
Mr.Akash M. Sonkamble Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1 – State.
Mr.S.V. Suryawanshi Advocate for Respondent No.2.
...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.15 OF 2020

Vijay Subodh Patil

...APPLICANT

VERSUS

- 1) The State of Maharashtra
- 2) Gopal Namdeo Patil

...RESPONDENTS

...
Mr.Akash M. Sonkamble Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1 – State.
Mr.S.V. Suryawanshi Advocate for Respondent No.2.
...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.16 OF 2020

Vijay Subodh Patil

...APPLICANT

VERSUS

- 1) The State of Maharashtra
- 2) Chandrakant Atmaram Patil,
- 3) Deepak Atmaram Patil,
- 4) Rajendra Nathu Patil

...RESPONDENTS

...
Mr.Akash M. Sonkamble Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1 – State.
Mr.V.P. Raje Advocate for Respondent Nos. 2 to 4.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 3rd FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 10th MARCH 2022

ORDER :

1. Applicant is the original informant, who is challenging the

orders passed granting bail to the respondents – accused in different applications by the learned Additional Sessions Judge, Jalgaon in connection with Crime No.381 of 2019 registered with Pachora Police Station, District-Jalgaon for the offence punishable under Sections 307, 143, 147, 148, 149, 354, 427, 323, 504 of the Indian Penal Code.

2. Respondent No.2 in Application for Cancellation of Bail (for short “ACB”) No.14 of 2020, Shubham Rajendra Patil has been granted bail under Section 438 of the Code of Criminal Procedure in Criminal Bail Application No.929 of 2019 on 4th January 2020, by the learned District Judge-3 and Additional Sessions Judge, Jalgaon. Respondent No.2 in ACB No.15 of 2020, Gopal Namdeo Patil has been granted bail in Criminal Bail Application No.932 of 2019 by the same Court on the same date but by a separate order. Respondent Nos.2 to 4 in ACB No.16 of 2020 i.e. Chandrakant Atmaram Patil, Deepak Atmaram Patil and Rajendra Nathu Patil have been granted bail in Criminal Bail Application No.936 of 2019 by the same Court on the same date, however, by separate order.

3. At the outset, it will have to be observed that when the concerned Court had the knowledge that all those applications

were filed by the accused persons involved in the same crime, then why there should be a need to pass separate orders. This Court has time and again deprecated the tendency of the Judicial Officers to pass separate orders in common matters just to get more disposal norms. If we see the orders, then the same are just copy-paste of each other. Not only the wastage of energy but even the stationary could have been avoided by the learned Additional Sessions Judge, Jalgaon.

4. Heard learned Advocate for the applicant, learned APP for the respondent – State and learned Advocate for respondents – accused in respective applications.

5. It has been vehemently submitted on behalf of the applicant in all the applications / original informant that the learned Additional Sessions Judge had not considered the seriousness of the offence and the necessity of the custodial interrogation of the respondents – accused. The offence under Section 307 of the Indian Penal Code was made out and at the time of First Information Report, one of the injured was admitted in the Intensive Care Unit. There was absolutely no progress in the investigation on that date, still unnecessary observations have been made. Learned Advocate appearing for the applicant

has taken through the medical certificate issued by Vighnaharta Multi Speciality Hospital, Pachora, which shows that uncle of the informant had the depressed fracture on left parietal bone. There was no evidence before the learned Additional Sessions Judge to arrive at a conclusion that "the informant is from the group of a person who is admittedly political heavy weight". The learned Judge was not expected to be get carried away by the statements made by the accused – applicants in their applications for bail. The order that was passed by the learned Judge was very cryptic in nature. The learned Judge had not considered the fact that the weapons with which the injury has been caused, were required to be seized.

6. Learned Advocate for the applicant has, thereafter, pointed out that the investigation appears to have been got done by the Police with whatever material they had or could gather and the charge-sheet has been filed on 11th February 2021 bearing R.C.C. No.185 of 2021. Certain weapons have been shown as seized from the accused persons. At the same time the statements of the witnesses are required to be seen which are now available before this Court. The witnesses are supporting the informant. Role has been attributed to each of the accused and also the weapons. The informant has any how got survived

but the seriousness of the offence was not considered by the concerned Court. Further, it also appears that the learned Judge was carried away with the First Information Report (For short "FIR") vide Crime No.379 of 2021 stated to be lodged earlier at 12.55 p.m. on 5th December 2019, which is stated to be the cross case. At the most, note of that FIR could have been taken by the learned Additional Sessions Judge. But in order to arrive at a conclusion that the FIR lodged by this applicant is exaggerated version, there was nothing before the learned Judge. Therefore, the learned Judge had committed gross error in not considering the relevant material and went on to make unnecessary observations. Therefore, the orders passed by the learned Additional Sessions Judge deserve to be set aside. Reliance has been placed by the learned Advocate for the applicant on the decision in ***State of Maharashtra vs. Sayyad Abdulhak Sayyad Khaja and others, 2014(2) Bom.C.R. (Cri.) 506***, wherein this Court held that, this Court is having powers under Section 439(2) of the Code of Criminal Procedure to cancel orders of bail when Court granting bail committed gross error in not considering relevant material and also on point of law. In the said order, reliance was placed by this Court on the decision in ***Puran vs. Rambilas, AIR 2001 S.C. 2023***. Learned

counsel for the applicant submitted that in the present case also need has arisen to exercise the powers of this Court under Section 439(2) of the Code of Criminal Procedure.

7. Per contra, the learned Advocates appearing for respondents – accused in respective applications strongly opposed the applications and submitted that the position which was before the learned Additional Sessions Judge on the relevant date, is required to be considered. When it was noticed that cross case has been filed earlier in point of time and even the accused had sustained injuries, they were granted anticipatory bail. Liberty once granted need not be taken away on the basis of the reasons now stated. The charge-sheet was not before the learned Judge at that time and therefore that evidence cannot be considered now.

8. No doubt, the situation that was before the learned Additional Sessions Judge is definitely required to be considered and the subsequent collection of evidence may not be the good material on which the liberty restored can be so taken away. It is, therefore, required to be seen as to what was the material before the learned Additional Sessions Judge when he granted anticipatory bail.

9. The learned Judge has taken note of FIR in Crime No.379 of 2019, which appears to have been lodged earlier in point of time than the present FIR. It has not been stated in the order, under which Sections the said offence came to be registered. It is fair enough to take note of which FIR is earlier, but to observe that the subsequent FIR is an exaggerated version or false one when there is absolutely no material, then it would be injustice to the informant in the subsequent FIR. The reasons have been stated only in one para, which is of ten lines only. No doubt, the learned Additional Sessions Judge was justified in taking note as to why the dispute triggered. It is also noted that even the applicants therein have sustained the injuries, but with knowledge that recovery of weapon is yet to be made, the bail has been granted. If we consider the copy of the say filed by the Investigating Officer, it was clearly stated that axe, iron rod and sticks were used. This fact ought to have been properly considered. What is more disturbing, is the further observations and it appears that it is the outcome of the fact of registration of the present FIR at the later point of time. At the cost of repetition, those observations are reproduced:

"Though recovery was yet to be effected, yet the offence being later in point of time **and more particularly when the Informant being from the group of a person who is admittedly political heavy weight, some degree of exaggeration cannot be ruled out.**" (stress supplied).

10. It is to be noted that there was absolutely no such material before the learned Additional Sessions Judge to establish the connection between the informant and the person from politically heavy weight group. A Judge should avoid making such observations when there is absolutely no material before him. In order to come to a conclusion that it is exaggeration, more material to judge that exaggeration should have been called for.

11. Another fact that is also to be noted, is that some unnecessary or rude conditions appear to have been included, for which at least there would have been some oral inquiry with the Advocate for the applicants therein by the learned Judge. The learned Judge has imposed the condition that, the applicant shall surrender his passport, if any with the investigating officer. The learned Judge has not made an inquiry as to whether the applicants therein are having passports. Further, apart from PR Bond, the learned Judge has directed cash security to be

deposited in the Court of Magistrate and to furnish proof thereof to the Investigating Officer. Why the learned Judge has avoided to take surety, is a question and there is no answer to it in the reasons part. In the normal circumstance, when securing the presence of the accused is concerned, surety is directed to be furnished. No doubt it depends upon the discretion of the Judge, but if the normal course is deviated, then there has to be reason for such deviation. That is not appearing in this case.

12. The contents of the FIR appears to have not been properly taken into consideration by the learned Judge for assessment, as to whether the applicants therein can be granted anticipatory bail or not. When a person approaches to the Police Station and his FIR is taken down and some of the injured were still under treatment at the hospital, then all these factors should be taken note of by the Court while considering application under Section 438 of the Code of Criminal Procedure.

13. No doubt from the above discussion it can be seen that the learned Additional Sessions Judge, Jalgaon has not considered certain factors which he ought to have, but whether his order can be said to be illegal or needs to be set aside, is now required to be considered. Non consideration of certain points may not

lead to illegality of an order. Further, now it will have to be considered, as to whether the investigation was any way hampered because of the release of the respondents – accused. The statements of the witnesses have been recorded and many of them are supporting the prosecution. Another fact to be noted is that at no point of time it appears that State / investing agency had ever come to this Court for cancellation of bail with reason that the release of the respondents has hampered the progress of the investigation. In view of the order of attendance, it appears that the respondents appeared before the Investigating Officer and the weapons have been seized. Those weapons were sent to medical officer who had given treatment to the injured and his opinion has been obtained. It has been opined that the injuries noted on the person of Padamsingh Patil are possible by the weapon, axe. The medical certificate has also been obtained. It appears that C.A. Report has not been produced yet. Therefore, when the bail granted to the respondents – accused has not hampered the investigation, the powers of this Court under Section 439(2) of the Code of Criminal Procedure need not be used. The ratio laid down in ***State of Maharashtra vs. Sayyad Abdulhak Sayyad Khaja and others*** (supra) cannot be denied, however, it can be said

that with those observations and the finding that the order passed by the Sessions Court which was under challenge in that matter was passed with gross error; ratio will not be applicable to this case.

14. In view of the observations above made, though there were certain lacunas in the order passed by the learned Additional Sessions Judge, yet this Court is of the opinion that with the change in circumstance i.e. filing of the charge-sheet, no case is made out to exercise the powers under Section 439(2) of the Code of Criminal Procedure.

15. Accordingly, all the Applications stand dismissed.

[SMT. VIBHA KANKANWADI , J.]