

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 APPLICATION FOR CANCELLATION OF BAIL NO.26 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
GOPINATH BHAIRAVNATH INGALE AND OTHERS

...
APP for Applicant – State : Mr. A. M. Phule
Advocate for the Respondents : Mr. K. G. h/f Mr. P. P. More
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14.03.2022

PER COURT :

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure.

2. Heard learned APP Mr. A. M. Phule for the applicant – State and learned Advocate Mr. K. G. Gaikwad holding for learned Advocate Mr. P. P. More appearing for respondent Nos.1 to 4 *Suo Moto*.

3. It is to be noted that the learned Additional Sessions Judge – 2, Latur in Criminal Bail Application No.659 of 2021 granted bail to respondent Nos.1 to 4 on 15.11.2021 under Section 439 of the Code of Criminal Procedure. Respondent Nos.1 to 4 came to be arrested in connection with Crime No.259 of 2021 registered with Murud Police Station, Dist. Latur for the offences punishable under Sections 307, 324,

504 read with Section 34 of Indian Penal Code.

4. Perusal of the FIR would show that as regards the informant is concerned, it is stated that he had also received the injuries and while considering the bail application, the learned Additional Sessions Judge had seen the injury certificates. The injury certificate of the informant shows that he had received simple injuries, however, as regards the injury sustained to brother of the informant is concerned, he has sustained grievous injury to his head. Perusal of the impugned order shows that said certificate was also considered by the learned Judge and a statement has been made that he appears to be out of danger. Learned APP is taking objection to this statement or observation. That observation appears to be taken into consideration after the fact that the brother of the informant has been discharged. Therefore, the prosecution should not have any objection as regards those observations are concerned. Taking into consideration the reasons assigned, though the offence is serious in nature, yet taking into consideration the fact that respondent Nos.1 to 4 were arrested, there was an ample opportunity to the investigating officer to investigate the matter, the weapons have been seized and the statements of witnesses have been recorded and also taking into consideration the basic principle that the bail is rule and not the jail, it can be seen that the application under

Section 439 of the Code of Criminal Procedure came to be allowed.

5. Section 439(2) of the Code of Criminal Procedure can be invoked by a person and the prosecution for challenging the grant of bail or even for modification of condition to the bail. Now, the learned APP submits that while granting bail, condition was not imposed by the learned Judge restricting the entry of the respondents in the village. He submitted that possibility of commission of similar offence cannot be ruled out taking into consideration the fact that the informant, his brother as well as respondent Nos.1 to 4 are resident of same village.

6. Perusal of the bail order passed by the learned Additional Sessions Judge-2, Latur would show that he had imposed the condition that the applicants shall not threaten and pressurize the informant and the witnesses in any manner. Even the attendance was granted before the police officer and further directions were given that they should cooperate with the investigation. Now, as regards the condition which the prosecution intends to be imposed is in respect of keeping respondent Nos.1 to 4 away from the village. The impugned order came to be passed on 15.11.2011. The prosecution has not produced on record any documentary evidence to show that there was any kind of retaliation by the accused persons or not even an application is filed by

the informant or witnesses to the police station that they have been threatened. It will have to be presumed that in view of the condition imposed, the respondents would be attending the police station on every Sunday between 10.00 a.m. to 2.00 p.m. The investigating officer has also not filed any affidavit stating that he had come across any such incident which will cause apprehension in his mind that there would be law and order situation because of the respondents in the village. In each and every matter, may be of serious nature, such kind of condition need not be imposed. It depends upon the facts and circumstances and, therefore, those circumstances have not been brought on record by the prosecution and, therefore, there is no merit in the application. It deserves to be rejected at the threshold. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]

scm