

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

913 CRIMINAL WRIT PETITION NO.488 OF 2022

MAGAN MAKTYA TADVI  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Bagul D.S.  
APP for Respondent 1 : Mr. R D Sanap  
Advocate for Respondent 2 : Mr. C C Deshpande

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CORAM : SHRIKANT D. KULKARNI, J.

Dated: September 22, 2022

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**PER COURT :-**

1. This petition takes an exception to the order of cancellation of bail passed by the Additional Sessions Judge, Shahada in Criminal MA No.12 of 2021 dated 18.12.2021.

2. Heard Mr. Bagul, learned counsel for the petitioner, Mr. Chaitanya Deshpande, learned counsel for respondent no.2 and Mr. Sanap, learned APP for the State/respondent no.1.

3. Mr. Bagul, learned counsel for the petitioner invited my attention to the bail order passed by the learned Additional Sessions Judge, Shahada dated

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16.3.2021. He submitted that, present petitioner was arrested in connection with crime no.33 of 2021 registered at Molgi police station for the offences punishable u/s 306, 323, 506, r/w 34 of the IPC. He was arrested on 23.2.2021. He was released on bail vide order dated 16.3.2021. He was behind bars for about 25 days. Custodial part of the investigation with the petitioner is over long back.

4. He submitted that after receiving postmortem report, section 302 of IPC is added and only because of adding of serious offence of murder, bail granted to the petitioner came to be cancelled. He submitted that petitioner was co-operating to the investigating agency. He submitted that the petitioner is a teacher. Custodial interrogation of the petitioner is now not necessary. There are no extra ordinary circumstances to cancel the bail of the present petitioner. He, therefore, urged to quash the order of cancellation of bail passed by the Additional Sessions Judge, dated 18.12.2021.

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5. Mr. Deshpande, learned counsel for respondent no.2/first informant strongly opposed to allow this petition. He submitted that present petitioner did not co-operate in the investigation as per his instructions. He submitted that the petitioner is threatening to the first informant, who is resident of same village. After receiving the postmortem report, section 302 of IPC came to be added, which is of serious offence. Learned Additional Sessions Judge after taking into consideration the postmortem report coupled with other aspects like blood stains found on the shawl of the deceased and after clarification from the autopsy doctor was pleased to cancel the bail of the present petitioner. He supported the order of cancellation of bail passed by the learned Additional Sessions Judge, Shahada.

6. He submitted that the learned Additional Sessions Judge has rightly invoked section 439 (2) of Cr.P.C. while canceling the bail when grave offence is disclosed. Mr. Deshpande has placed his reliance in case of **Ravis/o Narayan Gaikwad and others Vs. The State of**

**Maharashtra reported in 2019 ALL MR (Cri) 431.** He, therefore, submitted that no illegality is committed by the learned Additional Sessions Judge, while canceling the bail of the petitioner by invoking section 439 (2) of Cr.P.C.

7. Mr. Sanap, learned APP for the State submitted that the deceased was wife of the petitioner. She was found dead in his house. It is a custodial death when the petitioner and his wife were staying in the same house. As such, section 106 of the Evidence Act attract. In view of addition of section 302 of IPC, learned Additional Sessions Judge has rightly invoked powers vested with him u/s 439(2) of Cr.P.C. He submitted that report submitted by the I.O. no where speaks that the petitioner is not co-operating in the investigation, but the report indicates that his mother is not co-operating in the investigation. He, therefore, supported to the impugned order passed by the Additional Sessions Judge, Shahada.

8. I have considered the submissions of learned counsel for both sides and the learned APP for the State. Perused the copy of the order granting bail dated 16.3.2021 and copy of the order of cancellation of bail dated 18.12.2021 by the learned Additional Sessions Judge, Shahada . Perused the copy of the FIR.

9. On going through the copy of FIR, it would reveal that, crime no.33 of 2021 came to be registered at Molgi police station, District Nandurbar on 6.2.2021 at the instance of mother of the deceased for the offence punishable under sections 306, 323, 506 r/w section 34 of IPC. The petitioner came to be arrested in connection with said crime on 23.2.2021. As per the allegations levelled in the FIR, the deceased, who happened to be the wife of the petitioner alleged to have committed suicide because of cruelty and harassment caused by her husband and mother-in-law. The incident alleged had taken place on 27.1.2021 in the evening time. After arrest of the present petitioner, he was interrogated. Subsequently, he was remanded to judicial custody. He

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applied for regular bail and the learned Additional Sessions Judge was pleased to grant bail to the petitioner vide order dated 16.3.2021. He was in the jail for about 25 days.

10. The question is about cancellation of bail granted earlier to the petitioner in view of the addition of section 302 of the IPC in the same crime. Mr. Deshpande, learned counsel for respondent no.2 has placed his reliance on a judgment in **Ravi s/o Narayan Gaikwad and ors. Vs The State of Maharashtra** (supra) regarding powers of the sessions court for cancellation of bail u/s 439 (2) of Cr.P.C. wherein decision of the Hon'ble Supreme Court in case of **Pralhad Singh Bhati Vs. NCT Delhi and another** reported in **2001 ALL MR (Cri) 739 (SC)** is relied upon.

11. There is no dispute about the legal position regarding power of cancellation of bail vested with the Sessions Court and High Court under section 439 (2) of the Criminal Procedure Code. It depends upon the facts

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and circumstances of each case. Only because a serious offence is subsequently included in the same crime, it is not a ground to cancel the bail. There must be compelling circumstances and genuine need for investigation by making rearrest. The Sessions Court is well clothed with power u/s 439(2) of Cr.P.C.

12. Let me examine whether it is a genuine case to cancel the bail granted earlier. On going through the copy of the cancellation of bail order passed by the Additional Sessions Judge, Shahada, it would reveal that the learned Additional Sessions Judge prompted to cancel the bail after receiving postmortem report and after seeking clarification from the autopsy doctor. Whether wife of the petitioner, Gangibai met with suicidal death or homicidal death would be proved by adducing evidence during trial. The postmortem report is an expert opinion that would be considered during trial. As on today, only because postmortem report is suggesting homicidal death of wife of the petitioner, there is no need to rearrest the petitioner when

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practically investigation is at the verge of completion. It is not the case that some articles need to be recovered at the instance of this petitioner. There are no pressing needs to have such custodial interrogation of this petitioner. Moreover, as submitted by the learned APP for the State, report of the I.O. does not indicate that the petitioner is not co-operating in the investigation. Report of the I.O. is against mother-in-law of the deceased/accused no.2.

13. Having regard to the above reasons and discussion, I am of the considered view that there is absolutely no need to re-arrest the present petitioner and keep him behind bars. Parameters for granting bail and cancellation of bail are well settled by the Hon'ble Supreme Court in catena of decisions. On careful examination of the facts of the case in hand, I do not find any need to re-arrest the present petitioner and put him behind bars again when there is absolutely no need. Whatever part of the investigation is remained that can be completed by securing presence of the

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petitioner and by imposing certain conditions in view of apprehension of tampering of witnesses and threats to the first informant. Order of cancellation of the bail passed by the Additional Sessions Judge, Shahada is liable to be quashed and set aside in the above factual scenario. In the result, I proceed to pass the following order.

### **O R D E R**

- i. Petition stands allowed.
- ii. The impugned order passed in Criminal M.A. No.12 of 2021 by the Additional Sessions Judge, Shahada dated 18.12.2021 is hereby quashed and set aside.
- iii. Liberty granted to the petitioner by extending bail vide order dated 16.3.2021 is hereby restored, however, with following conditions :-
  - a] The petitioner shall attend the Molgi Police Station, once in a week i.e. on every Sunday between 10 am to 11 am till filing of the charge-sheet.
  - b] He shall not tamper with the prosecution witnesses and evidence in any manner and

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shall not contact with the first informant by any mode and keep him away.

- c] In case of breach of any of the conditions imposed by this Court would result in cancellation of bail of the present petitioner obviously by following provisions of law.
- iv] Inform to concerned court and police station accordingly.
- v] Petition is accordingly disposed off.

**( SHRIKANT D. KULKARNI, J. )**

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