

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**APPLICATION FOR CANCELLATION OF BAIL NO.43 OF 2020
IN CRI.APPLN.NO.6821/2017**

RANGNATH S/O KISANRAO VARAL
VERSUS
KISAN @ BABANRAO PATILBA KAWAD AND ANOTHER

.....
Advocate for Applicant : Mr. N. B. Narwade
Advocate for Respondent No.1 : Mr. C. V. Dharurkar
APP for Respondent No.2-State : Mr. V. M. Kagne
.....

WITH

**APPLICATION FOR CANCELLATION OF BAIL NO.115 OF 2019
IN CRI.APPLN.NO.6821/2017**

THE STATE OF MAHARASHTRA
VERSUS
BABAN @ KISAN PATILBA KAWAD

.....
APP for Applicant-State : Mr. V. M. Kagne
Advocate for Respondent : Mr. C. V. Dharurkar
.....

WITH

**CRIMINAL APPLICATION NO.3261 OF 2019
IN CA/6821/2017**

KISAN @ BABANRAO PATILBA KAWAD
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. C. V. Dharurkar
APP for Respondent-State : Mr. V. M. Kagne
.....

WITH

CRIMINAL APPLICATION NO.1647 OF 2017

THE STATE OF MAHARASHTRA

VERSUS

DR. MAHINDRA LAXMAN ZAVARE AND ANTOEHR

.....

APP for Applicant-State : Mr. V. M. Kagne

Advocate for Respondent No.1 : Mr. A. G. Ambetkar

Advocate for Respondent No.2 : Mr. D. G. Nagode

.....

WITH

**CRIMINAL APPLICATION NO.1178 OF 2018
IN CA/4277/2017**

SANDEEP S/O REVJI LANKE

VERSUS

THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. V. R. Dhorde

APP for Respondent-State : Mr. V. M. Kagne

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
02-02-2022**

**Date of Pronouncing the Order :
07-06-2022**

ORDER :

1. ACB No.115 of 2019 and Application No.1647 of 2017 have been filed by the State for cancellation of bail granted to the

respective respondents, whereas ACB No.43 of 2020 has been filed by the original informant for cancellation of bail of respondent No.1 who is original accused No.5. Application No.1178 of 2018 has been filed by accused Sandeep Revji Lanke for relaxation of condition imposed on them to the bail that he shall not enter within the limits of village Nighoj, Taluka Parner, District Ahmednagar, till the conclusion of the trial. Criminal Application No.3261 of 2019 is also filed for relaxation of condition imposed while granting bail to original accused No.5. For the sake of convenience the respondents would be addressed by name to avoid confusion. It will not be out of place to mention here that the respondent in ACB No.115 of 2019 and No.43 of 2020 are same i.e. original accused No.5 whose bail application granted by this Court is sought to be set aside on the ground of breach of terms of condition to the bail by State as well as informant. However, almost on the same line the State has filed Criminal Application No.1647 of 2017 to challenge the order passed by learned Additional Sessions Judge, Ahmednagar granting bail to the respondents.

2. All the respondents are accused in Crime No.19 of 2017 registered with Parner Police Station, District Ahmednagar, for the

offence punishable under Section 302, 143, 147, 148, 149, 120-B r.w.109 of IPC and under Section 25 r.w.3 and 4 of Arms Act.

3. Heard learned Advocates Mr. N. B. Narwade, Mr. C. V. Dharurkar, Mr. V. R. Dhorde for applicants, also heard learned APP Mr. V. M. Kagne for respondent-State, learned Advocate Mr. A. G. Ambetkar for respondent No.1 in Cri.Appln.No.1647 of 2017 and learned Advocate Mr. D. G. Nagode for respondent No.2 in Cri.Appln. No.1647 of 2017.

4. It has been vehemently submitted on behalf of the State as well as original informant in respect of the accused Kisan @ Babanrao Patilba Kawad that this Court while granting him bail had imposed condition that, "(a) he shall not try to meet the witnesses and shall not enter into village Nighoj till conclusion of the trial." However, he had occasionally come to the village for which the informant had taken the objection with the police authorities and then on 03-01-2022 accused Kisan Kawad had entered Nighoj village and had taken part in hunger strike till death. That fact was immediately made known to the police and police had gone to the said place. Even accused No.5 Kisan @ Baban Kawad was taken in custody by the police, however, it was only nominal arrest.

Panchanama about that incident has been carried out. Thereafter, the Police Inspector, Parner Police Station had given communication to Sub-Divisional Police Officer, Rural Ahmednagar, seeking permission to take further action against Baban @ Kisan Kawad. Police had issued notice to him on 03-01-2022 and asked him to leave Nighoj village. Prior to that, at the place where the hunger strike was going on, accused Kisan Kawad had given speech for about 18 minutes and transcript of the same as well as the photographs about his presence at the spot have been produced. They both submitted that when there is clear violation of the condition put to his bail; the bail deserves to be cancelled.

5. Learned APP has also made submissions on the Criminal Application No.1647 of 2017. It has been stated that when clear evidence is prima facie collected against them, the learned Additional Sessions Judge ought not to have granted bail. The conspiracy to commit murder of Sandeep @ Gondya has been hatched up by respondent Dr. Mahindra Zaware and Amruta Rasal, is clear enough. There was political enmity between the accused persons and the deceased. Sandeep was brutally murdered by firing bullets and also use of deadly weapons. The Trial Court had failed to

consider that the vehicles and weapons are yet to be seized as it is a high political affair. Though the charge-sheet has been filed, it cannot be said that it is a complete charge-sheet as certain accused persons are still absconding, and therefore, their bail order deserves to be set aside.

6. The learned Advocate appearing for respondent Dr.Mahindra Zaware and Amruta Rasal supported the reasons given by the learned Additional Sessions Judge while releasing those respondents on bail, and submitted that even if now we take the charge-sheet as it is, then there is no prima facie evidence to connect these respondents with the said crime. In fact, they were restrained from entering the village and accordingly they have abided by the terms. Now the charge-sheet is also filed, and therefore, that condition deserves to be cancelled.

7. Learned Advocate appearing for Kisan Kawad has submitted that he is a political person and also social worker. He had given certain representations to Superintendent of Police and Police Inspector, Parner Police Station. His drive was against the gaming business in Nighoj and on 03-01-2022 strike was arranged by Nighoj Vivid Karyakari Society in respect of payment of water tax. Even if

the transcription of his speech is considered of which the entire transcript is provided, would show that he was agitating about the legal rights of farmers in his area. The application that has been filed is not with a good intention. In respect of accused No.5 i.e. Kisan Kawad is concerned, he had approached this Court by filing Criminal Writ Petition No.1048 of 2018 and the Division bench of this Court allowed the petition and gave direction to the respondent/State to see that the report is given in respect of the action of respondent No.5 i.e. Deputy Superintendent of Police, Ahmednagar, for registration of the crime for the offence punishable under Section 167 of Indian Penal Code and for other offences which the department may file that they are also committed. It was on the basis of the fact that was pointed out that the forged record was created and was submitted against the present respondent Kisan Kawad. Further, as regards the decision to take part in the hunger strike is concerned, he had given an application to Police Inspector, Parner Police Station on 28-12-2021 and it was received by police station on 30-12-2021. So he had taken precautions to inform the concerned police about his intention to enter Nighoj area. He was agitating for the rights of people, and therefore, it cannot be considered as violation of terms of bail.

8. The learned Advocate for the respondent Kisan Kawad has relied on the decision in *Aslam Babalal Desai Vs. State of Maharashtra*, reported in AIR 1993 SC 1, wherein it has been held that :-

“Cancellation of bail cannot be for special reasons germane to cancellation under Section 437 (5) and 439 (2) of Cr.P.C.”

In that case, cancellation of bail was sought on the ground that there was subsequent filing of charge-sheet.

Further reliance has been placed on the *Dolat Ram Vs. State of Haryana*, reported in AIR OnLine 1994 SC 368, wherein it has been held that :-

“Cancellation of bail should not be in a mechanical manner without considering supervening circumstances.”

Further reliance has been placed on the decision in *Myakala Dharmarajam and others etc. Vs. State of Telangana and Another*, reported in AIR 2020 Supreme Court 317, wherein decision in *Raghubir Singh Vs. State of Bihar*, reported in AIR 1987 SC 149 was relying, and it was held that the grounds mentioned therein are illustrative and not exhaustive.

Further reliance has been placed on *Bhagirathsinh Judeja Vs. State of Gujarat*, reported in AIR 1984 Supreme Court 372, wherein it has been held that :-

“Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.”

Further reliance has been placed on the decision in *Manubhai Bhikhabhai Valand Vs. State of Gujarat and Ors.*, reported in 2009 Cri.L.J. 1275, wherein on evidence it was found that there is no breach of condition imposed to the bail application, and therefore,

the application was rejected.

He further relied on *Aiyub Ahmed Kora Vs. State of Gujarat, reported in AIR OnLine 2021 GUJ 1880 (Gujarat High Court)*, wherein the offence was of 2019 and there was marriage of one of the daughter of the applicant. Further due to pandemic it was difficult for him to remain outside the limits of village, and therefore, his entry into the village was not considered as breach to the bail order.

9. As regards the application for cancellation bail against accused Kisan Kawad is concerned, the bail order was passed by this Court, and therefore, no statement can be made on the merits. The State as well as the informant have filed application only for cancellation of bail on the ground that he has committed breach of the condition. It is also to be noted that accused Kisan Kawad is not denying the fact that he had entered Nighoj village on 03-01-2022. However, this incident has taken place much after the application for cancellation of bail was filed. If we consider the original, that means the applications as they are, then it has been tried to be canvassed that this Court has not considered the facts of the case and the evidence that was collected. As regards the application of the original

informant is concerned, he relied on the complaint filed by one Lahu Baban Nicchit on 14-01-2020 to the police stating that Kisan Kawad is projecting him that is Lahu as 'Sand Mafia' and he is editing the news published in WhatsApp without there being any concern of Lahu. The copy of that complaint is made available. However, another fact was relied for cancellation of bail that is lodging of offence under Section 195-A of IPC against him and one Suman Bodge on 11-01-2019 vide Crime No.34 of 2019 with Parner Police Station, District Ahmednagar, by one Sow. Sunita Vijay Uchale. Said Sunita Uchale is one of the witness in the present case where Kisan Kawad is facing murder charges. It was then stated that through said Suman Bodge, Baban @ Kisan Kawad had tried to give threats for not deposing. However, now along with the affidavit-in-reply Kisan Kawad has filed copy of the Judgment in Sessions Case No.244 of 2019 by the learned Additional Sessions Judge, Ahmednagar, that he as well as said Suman Bodge has been acquitted from the offence punishable under Section 195-A of IPC on 27-12-2021, therefore, the said grounds are not in existence now. But, as regards the subsequent event that has taken place on 03-01-2022, that is the recent one as aforesaid Baban Kawad accepts that he had come within the jurisdiction of Nighoj village. Important

point to be noted is that part of the transcription of his speech has been given by the original informant and on direction by this Court even Baban Kawad has given the entire transcript of his speech. We are not concern with for what cause he had come inside the village. We have to see whether he had adopted proper procedure and whether there is breach of the condition. This Court does not agree with the submission on behalf of the Advocate for respondent Kisan Kawad that intention is required to be seen in such situation. He mean to say that intention of Baban @ Kisan to enter Nighoj village was different and not give threats to any witnesses. In fact, when such political persons are involved in a case, then their presence itself for whatever reason at a particular place may raise apprehension in the mind of the witnesses who have been posed against them. Taking into consideration the brutal murder that was committed, that too at the broad day light, this Court had imposed the said condition. Accused Baban Kawad has full knowledge about the condition that has been imposed on him and if we consider his speech, he specifically states that he is aware that his bail would be cancelled when he has come to village. When he has the knowledge as to what he is committing, then he cannot put forward a defence that his intention to enter the village was different. Certainly he has

committed breach of the term imposed by this Court and even in his speech he has stated that he is ready to go to jail for committing breach of the condition to the bail. In fact, he was not required to glorify his act when still the charges of murder of a person are hanging over his head. He cannot roam around and especially enter the village as it he has been acquitted from those charges. Under such circumstances, the bail granted to accused Baban Kawad deserve to be cancelled for committing breach of the term. The ratio laid down in the authorities cited by the learned Advocate for said respondent cannot be denied, but the interpretation of those authorities is not in the way he want to. In *Myakala Dharmarajam Vs. State of Telangana (Supra)* it has been clarified by the Hon'ble Apex Court that the list given in *Raghubir Singh (Supra)* for cancellation of bail is not exhausted. Conditions are imposed while granting a bail to an accused taking into consideration the circumstances. There is always a reason behind imposition of such condition and one of the consideration is definitely that the witness should feel protected till their evidence is over. Therefore, that environment should be given by the Courts themselves, and therefore, the said bail order deserves to be set aside.

10. As regards the cancellation of bail to other two accused are concerned, it can be seen that the learned Additional Sessions Judge while granting bail to them had considered the role alleged against them. A detailed order has been passed and it has been observed that as regards applicant No.2 therein i.e. Amruta Rasal is concerned, there was absolutely no evidence about criminal conspiracy. She was not present at the spot. As regards applicant No.1 therein Dr. Mehindra Zavare, it has been stated that there are statements of some witnesses disclosing the material that there was meeting in the pomegranate garden of applicant No.1 wherein he said some incriminating words. It was also observed that there was some material against applicant No.1, he was found to be talking with some of the assailants and then it was also stated that the talk was in the hospital of applicant No.1. However, the assailants from whom the weapons have been recovered under Section 27 of the Indian Evidence Act have not stated name of applicant No.1, and therefore, all those things prompted to concern Judge to allow the application. It is to be noted that proper conditions have been imposed while granting bail. They have also been asked not to stay within the radius of five kilometers of village Nighoj where the prosecution witnesses are residing. Therefore, no case is made out

for cancellation of bail granted to them by the State. As regards the application filed by those respondents for cancellation of the condition imposed is concerned, at the cost of repetition it can be said that the condition has been imposed for the protection of the witnesses and it need not be cancelled till the conclusion of the trial.

11. There is also Application No.1178 of 2018 filed by another accused Sandeep Revji Lanke for relaxation of condition about not to enter village Nighoj. It is to be noted that he has been released under Section 439 of Cr.P.C. by this Court by order dated 20-09-2017. This Court had noted that the said applicant was not present at the spot at the time of incident. His name was not even mentioned in the FIR and as regards the charge of conspiracy is concerned, there are statements of two witnesses on that point. That material was taken into consideration while releasing him on bail, however, when the condition is imposed, the intention was to protect the witnesses. Even though since 2017 it appears that he is away from his village, yet the time has not yet come to relax the said condition taking into consideration the fact that the trial has not come to an end and it was a brutal murder. Under such circumstances, for the aforesaid reasons, following order is passed.

ORDER

- 1) ACB No.115 of 2019 and ACB No.43 of 2020 stand allowed.
- 2) The order passed by this Court on 21-08-2018 in Criminal Application No.6821 of 2017 releasing Kisan @ Babanrao Patilba Kawad stands set aside. He should surrender before the learned Additional Sessions Judge, Ahmednagar, before 05.00 p.m. on 10-06-2022.
- 3) In case of failure on his part to surrender, the learned Additional Sessions Judge, Ahmednagar, may take up the steps by issuing non-bailable warrant and thereby securing his presence.
- 4) Criminal Application No.3261 of 2019 was filed by applicant/accused Kisan Kawad for relaxation of condition, however, when this Court has come to the conclusion that the bail granted to him deserves to be cancelled for breach of terms of condition, the said application in fact does not survive, hence that application stands disposed of.
- 5) Criminal Applications No.1647 of 2017 and No.1178 of 2018 stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

LATER ON :

After pronouncing the order, the learned Advocate Mr. C. V. Dharurkar for respondent Kisan @ Babanrao Patilba Kawad prays for Stay of the order as respondent Kisan @ Babanrao intends to approach the Higher Court. In view of this, the operation of this order is stayed till 30-08-2022.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.