

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

APPLICATION FOR CANCELLATION OF BAIL NO.54 OF 2022

Sau. Jyoti Sunil Badadhe

..Applicant

Versus

1. Ajit Macchindra Badadhe

2. The State of Maharashtra

..Respondents

**WITH
APPLICATION FOR CANCELLATION OF BAIL NO.55 OF 2022**

Sau. Jyoti Sunil Badadhe

..Applicant

Versus

1. Omkar Macchindra Badadhe

2. The State of Maharashtra

..Respondents

...

Advocate for Applicant : Mr. Prakash Bhausheb Shirsath

APP for Respondent/State : Ms. V.S. Choudhari

Advocate for Respondent No.1 : Ms. Pooja V. Langhe

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CORAM : S.G. MEHARE, J.

DATED : 21st SEPTEMBER, 2022

ORDER :-

1. The applicant, the first informant, injured preferred these applications under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted by the learned District Judge-1 and Additional Sessions Judge, Shrirampur to respondent no.1 in Criminal Bail Application No.66/2022 and 65/2022 by order dated 28.03.2022.

2. The applicant sought the cancellation on the grounds that the material available before the learned Sessions Judge had not been considered. Specific allegations were levelled against both respondent no.1 that they had assaulted the complainant and her father-in-law with weapons. He has referred to the First Information Report and observations recorded by the learned District Judge-1 and learned Additional Sessions Judge, Shrirampur, and pointed out that the reasons recorded by the said Court were apparently against the fact and material before the Court. Though there were direct allegations against both respondent no.1, the learned Additional Sessions Judge ignored the material and thereby granted anticipatory bail to both respondent no.1. The complainant had suffered a fracture injury, and her father-in-law was also assaulted with a wooden stick. Therefore, both applications deserve to be allowed. He relied on the case of Say Gaud Kondagaud Bhurewar and another Vs. State of Maharashtra and others, 2000(4) Mh.L.J. 840.

3. Learned counsel Ms. Pooja Lange appearing for the respondents/accused, has vehemently argued that the accused have never breached the bail conditions. The learned Additional Sessions Judge had imposed various conditions not to tamper with the evidence, to attend the police station, not to leave the Indian jurisdiction without prior permission of the Court and also directed to attend the police station as and when required by the investigating

officer. She would further argue that the argument of the learned counsel for the applicant that no conditions were imposed is incorrect. She has also vehemently argued that the parties have inimical terms, and this aspect cannot be ignored. The order is well reasoned. The offence under Section 307 is not made out. She would rely on the case of Mr. Khalid Yunus Patel Vs. Mr. Aslam Abdul Rahim Patel and others, 2010 ALL MR (Cri) 3525, Ujwala w/o Madhukamal Hiwale Vs. The State of Maharashtra and another, 2011 ALL MR (Cri) 3250, The Balasaheb Satbhai Merchant Co-op. Bank Ltd Vs. The State of Maharashtra and others, 2012 ALL MR (Cri) 2558. She prayed to dismiss both applications.

4. Before embarking upon the factual aspects, it would be proper to discuss the law laid down by the Hon'ble Supreme Court on cancellation of the bail. The Hon'ble Supreme Court, in the case of Gurucharan Singh & Ors vs State (Delhi Administration), 1978 AIR 179, has observed in Para 16, which reads thus:

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under [Section 439\(2\)](#), to commit the accused to custody. When, however, the State is aggrieved by order of the Sessions Judge granting bail, and there are no new circumstances that leave copied up except those already existed, it is futile for the State to move the Sessions Judge

again, and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a- vis the High Court. “

5. In the case of Dolat Ram Vs. State of Haryana, (1995) 1 SCC 349, the Hon'ble Supreme Court held that rejection of bail in a non-bailable case at the initial stage, and the cancellation of bail already granted have to be considered and dealt with on a different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Generally speaking, the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of Justice or abuse of the concession granted to the accused in any manner. The Hon'ble Supreme Court has clarified that these instances are merely illustrative and not exhaustive and one such ground for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail is passed in a heinous crime, that too without giving any reasons. Such an order would be against the principles of law. The interest of Justice would also require that such a perverse order be set aside and bail be cancelled.

6. The Hon'ble Supreme Court, in the above two case laws, has clarified that where condition while granting bail is breached, and

new circumstances have arisen which were not known to the State, the person aggrieved or the State may approach the Sessions, Judge. Besides this reason, if the order passed by the Sessions Court is perverse, arbitrary, and without giving any reason, the State or the person aggrieved may approach the High Court under Section 439(2) of the Code of Criminal Procedure.

7. The applicant has the specific case that the learned Sessions Judge did not consider the allegations levelled against respondent no.1 in both applications. Even the learned Additional Sessions Judge did not consider the FIR wherein it has been specifically alleged that applicant Ajit Badadhe assaulted the complainant with an iron rod and applicant Omkar Badadhe assaulted her father-in-law on his hand with a wooden stick.

8. The Bombay High Court, in the case of Say Gaud Kondagaud Bhurewar (cited supra) has observed that the Additional Sessions Judge ignored the police statements of the eyewitnesses and made contrary observations with the material placed on record that the police papers did not disclose the author of major stab wound which caused death. The Additional Sessions Judge did not refer to the statements of eyewitnesses while granting regular bail. The Additional Sessions Judge had not acted judiciously and made contrary observations to the material placed on record, and it was the gross misuse of discretionary powers. In the case of Ujwala w/o

Madhukamal Hiwale (cited supra), relied on by the learned counsel for the respondent-accused, the facts were that the allegations against the accused were general and omnibus in nature, and no specific role was attributed to the accused. Considering the facts of the case, the Court was pleased to observe that considering the said grievance, the necessary condition can be imposed upon respondent no.2 to meet the said apprehension of fleeing away from Justice. In the case of Mr. Khalid Yunus Patel (cited supra), the facts were that the reasoning given in the bail order was not properly worded. Therefore, it has been observed that only on such observations it cannot be said that the order granting bail is per se perverse. In the case of The Balasaheb Satbhai Merchant Co.op. Bank Ltd. (cited supra), the facts were that certain irregularities and illegalities were noticed in the conduct of the banking business; therefore, the Reserve Bank of India has cancelled the license of the applicant bank. Thereafter, the District Deputy Registrar, Cooperative Societies, appointed the liquidator on the applicant bank to look after the affairs of the said bank. The audit was done. During the audit, certain illegalities allegedly committed by the applicant-accused were noticed. It was alleged against them that there was misappropriation to the tune of Rs.33 crores committed by the accused. The accused in the said case were released on regular bail by the learned JMFC. The correctness and illegality were questioned before the Court in that petition on the

ground that the learned JMFC had no jurisdiction to entertain the bail applications, and he has erroneously observed that papers of the investigation do not disclose *prima facie* commission of an offence punishable under Section 409 of the Indian Penal Code. In view of the grounds raised by the applicant in the said petition, the Bombay High Court held that the Magistrate had the jurisdiction to try the offences; hence, the Magistrate has jurisdiction to entertain the bail application. It is also observed that the respondents were released on regular bail way back in 2008, and thereafter, the charge sheet came to be filed. No complaints of misuse of liberty by respondents were lodged, nor were there allegations that they were likely to abscond and would not face the trial. On this factum, the said application for cancellation of bail was rejected.

9. None of the cases relied upon by the learned counsel for the accused would help them as those are on different facts.

10. The FIR reveals direct allegations against the applicant that they have assaulted the first informant and caused the injury to the first informant and father-in-law. Accused Ajit Badadhe assaulted her with an iron rod, and Omkar Badadhe assaulted her father-in-law with a wooden stick on his back. Admittedly, the weapons were not seized when the application for anticipatory bail came up before the learned Additional Sessions Judge for hearing. Considering the specific allegations against the applicants, the observations recorded

by the learned Additional Sessions Judge that there is no *prima facie* role assigned to the applicants/accused but came to be implicated due to previous dispute, is apparently against the record and material available before it. The learned Additional Sessions Judge, ignoring the material, has observed that if the applicant/accused is arrested, he will suffer serious consequences, and it will cause humiliation to him. The nature and gravity of the application do not specify the role of the applicant/accused for their custodial interrogation since the applicant expressed readiness to abide by the terms and conditions imposed by the Court to assist the investigating officer and also cooperate with further investigation. The condition to attend the police station was imposed. This is not the principle granting anticipatory bail. The recovery of the weapon in case of assault causing serious injuries is essential to complete the investigation. Otherwise, the fate of the case would be decided on the very same day when the accused are released on anticipatory bail. No doubt, the conditions have been imposed by the learned Additional Sessions Judge and those are not breached. Learned counsel for the applicant is correct in arguing that the applicant did not approach this Court for cancellation of bail against the breach of the conditions.

11. The incident happened on 12.03.2022, and the applicants were released on anticipatory bail on 28.03.2022. The applicant would argue that since the day of granting bail, it would be proper to

withdraw the liberty granted to them. This Court, in the case of Say Gaud Kondagaud Bhurewar (cited supra) has answered the claim of such protection in para 28 in last five lines in the words “if the order of bail suffers from arbitrariness, then the High Court can legitimately invoke the powers under Section 439(2) of the Criminal Procedure Code for cancellation of bail. In that event, the duration of enjoyment of liberty is immaterial. Confidence of common man in the judiciary cannot be sacrificed so lightly.” In view of the observations of the Court in the above cited case, the applications can be considered very well.

12. The discussions made above laid this Court to arrive at a conclusion that the orders granting anticipatory bail to the applicants by the learned Additional Sessions Judge, Shrirampur in Criminal M.A. No.66/2022 and 65/2022 dated 28.03.2022 are perverse, arbitrary, and that too without considering the material on record. Therefore, the applications are liable to be allowed. Hence, the following order :

ORDER

- I) Both applications are allowed.
- II) The order granting bail passed by the learned District Judge-1 and Additional Sessions Judge, Shrirampur, District Ahmednagar in Criminal M.A. No.65/2022 (Omkar Macchindra Badadhe Vs. The State of Maharashtra) and Criminal M.A.

No.66/2022 (Ajit Macchindra Badadhe Vs. The State of Maharashtra) on 28.03.2022, are set aside and the anticipatory bail granted to the respondent Nos. 1 in both petitions is cancelled.

III) Bot applicants/accused are directed to surrender before the Investigating Officer on 28.09.2022.

(S.G. MEHARE, J.)

Mujaheed//