

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

APPLICATION FOR CANCELLATION OF BAIL NO.89 OF 2020

Amol S/o Ashok Warat

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Sudam S/o Kiran Warat,
- 3) Uddhav S/o Nagnath Warat,
- 4) Vinod S/o Uddhav Warat

...RESPONDENTS

...
Mr.Rahul R. Karpe Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1 – State.
Mr.Z.H. Farooqui Advocate h/f. Mr. N.V. Gaware
Advocate for Respondent No.2.
Mr.S.E. Shekade Advocate for Respondent Nos. 3 and 4.
...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.65 OF 2020

Amol S/o Ashok Warat

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Balu @ Ganesh S/o Uddhav Warat

...RESPONDENTS

...
 Mr.Rahul R. Karpe Advocate for Applicant.
 Mr.A.M. Phule, A.P.P. for Respondent No.1 – State.
 Mr.S.E. Shekade Advocate for Respondent No.2.
 ...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.38 OF 2021

The State of Maharashtra

...APPLICANT

VERSUS

- 1) Sudam S/o Kiran Warat,
- 2) Uddhav S/o Nagnath Warat,
- 3) Vinod S/o Uddhav Warat

...RESPONDENTS

...
 Mr.A.M. Phule, A.P.P. for Applicant - State.
 Mr.Z.H. Farooqui Advocate h/f. Mr. N.V. Gaware
 Advocate for Respondent No.1.
 Mr.S.E. Shekade Advocate for Respondent Nos. 2 and 3.
 ...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.37 OF 2021

The State of Maharashtra

...APPLICANT

VERSUS

Balu @ Ganesh Uddhav Warat

...RESPONDENTS

...
 Mr.A.M. Phule, A.P.P. for Applicant – State.
 Mr.S.E. Shekade Advocate for Respondent No. 2.
 ...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 11th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 8th JUNE 2022

ORDER :

1. Anticipatory Bail Application (for short "ACB") Nos. 65 of 2020 and 89 of 2020 have been filed by the original informant for cancellation of bail granted to the respective respondents – accused, whereas ACB Nos. 37 of 2021 and 38 of 2021 have been filed by the State for cancellation of bail granted to same respondents by the learned Additional Sessions Judge, Shrigonda, District-Ahmednagar. The respondents are accused persons in Crime No.216 of 2020 registered with Jamkhed Police Station, District-Ahmednagar for the offence punishable under Sections 143, 147, 148, 149, 323, 504, 506, 109, 114 of the Indian Penal Code and Sections 188, 37(1), 37(3) and 135 of the Maharashtra Police Act.

2. Initially, the offence was under Section 307 of the Indian Penal Code, however, after the death of injured Omkar Ashok Warat – brother of the informant, the offence has been converted into Section 302 of the Indian Penal Code. Respondent in ACB Nos. 37 of 2021 and 65 of 2020 is the same and the order under challenge in these two Applications is the same. The application under Section 439 of the Code of Criminal Procedure filed by respondent – Balu @ Ganesh Uddhav Warat bearing Criminal (Bail) Misc. Application No.406 of 2020 came to be allowed by the concerned Judge on 27th July 2020; whereas the respondents in ACB Nos. 38 of 2021 and 89 of 2020 are the same, who had filed application under Section 439 of the Code of Criminal Procedure bearing Criminal (Bail) Misc. Application No.453 of 2020, which came to be allowed on 29th August 2020.

3. Heard learned Advocate appearing for the applicant, learned APP appearing for the State and learned Advocate appearing for the respective respondents.

4. It has been submitted on behalf of the original informant as well as by learned APP that the Court below has not considered the facts of the case, the manner in which the

offence was committed by the respondents and co-accused. Deceased Omkar was excellent in academics and he was brutally murdered when he was in fact just sleeping outside the farm house. He has not even done any act so that he could be assaulted by the accused persons. There is boundary dispute in respect of the agricultural land of the informant as well as the accused persons, however, on that count there could not have been such retaliation. Informant's father was saying to accused No.1 – Kiran that they would get the agricultural lands measured so that the dispute will end, however, there was resistance by the accused persons for such proposal and the incident has taken place. As regards respondent – Balu @ Ganesh is concerned, the concerned learned Judge failed to consider the statements of the witnesses, the postmortem report and other documents on record, and his bail order has been relied and the respondents – Sudam, Uddhav and Vinod have been released on the ground of parity, which is wrong and illegal. Respondent – Balu @ Ganesh has tried to take plea of alibi and the said fraud has been confirmed in the light of statement of one Manager of S.T. Depot (where the respondent – Balu @ Ganesh is serving). Respondent – Balu was not present at the place of his office or work on the day when the incident took place, therefore, he has

tried to take bail order by committing fraud upon the Court. Therefore, his bail order ought not to have been taken as ground of parity for the co-accused. The orders of bail granted to the respondents deserve to be set aside and they be taken into custody.

5. Per contra, the learned Advocates appearing for the respective respondents supported the reasons given by the Court below while releasing the respondents on bail under Section 439 of the Code of Criminal Procedure. The concerned Judge has considered the role played by each of the accused and what evidence has been collected against them. The plea of alibi raised by respondent – Balu @ Ganesh has not been considered at all by the concerned learned Judge and on other grounds his bail has been allowed. No interference is required in the impugned orders.

6. At the outset it is to be noted that while releasing respondents – Sudam, Uddhav and Vinod on bail, the concerned Judge has considered the bail order passed in favour of respondent – Balu @ Ganesh and therefore, on the ground of parity those applicants / present respondents came to be

released. Therefore, it is necessary to see first, as to whether there is any alleged illegality or error committed by the concerned Court while releasing respondent – Balu @ Ganesh on bail. Perusal of the order passed by the learned Additional Sessions Judge, Shrigonda on 27th July 2020 would show that though the plea of alibi was taken by respondent – Balu @ Ganesh, it has been clearly observed that “Hence, at this stage, submission of learned advocate that, applicant-accused was in office at the time of alleged incident and the plea of alibi taken by applicant-accused is not acceptable.” In Para 10, learned Judge has clearly stated that there are other factors which have to be considered for granting bail and then he considered those other factors. Therefore, there appears to be no illegality or error on the said point by the learned Additional Sessions Judge while passing order of bail to respondent – Balu @ Ganesh and taking into consideration the allegations against respondents - Sudam, Uddhav and Vinod, similar to that of respondent – Balu @ Ganesh, the ground of parity has been rightly invoked.

7. While passing order in both the applications, the learned Additional Sessions Judge has stated that the respondents have been shown as members of unlawful assembly and then role

attributed to each one of them has been taken into consideration. As per the contents of the First Information Report, respondent – Balu was holding stone, respondents – Sudam, Uddhav and Vinod were holding sticks and wooden logs. Then it is stated that all of them had assaulted the informant, his brother Bajirao, mother Daivashala, Aunt Sunita Gade, cousin Priyanka. Accused – Kiran then instigated his sons – Ajay and Vijay to beat brother Omkar, who was sleeping on a cot in front of the house in the farm. The informant then says that accused Ajay and Vijay assaulted Omkar on his head with wooden stick causing him serious injury and resulting in unconsciousness of Omkar. Thus, it is to be noted that in the First Information Report it is not stated by the informant that respondents – Sudam, Uddhav, Vinod and Balu had assaulted Omkar with any weapon. The postmortem report shows seven injuries on the person of Omkar and the internal injuries, and the opinion as to the cause of death is stated to be “Death due to head injury, however, viscera preserved for chemical analysis”. The father of the informant even as per the First Information Report as well as his own statement, would show that after he saw the accused persons, he and the informant got frightened and came to their house in the farm. This is the first incident that had allegedly

taken place in the agricultural land itself. The second incident had taken place in front of house of the informant in the farm and there appears to be two agricultural lands of the informant at different places. Therefore, in both the orders the learned Additional Sessions Judge has considered that the incident had happened at two places and Omkar was present at the time of second incident in front of the house in the farm. Taking into consideration the evidence on record and also the role attributed to the present respondents, the concerned Judge appears to have granted bail under Section 439 of the Code of Criminal Procedure. There is no illegality or error committed by the learned Judge.

8. It appears that the State had even filed application for cancellation of bail of respondent – Balu @ Ganesh before the trial Court on the ground of merits as well as breach of terms of the bail. That application came to be rejected and it cannot be agitated in this application under Section 439(2) of the Code of Criminal Procedure. There is no merit in the Applications. Extraordinary exceptional powers under Section 439(2) of the Code of Criminal Procedure need not be invoked in the present case for the grounds stated and the liberty of the individuals

need not be jeopardized. It is also to be noted that appropriate conditions have been imposed, including staying away from the village till filing of the charge-sheet which takes care of the safety of the prosecution witnesses. Therefore, all the Applications deserve to be rejected.

9. Accordingly, all the Applications stand rejected.

[SMT. VIBHA KANKANWADI , J.]

asb/MAY22