

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.66 OF 2020
WITH ACB/67/2020

PRAVIN S/O POPAT BHOGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. Z. H. Farooqui h/f Mr. N. V. Gaware, Advocate for the applicant in
both the cases.

Mr. N. T. Bhagat, APP for respondent No.1 – State in both the cases.
Mr. S. S. Jadhav, Advocate for respondent Nos.2 to 7 in ACB/66/2020
and for respondent Nos.2 and 3 in ACB/67/2020

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14.01.2022

ORDER :-

. Present applications have been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted to respondent No.2 to 7 in ACB No.66 of 2020 and respondent Nos.2 and 3 in ACB No.67 of 2020 by learned Additional Sessions Judge, Newasa, Dist. Ahmednagar.

2. Present applicant is the original informant, who had filed First Information Report (FIR), which came to be registered vide Crime No. 41 of 2020 for the offence punishable under Sections 143, 147, 148, 149, 307, 326, 341 read with 34 of Indian Penal Code. The respondents/

accused persons in both the applications had filed application bearing Nos.201 of 2020 and 211 of 2020 under Section 438 of Code of Criminal Procedure respectively, before learned Additional Sessions Judge, Newasa. Both the applications came to be allowed on 29.06.2020 by imposing certain conditions. Informant has filed these applications for cancellation.

3. Heard learned Advocate Mr. Z. H. Farooqui holding for learned Advocate Mr. N. V. Gaware for the applicant, learned APP Mr. N. T. Bhagat for respondent No.1 – State in both the cases and learned Advocate Mr. S. S. Jadhav for respondent Nos.2 to 7 in ACB No.66 of 2020 and for respondent Nos.2 and 3 in ACB No.67 of 2020.

4. It has been vehemently submitted on behalf of applicant/original informant that the learned Additional Sessions Judge has not considered the facts of the case, seriousness of the offence and mechanically granted the anticipatory bail. He did not even considered as to whether the physical custody of the accused persons, who had caused serious injuries, is required for the purpose of investigation or not. Accused persons had used scythe and axe, which are the deadly weapons. Learned Judge failed to apply his mind on the evidence that was collected in the case. Informant and witnesses have received serious

injuries and to demonstrate it, photographs have been produced. Learned Advocate for the applicant has taken this Court through the charge-sheet also, since it has been produced now, after the investigation is over. He strenuously submitted that the pre-arrest bail has been wrongly granted and, therefore, the impugned order needs to be set aside.

5. Per contra, the learned Advocate representing respondents/accused persons opposed the applications and submitted that all the material documents were considered by the concerned Court before granting the bail. Present applicant had even objected those applications and an opportunity was granted to him to assist Public Prosecutor. The discretion has been properly used. The weapons were seized and accused persons had co-operated the investigation. There was no question of fleeing away by the accused as they have permanent place of abode. The orders passed by the learned Judge are legal and, therefore, there is no necessity to curtail the personal liberty of the respondents only for the whims of applicant.

6. Present applicant had lodged FIR on 29.05.2020 in respect of the alleged incident taken place on that day itself. Thereafter, the accused persons filed application for pre-arrest bail on 03.06.2020 and

16.06.2020 respectively. Both the applications came to be decided on 29.06.2020. Investigation was in progress at that time. However, it appears that the learned Judge had seen the police papers and other documents produced. Perusal of the FIR would show that allegations about use of scythe and axe is against accused Mukund Bhoge and Rahul Bhoge. They were not before the learned Judge in those two applications. Contents of FIR as against the applicants before Court/ present respondents-accused were about assault, but it was not clarified with which weapon. Therefore, it has been observed by the learned Judge that no specific role has been attributed to the applicants. It was also observed that the entire family appears to have been roped. The earlier FIR was also considered. Though it appears that informant had received serious injuries, yet the authors were different. Now, in the statements of witnesses, role is attributed to all accused persons; but that is contrary to FIR.

7. Learned Additional Sessions Judge has imposed conditions also while granting pre-arrest bail to those applicants. It has been seen that the investigation does not hamper. Prosecution has not come with a case that there is any violation of those conditions. Therefore, no case is made out for interference by this Court in the order of bail passed by the learned Additional Sessions Judge. When there is proper application of

mind, only for the reasons stated by the applicant, liberty of the accused need not be curtailed.

8. Both the applications, therefore, stand rejected.

[SMT. VIBHA KANKANWADI, J.]

scm