

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.101 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
AKASH MURLIDHAR SAPKALE

...

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.102 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
RUPESH SANJAY SAPKALE

...

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.103 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
MAHESH @ MUKESH RAJU NIMBALKAR

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Mr. A. M. Phule, APP for the applicant – State in all the matters.
Mr. S. S. Jadhav, Advocate for respondent in all the matters.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14.02.2022

ORDER :-

. Present applications have been filed by the original informant for cancellation of anticipatory bail granted to respective respondents by the learned Additional Sessions Judge, Jalgaon, Dist. Jalgaon on 20.01.2021 in Criminal Bail Application Nos.1015 of 2021, 1013 of 2021 and 1014

of 2021.

2. Heard learned APP Mr A. M. Phule for the applicant – State and learned Advocate Mr. S. S. Jadhav for the respondent in respective matters.

3. It has been vehemently submitted on behalf of the applicant/prosecution that the First Information Report was lodged by informant Sonu Ashok Sapkale vide Crime No.664 of 2020 alleging that offence has been committed under Sections 143, 147, 148, 149, 302, 307, 323, 341, 427 of Indian Penal Code and Section 25 (4) of Indian Arms Act. It was in respect of the incident that had taken place around 11.00 p.m. on 04.11.2020. He had gone to take tiffin of his father. He was along with his driver Salman Yusuf. However they were on two wheeler. When they came near Shivajinagar cemetery, accused Vishal Salunkhe and another person, who had come on motorcycle, kicked the motorcycle of informant on the count that informant had not given them side. Accused Ganesh had then caused damage to the new motorcycle of informant by sword. Another blow was tried to be given on the head of informant, but he ducked and it hit his right elbow. All of them started assaulting informant by kick and fists. Informant's brother Rakesh and his friend came there. Informant's brother was tried to rescue informant, but he

was assaulted by Ganesh by sword on his head, right and left thigh. Vishal gave blow of chopper on the head of Rakesh. When people started gathering, the accused persons left the scene with weapons. Informant went to his house to call his another brother. As he could not be contacted, Salman was at the spot with Rakesh. Informant and his brother then took Rakesh to hospital, where he was declared dead.

4. Learned APP submitted that all the events were told by the informant minutely and role was attributed to each accused. Offence was serious. Statements of eye witnesses have been recorded. Knife as well as wooden rod have been recovered at the instance of accused Ganesh and Aakash. In fact, the respondent in all cases are members of gang. Learned Additional Sessions Judge had not considered that for a trifle reason, the boys were brutally assaulted and one has succumbed to the injuries on the spot. There were 24 injuries on the person of Rakesh. The assault is attributable to any sharp weapon. Investigation was at budding stage at that time. Learned Judge ought not to have shown leniency to the respondents. The impugned order is illegal and deserves to be cancelled.

5. Learned Advocate for the respondents relied on the reasons assigned by the learned Additional Sessions Judge while granting bail

and submitted that a reasoned order has been passed. Strict conditions have been imposed. Accused persons could not have been asked to remain in jail for indefinite period. No case is made out for cancellation of the bail.

6. Contents of the FIR have been narrated in earlier paragraphs and therefore, they are not repeated. Specific role is attributed to accused Ganesh and Vishal. Name of the present respondents is not reflected in the FIR. How they had come and what was their motive is also not stated. Merely because their friend was assaulting informant and his brother, it cannot be said that the present respondents also would have assaulted them. Though it has been shown that there is recovery from accused Aakash, there is no statement in the FIR that he had assaulted Rakesh with that weapon. Prosecution has not produced any other document other than copy of the FIR. When the order says that statements of eye witnesses were recorded, then there would have been no hurdle for the prosecution to annex those documents on which they want to rely. This Court is, therefore, constrained to consider the observations of the trial court about the evidence that was produced before him. It has been stated that out of 24 injuries, 4 were stab injuries and others were laceration, contusion and abrasion. There appears to be wrong statement that none of those injuries were

attributable to sharp weapon. Stab injuries are possible only by sharp weapon. Knife has been recovered. However, unless the use of those discovered weapon were connected to present respondents, we cannot say that they are actively involved in the crime.

7. A fairly reasoned order has been passed after considering all the documents produced before him. Cancellation of bail would be undertaken by this Court only in the event of extreme circumstances. The liberty restored, may be with strict conditions, cannot be taken away on some flimsy grounds. No case is made for cancellation of bail. Applications deserve to be rejected. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]

scm