

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

APPLICATION FOR CANCELLATION OF BAIL NO.73 OF 2022

RADHAKISAN FAKIRAJ SHETE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Mundhe Sanjay V.
APP for Respondent/State : Mr. K.S. Patil
Advocate for Respondent No.2 : Mr. R.S. Kasar
...

CORAM : S.G. MEHARE, J.

DATED : 10th NOVEMBER, 2022

PER COURT:-

1. None present for the applicant. Learned Counsel for respondent no.2 is present. The applicant and his Counsel seem to have no interest in prosecuting the application. Hence, the application stands dismissed for default.

2. Then, the learned Counsel for the applicant appeared. On his oral request, the application is restored.

3. Heard learned Counsel for the applicant and learned Counsel for respondent no.2.

4. The present application has been filed by the complainant for cancellation of bail granted to respondent no.2 by the learned Additional Sessions Judge, Ahmednagar, in Crime No.I-25/2021, registered by Tophkhana Police Station, Ahmednagar.

5. Learned Counsel appearing for the applicant would submit that the learned Sessions Court while granting the bail, did not consider

the legal presumption under Section 304 (B) of I.P.C. He would also argue that the Learned Sessions Judge ignored the criminal antecedents to the discredit of the accused. The second ground is that the applicant has threatened the witnesses after releasing him on bail. The third ground is a breach of condition.

6. Per contra, learned Counsel for respondent no.2 would submit that the learned Sessions Judge has considered every aspect.

The legal fiction of dowry death within seven years of marriage is rebuttable. Hence, that may not be a ground to deny the bail. He has also argued that the so-called antecedents, to the discredit of the applicant, have no concern with matrimonial relations with his wife. He would submit that the order impugned before the Court is neither arbitrary nor perverse. The applicant has no case that the material placed before the Court has not been considered. Therefore, the application is liable to be dismissed.

7. The law relating to the cancellation of bail is well settled in the case of Gurucharan Singh & Ors vs State (Delhi Administration), 1978 AIR 179. As far as the breach of bail condition is concerned. In view of the ratio laid down by the Hon'ble Supreme Court in the above cited case has laid down the law the remedy to cancel the bail already granted would lie to the Court which has granted the bail. Hence, that ground is out of the jurisdiction of this Court.

8. Cancelling the bail granted is not a rule unless the order granting bail is illegal, contrary to the law, perverse and arbitrary. The bail granted by the Sessions Judge may also be cancelled where the material in the papers of investigation has been brushed aside. While granting bail, the Court has to consider the circumstances, the gravity of the offence, the possibility of tampering with the prosecution witness and the possibility of repeating a similar crime, as well as the antecedents to the discredit of the accused/person seeking bail.

9. Learned Counsel for the applicant has fairly conceded that merely having the presumption of the dowry death of the deceased is no ground to grant the bail. As far as the antecedents are concerned, those were placed before the learned Sessions Court. The order granting bail is neither perverse nor arbitrary. The learned Sessions Court has correctly considered the earlier crimes registered for the offence punishable under Section 498-A, 354, 323, 504 and 506 of the Indian Penal Code.

10. The learned Counsel for non-applicant no.2 would submit that respondent no.2 was the co-accused in the earlier case.

11. Examined the relevant papers and the order seeking cancellation. It does not appear that the Sessions Court has ignored the facts and earlier involvement of the applicant in other crimes, one of which was a crime arising out of the matrimonial dispute. The deceased has committed suicide by hanging. *Prima facie*, it does not appear that the order passed by the learned Sessions Court is arbitrary and perverse. Considering the law and material, this Court is of the view that the

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applicant has no ground to seek the cancellation of bail. Hence, the application stands dismissed.

(S.G. MEHARE, J.)

Mujaheed//