

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

**CRIMINAL APPLICATION NO.1676 OF 2020**  
**IN BA/1396/2019**

|                              |                |
|------------------------------|----------------|
| Ganesh s/o Ankushrao Nakhate | ... Applicant  |
| Versus                       |                |
| The State of Maharashtra     | ... Respondent |

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Mr. V. B. Jadhav, Advocate for the applicant.  
Mr. V. M. Kagne, APP for the respondent – State.

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**WITH**  
**APPLICATION FOR CANCELLATION OF BAIL NO.83 OF 2020**  
**IN BA/1396/2019**

|                              |                |
|------------------------------|----------------|
| The State of Maharashtra     | ... Applicant  |
| Versus                       |                |
| Ganesh s/o Ankushrao Nakhate | ... Respondent |

...

Mr. V. M. Kagne, APP for the applicant – State.  
Mr. V. B. Jadhav, Advocate for the respondent.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**Reserved on : 02.02.2022**

**Pronounced on : 04.03.2022**

**ORDER :-**

. Criminal Application No.1676 of 2020 has been filed for relaxation of condition imposed in Bail Application No.1396 of 2019. This Court had decided the said bail application on 13.01.2020. While allowing the said bail application under Section 439 of the Code of Criminal Procedure, the condition was imposed that the applicant shall

not tamper with the prosecution evidence and the applicant shall not enter limits of Parbhani district till conclusion of trial except for attending the Sessions Case, whereas the State has filed ACB No.83 of 2020 for cancellation of the said bail on the ground that he has committed breach of the said condition.

2. Before proceeding further what is not in dispute to the applicant is that he had come to Parbhani on 26.02.2020 and according to him as the Sessions Case was scheduled on 27.02.2020, he had come to Parbhani to attend the same as that liberty was granted by this Court to him. The prosecution has contended that on 26.02.2020, he had assaulted one Yogesh Ture, his brother Balaji Ture and cousin Arjun Hulekar. On 27.02.2020, at about 10.00 p.m., the offence vide Crime No.95 of 2020 came to be registered with Nanalpeth Police Station, Dist. Parbhani for the offence punishable under Sections 326, 323, 427, 504, 506 read with Section 34 of Indian Penal Code. However, there appears to be typographical mistake in the FIR as the FIR came to be registered at 00.56 hours of 27.02.2020, that means prior to 10.30 p.m. of 27.02.2020. That means the incident would have occurred around 10.00 p.m. on 26.02.2020. The printed FIR, column No.3, states about the occurrence of offence. It is stated that it was between 22.30 to 22.35 hours on 27.02.2020. It will not be out of place to mention here

that even the present applicant/respondent No.2 in application for cancellation of bail has also lodged FIR vide Crime No.97 of 2020 with the same police station at 16.54 hours on 27.02.2020 against Yogesh Ture and others for the offence punishable under Sections 325, 324, 323, 504 read with Section 34 of Indian Penal Code. Therefore, the prosecution states that when his entry was limited for attending the Court in connection with the Sessions Case, yet the present applicant/respondent in application for cancellation of bail went to another place and committed another offence. This amounts to breach of term of condition and since he is threatening the witnesses, the prosecution says that his bail should be cancelled.

3. Heard learned Advocate Mr. V. B. Jadhav for the applicant in Criminal Application No.1676 of 2020 and for respondent in ACB No.83 of 2020 and learned APP for the respondent – State in Criminal Application No.1676 of 2020 and for applicant in ACB No.83 of 2020.

4. It has been vehemently submitted on behalf of the applicant that the applicant is abiding the term that is imposed and he resides at Pune after he was released on bail. He had come to Parbhani on 26.02.2020 for attending the Court for the next date i.e. 27.02.2020. He was proceeding on motorcycle along with friend from R. R. Tower to

Gavhane Chowk. He found four persons standing near ATM Machine, Nehru park. He was then called by Santosh Ture, therefore, he stopped the vehicle and went near those persons. Those persons were Santosh Ture, Yogesh Ture, Shrikant Ture and Arjun, whose full name he has not aware. Santosh Ture then asked the applicant that he has committed murder of his younger brother then how he can pass through the road in front of his house. He threatened and caught hold of the collar of the shirt of the applicant. Santosh then assaulted him by iron rod on his right cheek, forehead, nose etc. causing bleeding injury and loss of tooth. The others had assaulted him by fists and kick blows. After his friend raise voice, a police vehicle came and he was taken in police jeep to Nanalpeth Police Station and then he was taken to hospital. He lodged the report from the hospital. The applicant has not violated any term. He had come for the purpose of attending the case, but he has been then falsely implicated, though he himself is the victim of the assault by Santosh Ture and others. His liberty, therefore, need not be curtailed.

5. The learned Advocate for the applicant further submitted that as he cannot enter Parbhani district, he started doing labour work in the adjacent district, however, due to Covid-19 pandemic situation, he is facing starvation as he is unable to get labour work. His entire family is

residing at Parbhani. He is having agricultural land and by cultivating it, he can earn and support the family. He has stayed out of Parbhani for a considerable period. The said condition deserves to be cancelled.

6. Learned APP has strongly opposed the application for relaxation of condition. It is submitted that this Court had considered the manner in which the offence was committed and the need was felt to impose that condition in view of the brutal murder that was committed. The applicant had taken active part in commission of that crime. There is danger to the witnesses, who are yet to be examined and, therefore, till the conclusion of trial, the said condition needs to be continued.

7. It has been further submitted on behalf of the prosecution that the filing of cross complaints on 27.02.2020 is the outcome of the apprehension of the prosecution and also the possibility of tampering with the evidence of the prosecution cannot be ruled out. Those persons, who had received injuries, due to the assault by the applicant are the witnesses in the Sessions Case. In fact, when there is specific condition that the applicant shall not enter the limits of Parbhani district, then it was expected that the applicant ought to have given his address in Criminal Application No.1676 of 2020 of the new place, where he is residing. He has given his address as New Mondha,

Parbhani. He has not supplied the address where he has allegedly taken the shelter after the bail was granted to him. It is not supplied to either the Trial Court or to the Investigating Officer. The Investigating Officer/Police Inspector, Kotwali Police Station, Parbhani i.e. P.I. Pramod Santoshrao Patil has filed affidavit and has stated that no such address was given by the applicant to him. The learned Advocate appearing for the applicant submitted that the applicant is residing at Pune, but for want of address, his said statement cannot be accepted. In fact, there was no need for the applicant to pass through the road in front of one Jagdish Shirale or as per his own contention from R. R. Tower to Gavhane Chowk road. It only indicates that just to give threats to those witnesses, the applicant had gone to that place and the applicant cannot deny that incident. With these facts, it can be definitely said that he has violated the condition imposed on him and, therefore, his bail order needs to be cancelled.

8. Before turning to the facts of the case, it is necessary to consider certain decisions of the Hon'ble Supreme Court. The Hon'ble Supreme Court in ***Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)*** has held that, "*it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out*". The principles laid down in ***Daulatram Vs. State of Haryana,***

(1995) 1 SCC 349) have been reiterated, those are as follows :-

*“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”*

9. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

*“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”*

10. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, “*when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner.*”

11. Now, turning towards the facts of the case, here we will have to deal with the incident dated 26.02.2020 first, because the conclusion drawn in respect of that incident has the effect on the application for relaxation of the condition to the bail. It is to be noted that the applicant himself has provided the orders of bail granted by learned Additional Sessions Judge-3, Parbhani to co-accused. In all those orders,

which are placed on record, condition has been imposed, but for accused – Balaji @ Balasaheb Subhash Sonawane, same condition is imposed that he shall not enter within the limits of Parbhani City till the conclusion of trial, except for attending the Court's dates. However, to another accused i.e. Sandeep @ Sandy Premnath Bamne it is other way i.e. he shall not leave Parbhani without informing in-charge of Police Station, Kotwali in writing. As regards the applicant is concerned, the condition was imposed by this Court while releasing him on bail that he shall not enter Parbhani district. No doubt, it has not been mentioned by this Court that he should provide his address, where he would be residing till the conclusion of trial either to the Sessions Court or to the Police Station/Investigating Officer, but that can be said to be the inherent expectation of this Court that the applicant should state the address where he would take shelter till the conclusion of trial. Surprisingly, in the Criminal Application No.1676 of 2020, the applicant is giving his address as New Mondha, Parbhani. In the entire application he has not given where exactly he is residing, though he says that he has started labour work in the adjacent district. But then the learned Advocate representing the applicant submitted that the applicant resides at Pune. Pune is not an adjacent district to Parbhani. But then it is to be noted that in the FIR lodged by the applicant i.e. Crime No.97 of 2020,

he has not stated that he had come from Pune on that day and was going towards his house. Neither in his application nor in his FIR he has stated so. He has filed affidavit-in-reply to the application for cancellation of bail and in that, he has given an address which is stated to be the address of one Chetan Gavhane, who is his friend and it is stated that it is in Chinchwad, Pune. He has then stated that he had started from Pune at about 2.00 p.m. on motorcycle and reached Parbhani City around 10.30 p.m. on 26.02.2020. He has also then stated that at present he is residing on rent at property owned by one Sonaji Kakade behind Sugandha Nagar Market Committee, Mantha. It is to be noted that the said affidavit has been filed on 03.12.2020, which is, in fact, rejoinder in response to the affidavit filed on behalf of the State. That means whatever statements are made in the said rejoinder or affidavit-in-reply appears to be afterthought. It is not supported by any documentary evidence. When he states that he has come all the way from Pune to Parbhani on motorcycle, definitely he would have filled petrol in the motorcycle. Further, he has not stated that he was supposed to take the road from R. R. Tower to Gavhane Chowk, near Nehru Park to go to his house. We are on this point as to why he would have gone to the said place, where admittedly the incident had taken place at about 10.30 p.m. on 26.02.2020. If the applicant is unable to give that

explanation, then his presence at that spot was uncalled for or for that purpose, prosecution intends to canvass.

12. It is to be noted that the applicant was arrested in connection with Crime No.152 of 2019 registered with Kotwali Police Station, Parbhani for the offence punishable under Sections 302, 341, 324, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code. Name of deceased is Amol Rustamrao Ture. Santosh Ture is the informant in that case. Yogesh Ture is the informant in Crime No.95 of 2020 and he has stated that since his aunt had expired around 10.00 p.m., he along with his brother Balaji and cousin Arjun were proceeding for purchasing material for last rites. They were stopped by the present applicant and one Bhagwat Sable as well as Jagdish Shirale. He states that the applicant had given threat that he has killed brother (Amol) and they should not behave arrogantly (तुम्ही जास्त माजलेत का). Thus the acts done and the threats given has direct connection with the case in which the applicant has been granted bail. Therefore, on two counts there appears to be violation/breach. One is not to tamper the prosecution evidence and another to enter the limits of Parbhani district. Applicant cannot take advantage of the date which was the next date before the Sessions Court. When specific limits were put that he can enter the Parbhani district just to attend the Court, then he was not supposed to go here and there and utilize that time for

threatening the prosecution witnesses. Taking into consideration the above citations, it can be stated that the facts demonstrated, especially threat given to the prosecution witnesses for amounting to tampering the evidence, are not conducive to fair trial to allow the applicant to retain his freedom by enjoying the session of bail during the trial. Therefore, case is made out/sufficient material has been shown to cancel the bail granted to the applicant/respondent in application for cancellation of bail in view of violation of condition imposed by this Court and in consequence thereto the said condition cannot be relaxed. For the aforesaid reasons following order is passed :-

**ORDER**

- I) Application for Cancellation of Bail No.83 of 2020 stands allowed.
- II) Bail granted by this Court to the respondent in ACB No.83/2020 on 13.01.2020 in Bail Application No.1396/2019 stands cancelled.
- III) Respondent in ACB No.83/2020 to surrender before the jail authorities at Parbhani on or before 5.00 p.m. on 07.03.2022.
- IV) In case of failure on the part of the respondent in ACB No.83/2020, the learned Additional Sessions Judge, Parbhani to issue Non-Bailable Warrant against the accused – Ganesh s/o

Ankushrao Nakhate, whose bail is now cancelled.

V) Criminal Application No.1676 of 2020 stands rejected.

VI) Registrar (Judicial) to forward the copy of this order to learned Additional Sessions Judge, Parbhani.

**[SMT. VIBHA KANKANWADI, J.]**

**Later on :-**

. Learned Advocate for the applicant, after pronouncement of the order, submits that his client intends to approach Higher Court and seeks stay of this order.

2. Learned APP strongly opposes for grant of stay considering the fact that the bail granted by this Court has been cancelled due to breach of terms of conditions imposed while releasing the respondent – accused on bail.

3. In view of the fact that the bail granted earlier by this Court has been cancelled for the breach of terms of conditions imposed, an opportunity is given to the respondent – accused and, therefore, the operation of this order is stayed for a period of four weeks from today.

**[SMT. VIBHA KANKANWADI, J.]**

scm