

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION NO.69 OF 2019

Ramesh s/o Shamrao Kendre

... Applicant

Versus

1. Nagnath s/o Narayan Dhakane
2. Narayan s/o Gangaraim Dhakne
3. Vaijnath s/o Narayan Dhakne
4. The State of Maharashtra

... Respondents

...

Mr. D. M. Shinde h/f Mr. S. B. Madde, Advocate for applicant.

Mr. J. M. Murkute, Advocate for respondent Nos.1 to 3.

Mr. A. M. Phule, APP for respondent No.4 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21.02.2022

ORDER :-

. Present application has been filed by the original informant for cancellation of bail granted to respondent Nos.1 to 3 by this Court by orders dated 20.04.2018 and 10.05.2018 in Bail Application Nos.351 of 2018 and 509 of 2018 respectively on the ground of violation of conditions.

2. Heard learned Advocate Mr. D. M. Shinde holding for learned Advocate Mr. S. B. Madde for the applicant, learned Advocate Mr. J. M. Murkute for respondent Nos.1 to 3 and learned APP Mr. A. M. Phule for respondent No.4 – State.

3. It has been vehemently submitted on behalf of the applicant – original informant that the informant's daughter got married to respondent No.1 about 5 years prior to 03.04.2017. She had one son and one daughter. Offence under Sections 302, 498-A, 323, 504 read with Section 34 of Indian Penal Code vide Crime No.35 of 2017 came to be registered with Kingaon Police Station, Dist. Latur on the basis of dying declaration by the daughter of the present applicant. As aforesaid all the three respondents i.e. respondent Nos.1 to 3 were granted bail by this Court by imposing conditions. In both the applications, the main condition was that they shall not tamper with the evidence of the prosecution and specifically in Bail Application Nos.509 of 2018 and 508 of 2018, they were directed not to enter the village of the witnesses. It was also stated that respondent No.1 shall not reside at Yestar and surrounding area of 10 Kms. of it till evidence of material witnesses is recorded. For accused - Laxman, it was the condition that he shall not visit Yestar and surrounding area of 10 Kms. of it.

4. Learned Advocate for the applicant submits that respondent Nos.1 to 3 are trying to pressurize the witnesses and, therefore, they had filed application at Exhibit-66 in Sessions Case No.15 of 2017 before the learned Additional Sessions Judge, Ahmedpur, however, that application came to be rejected. They had also moved application before the Police

Inspector of the concerned Police Station on 26.01.2019, however, no cognizance was taken. It is stated that the accused persons are willfully adjourning the matter for one or the other reason, though at once trial Court imposed cost. Only intention of the accused is to prolong the matter. Further, respondent No.1, after his release, had illegally entered the village of the applicant and by playing drama of consumption of poison registered FIR vide Crime No.421 of 2018 on 14.11.2018 under Sections 307, 323, 504 read with Section 34 of Indian Penal Code against the applicant and his son. After the police had come to the conclusion that the said complaint is bogus, they had submitted B-summary report. It is submitted that respondent No.1 has crossed his limit and by trying to implicate the applicant, he is pressurizing him so that he should withdraw the case or speak something against his own necessity. The accused is having criminal mind and they have money as well as muscle power and, therefore, he had no alternative but to approach under Section 439(2) of the Code of Criminal Procedure. In view of the said circumstance, the bail granted by this Court to respondent Nos.1 to 3 deserves to be cancelled.

5. Per contra, the learned Advocate for the respondent No.1 to 3, considering the affidavit-in-reply filed by respondent No.1 on behalf of himself as well as co-respondents, vehemently submitted that

intentionally the applicant has not disclosed many facts. It is denied by the respondents that they are seeking unnecessary adjournments and they are pressurizing the witnesses. In fact, after the release of respondent No.1 on bail, there were talks between the relatives and the applicant for settlement of the matter and accordingly, the matter was settled. It was agreed that the respondent No.1 will execute registered Gift Deed in respect of land bearing Gat No.202 admeasuring 97.50 R and land Gut No.179 admeasuring 1 H 1 R in favour of minor son of respondent No.1, namely, Gangadhar Nagnath Dhakne. It was also agreed that the guardian of the minor son would be the father-in-law i.e. the present applicant. The minor two sons of respondent No.1 are presently residing with the applicant and he is using them to settle the score. Accordingly, the Gift Deed was executed on 06.08.2018 in the office of Sub Registrar, Ahmedpur in presence of witnesses to which the applicant is also the signatory. On the basis of the said gift deed which was then accepted in the capacity as guardian of the son by the present applicant, Mutation Entry has also been effected. Thereafter, it was also agreed that respondent No.1 would pay amount of Rs.5,00,000/- to the applicant for the upbringing of sons. Accordingly, amount of Rs.4,00,000/- has been paid. The remaining amount of Rs.1,00,000/- was to be paid on 09.11.2018 and accordingly, the respondent No.1

obtained loan in the name of his mother and brother from Mahindra Finance Limited. He had gone to the house of the applicant on 09.11.2018 for handing over the remaining amount of Rs.1,00,000/- where other persons were also present, however, after the acceptance of the amount, the applicant and others had attacked respondent No.1. The applicant told that when they have received the loan and the money, now respondent No.1 should be eliminated. He was forcibly administered poison and was thrown on the road. His FIR was recorded by Police and offence was registered. However, it appears that the applicant has managed the Investigating Officer. Respondent No.1 was thereafter called and threatened by the police that they will close the case. The accused persons were not even arrested nor even they obtained bail from the Court of law. This fact is very much clear as to who has the muscle power and money power. On 27.11.2018, respondent No.1 had filed application to Superintendent of Police, Latur pointing out the attitude of the Police Inspector and requested for handing over of investigation in his case to some other police person. Superintendent of Police, Latur had not taken any decision and, therefore, respondent No.1 was required to come before this Court and had filed Criminal Writ Petition No.1803 of 2018. During the course of hearing, learned APP submitted to this Court that the investigation is

completed and 'B' summary report has been filed before the learned Judicial Magistrate First Class and, therefore, the writ petition has been disposed of. It was observed that the Magistrate is duty bound to issue notice to the respondent No.1 before accepting the 'B' summary report. Till the date of affidavit, he has not received any notice from the Magistrate. Therefore, applicant cannot take advantage of the submission of 'B' summary report. The respondent No.1 had entered the village in view of settlement to which even the applicant was party. Till the execution of Gift Deed and changing revenue record as well as acceptance of Rs.5,00,000/-, the applicant had not made any kind of grievance. Now, all of a sudden, he has grievance and comes with the story that he and the witnesses are being pressurized. The bail cannot be cancelled when the application is filed with *mala fide* intention. Learned Advocate for respondent Nos.1 to 3, therefore, prayed for dismissal of the application.

6. Almost all the facts have been stated above in detail and, therefore, they are not reproduced here. This Court while granting bail imposed condition as aforesaid. It cannot be interpreted that there is only condition to the accused persons. There is inherent and hidden condition for the prosecution witnesses also that they shall not do any illegal activity against the interest of the prosecution. Here, along with

the affidavit-in-reply, the respondents have produced on record the copy of registered Gift Deed. After the affidavit-in-reply was filed, there is no counter affidavit by the applicant and he is not denying the execution of the said document. He is very much party to that document of Gift Deed in the capacity as guardian of the minor son of respondent No.1. Intentionally, the applicant has kept silence about the execution of this document in his application. There was absolutely no necessity for him to enter into any such document on behalf of the son of respondent No.1. Substantial property appears to have been gifted by respondent No.1 and his father in favour of the minor son of respondent No.1. The said document also bears the photograph, signature and thumb mark of the applicant as well as the photographs taken from the system of the Sub Registrar's office. As aforesaid, the applicant has not denied the execution of such document. When he has not explained as to what was the reason for getting such document executed in his favour, there is room to believe what respondent No.1 is saying that there was a settlement and in view of that settlement, those pieces of lands were gifted in favour of the minor son of respondent No.1 who is presently in the custody of the applicant. Further, there is also evidence filed by respondent No.1 about obtaining of loan from Mahindra Rural Housing Finance Limited that the amount was borrowed by him. He has also

stated on oath that he had given amount of Rs.4,00,000/- first and, thereafter, the amount of Rs.1,00,000/- was given in the house of the applicant. The respondent No.1 has also produced on record the FIR lodged by him. At that time, it was registered for the offences punishable under Sections 307, 323, 504 read with Section 34 of Indian Penal Code against the applicant, his sons, cousin brother-in-law, cousin mother-in-law and mother-in-law of respondent No.1. No doubt, it appears that 'B' summary has been filed, but the respondent No.1 has agitated about the attitude of the Investigating Officer and had come uptill this Court by way of writ petition. The Hon'ble Division Bench of this Court on 20.03.2019 disposed of the petition in view of the 'B' summary report, but it was stated in the order itself that it is opened to the Magistrate to give direction of further investigation. It is also necessary for the Magistrate before accepting the report to give notice to the petitioner and hearing as petitioner can file objection petition that proceeding. Again on oath the respondent No.1 has stated that he has not received notice from the Magistrate. Under such circumstance, advantage cannot be given to the applicant of the fact of 'B' summary report filed by the police.

7. In the nutshell, it can be seen that the application is absolutely not *bona fide*. When the offence was registered against the applicant and

others on 14.11.2018, the applicant had not come to this Court immediately stating that all that has been stated in the FIR is false and there is breach of condition of the bail. Another aspect to be noted is that the police will otherwise be active when it would be an offence under Section 307 of Indian Penal Code, but in this case surprising to note that none of the named accused persons therein were tried to be arrested and those accused persons have had also not tried to seek anticipatory bail. These activities of the police are sufficient enough to show that something has gone wrong. Since the matter can be still said to be subjudice before the learned Magistrate and the ball is in his Court, this Court is refrained itself from making any kind of comments. Certainly, the bail that was granted and the liberty that was restored to respondent Nos.1 to 3 cannot be taken away under those circumstances. Cancellation of bail is a serious affair and it cannot be at the behest of such a person, who himself had entered into Gift Deed and received the benefit of the alleged settlement. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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