

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 110 OF 2022

Mayur Sarangdhar Patil,
Age 26 years, Occu.
R/o. Sakegaon, Tq. Bhusawal,
District Jalgaon

.. Applicant
(Original complainant)

Versus

1. The State of Maharashtra
Through Police Inspector,
Taluka Police Station,
Bhusawal, District Jalgaon
2. Ishwar @ Rahul Santosh Koli,
Age 19 years, Occu. Agri. & Labour,
3. Vishal s/o. Subhash Koli,
Age 25 years, Occu. Agri. & Labour,
4. Subhash s/o. Shamrao Koli,
Age 55 years, Occu. Agri. & Labour,

Nos. 2 to 4 R/o. Sakegaon,
Tq. Bhusawal, Dist. Jalgaon.

.. Respondents
(Nos. 2 to 4 – original
Accused No.1, 3 & 4)

Mr. Hemantkumar F. Pawar, Advocate for Applicant;
Mr. K. S. Patil, A.P.P. for Respondent No.1/State;
Mr. Vinod Prakash Patil, Advocate for Respondent Nos. 2 to 4

CORAM : S. G. MEHARE, J.

Reserved on : 09-12-2022

Pronounced on : 21-12-2022

ORDER

1. The complainant has filed this application under Section 439(2) of the Code of Criminal Procedure, for cancellation of bail

granted to respondents No.2, 3 and 4 by Additional Sessions Judge, Bhusawal, District Jalgaon, in Criminal bail Application No. 592 of 2021, dated 30.09.2021.

2. Heard the learned counsel for the applicant/complainant and the learned counsel for the respondents No.2 and 4/accused and the learned A.P.P. for the respondent/State.

3. The learned counsel for the complainant/applicant has vehemently argued that the learned Sessions Court, while granting bail, failed to consider the allegations levelled against respondent Nos. 2 to 4. The recovery of weapons at the instance of respondent Nos. 2 to 4 has also been not considered. The victim was assaulted on vital part. The aggressive acts of the applicant coming to the house of the complainant and assaulting him with weapon has also not been considered. The order granting bail is without appropriate reasons and without considering the material on record. This Court has cancelled bail granted by the same Judicial Officer to the co-accused in similarly situated case.

4. The complainant had challenged the said order before the Honourable Supreme Court. However, the said special leave to bail was also dismissed. Heavily relying on the view taken by this Court cancelling the bail of this applicant, the learned counsel for the applicant would submit that the same principles would apply to the case in hand. He prayed to allow the application.

5. The learned counsel for respondent Nos. 2 to 4 has vehemently argued that the learned Additional Sessions Judge has considered the material placed on record. The case diary was also perused. The learned Judge, while granting bail, has given reason that the statements of material witnesses have been recorded. There were no criminal antecedents against the respondents. On perusing the application, it appears that there are sufficient grounds to release them on bail. The order granting bail does not reflect that there was non application of mind and without considering entire material placed before the Court.

6. This Court, in the case the *State of Maharashtra Versus Mayur Sarangdhar Patil and another*, in ACB/222/2021 dated 06.06.2022, filed by the complainant, has discussed the law as regards the principles granting bail.

7. In the above case filed by the complainant, this Court held that the learned Additional Sessions Judge, Bhusawal, has not considered the material that was placed before him in the charge-sheet under Section 173 of the Code of Criminal Procedure, while deciding the bail applications filed by the respondents. However, instead of carrying out desired exercise, he has adopted a cryptic way. This Court also referred to the ratio laid down by the Honourable Supreme Court in the case of ***Brijmani Devi Versus Pappu Kumar and another (Criminal Appeal NO. 1663 of***

2021 disposed of 17th December, 2021), in which it has been reiterated that while considering application for grant of bail, a *prima facie* conclusion may be supported by the reasons and must be arrived after having regard to the vital facts of the case brought on record. It has also been observed that a cryptic order or orders which have now been demonstrated as a copy paste format orders cannot be allowed to be sustained. It has also been observed that, *the approach of the then learned Additional Sessions Judge, Bhusawal, was totally wrong. When he is sitting in the chair of a Judge, he should have understood that there is no short cut at any stage of the proceeding. At each and every stage of a proceeding, the Judge should apply his or her mind and it can be reflected only through the orders and judgments, those are passed. An order cannot be passed in a mechanical way and at the cost of repetition it can be said that there cannot be a format of a bail order at least under Section 439 of the Code of Criminal Procedure before the Sessions Judge or Additional Sessions Judge.* It has also been observed in paragraph No. 11 of the order/judgment of this Court that cryptic reasons are no reasons at all and this Court really shocked to see that the concerned Judge has literally made a format for bail orders, may it be for the bail applications where the accused is charged for the offence punishable under Sections 302, 307 or even 354 and under POCSO Act, Arms Act, etc. There cannot be uniformity in reasons like 'copy paste'.

8. It appears that this Court while passing the order in the above case has considered that the specific format of the orders of the same Judicial Officer while granting bail.

9. The learned counsel for the applicant has vehemently argued that the same Judge had granted bail to respondent Nos.2 to 4 reporting the copy paste orders and in a format. There was absolutely no application of mind.

10. The Honourable Apex Court, in the case of **Puran, Shekhar and another Vs Rambilas and others, AIR 2001 SC 2023**, has laid down the law on the cancellation of bail. The Hon'ble Apex Court, in the case of **Puran** (*supra*), has reproduced the ratio laid down in the case of **Gurucharan Singh vs State (Delhi Administration) AIR 1978 SC 179**, It has been extracted as below;

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of bail. This position follows from the subordinate position of the Court of Sessions vis-a-vis the High Court."

11. The law is well settled that the order without reasons is no order. Reasoning is the soul of judgment or order. Reasoning must run with the material placed before the Court and it should be relevant and convincing too.

12. There appears substance in the arguments of the learned counsel for the applicant that the same Judicial Officer granted bail to respondent Nos. 2 to 4 on the same and the 'cut-paste' format. It appears that the nature of injuries and way of committing the crime has not been seriously considered. One of the grounds to refuse bail is gravity of the offence, but this aspect also appears to have not been considered by the Court while granting bail.

13. The order granting bail is apparently against the settled principles of law and is in 'cut-paste' format.

14. The material collected against respondent Nos.2 to 4 reveals that they were armed with weapons and went to the house of the first informant. They assaulted the first informant and others with iron pipe, axe and wooden stick.

15. Keeping in view the law regarding the cancellation of bail and examining the bail order of the learned Additional Sessions Judge, there appears force in the arguments for the applicant that the learned Judge did not consider the material facts and passed the said order in a prescribed form as if 'cut and paste' order from

another case. The offence appears serious. In view of the matter, the application deserves to be allowed. Hence the following order;

ORDER

- i) The application is allowed.
- ii) The order granting bail to respondents nos. 2 to 4 by the learned Additional Sessions Judge, Bhusawal in bail application No.592 of 2021, dated 30.09.2021, stands cancelled.
- iii) The respondents nos. 2, 3 and 4 directed to surrender before the learned Additional Sessions Judge, Bhusawal on or before 6th of January 2023, till then they should not be arrested.
- iv) Cancellation of bail by this order does not curtail the rights of accused to claim a bail afresh.

**(S. G. MEHARE)
JUDGE**

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