

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

APPLICATION FOR CANCELLATION OF BAIL NO.101 OF 2020

Shaikh Naser S/o Abdul Wahed Patel

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Shaikh Yunus S/o Shaikh Sikander Patel,
- 3) Shaikh Jakir S/o Shaikh Sikander Patel

...RESPONDENTS

...
Mr.S.S. Kazi Advocate for Applicant.
Mr.N.T. Bhagat, A.P.P. for Respondent No.1 – State.
Mr.Govind Kulkarni Advocate h/f. Mr. D.R. Deshmukh
Advocate for Respondent Nos.2 and 3.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 7th JANUARY 2022

DATE OF PRONOUNCING ORDER : 8th JUNE 2022

ORDER :

1. Present Application has been filed under Section 439(2) of the Code of Criminal Procedure to challenge the orders passed

by the learned Additional Sessions Judge, Aurangabad on 28th August 2020 in Criminal Bail Application Nos. 1167 of 2020 and 1173 of 2020 granting regular bail under Section 439 of the Code of Criminal Procedure, to respondent Nos.2 and 3.

2. Heard learned Advocate Mr. S.S. Kazi for Applicant, learned APP Mr. N.T. Bhagat for Respondent No.1 – State and learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. D.R. Deshmukh for Respondent Nos. 2 and 3.

3. Applicant himself is an Advocate who is the original informant. It has been vehemently submitted on behalf of the applicant that he lodged First Information Report (for short "FIR") vide Crime No.273 of 2020 with Harsul Police Station, Aurangabad city on 1st August 2020 for the offence punishable under Section 307, 120-B, 427, 323, 504, 143, 147, 148, 149 of the Indian Penal Code. It was against eight persons. It is alleged that all the eight persons had assaulted brutally to the applicant with dangerous weapons. Respondent Nos. 2 and 3 came to be arrested and then they filed applications for regular bail. Those applications were opposed by the present applicant, however, the learned Additional Sessions Judge, Aurangabad allowed both the Applications on 28th August 2020. The injury suffered by the

applicant were not considered by the learned Judge properly. Some how the applicant has survived, otherwise he would have been dead. The learned Additional Sessions Judge could not have left role of each accused to be decided during trial. It was thought that there was no pre-meditation between the accused to commit such offence and therefore the concerned Judge came to the wrong conclusion that further custodial interrogation of those accused persons is not required.

4. Learned Advocate appearing for the applicant has further submitted that worst part has taken place later on after the orders were passed by the learned Additional Sessions Judge. Respondent Nos. 2 and 3 were represented by one Advocate Rajesh Kale. After respondent Nos.2 and 3 were granted bail, it appears that there was a celebration and Advocate Rajesh Kale was congratulated. There were distribution of sweets. Advocate Sitaram Chavan Patil with Advocate Ajay Kale and four others had made Facebook post which was viral. So also one Advocate Datta K. Dhoble had congratulated Advocate Rajesh Kale. This kind of celebration is hazardous to the profession. The learned Additional Sessions Judge has failed to consider the chequered history and the criminal antecedents of the accused persons and

therefore the bail granted to respondent Nos.2 and 3 deserves to be cancelled.

5. Learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. D.R. Deshmukh for respondent Nos.2 and 3 pointed out that the informant who is Advocate, had suppressed his own antecedents and also the fact that at the relevant time he himself was holding the knife in his hand. For what purpose he was holding the knife has not been explained by him. The CCTV footage is very much clear in that respect. This aspect was considered by the learned Additional Sessions Judge and then taking into consideration the role attributed to respondent Nos.2 and 3, the bail was granted. In clear terms learned Advocate Mr. Kulkarni submitted that he is not justifying the acts of certain Advocates who are practicing in the District Court and they should refrain themselves from projecting anything which is unprofessional, but then that cannot be the ground for cancellation of bail granted to respondent Nos.2 and 3.

6. Learned Advocate for the applicant is relying on the decision in ***Kumar Singh vs. State of Rajasthan and another, 2021 SCC OnLine SC 511***, wherein the principles to be considered at the time of grant of bail were reiterated and the

ratio laid down in ***Mahipal vs. Rajesh Kumar @ Polia, (2020) 2 SCC 118*** was reiterated, wherein it was observed that, where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. It was further observed that an appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a *prima facie* view of the evidence on record. Further reliance has been placed on the decision in ***Kanwar Singh Meena vs. State of Rajasthan and another, AIR 2013 SC 296***, wherein it is held that:-

“ Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other Courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is *prima facie* case against the accused. The Court must not undertake meticulous

examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society.”

7. It is to be noted that the investigation is complete and charge-sheet has been filed on 14th November 2020 before the learned J.M.F.C. Aurangabad. By this time the case might have

committed to the Court of Sessions. It will not be out of place to mention here that on the basis of FIR lodged by one Yunus Sikander Patel (who has been posed as accused No.2 by the present applicant in his FIR) Crime No.274 of 2020 was registered with the same Police Station on 2nd August 2020 at about 23.37 hours for the offence punishable under Sections 307, 120-B, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code. Thus, it can be seen that there was counter case and the present applicant has been posed as an accused in the said counter case. While considering the bail applications filed by respondent Nos.2 and 3, the allegations in the FIR were considered. It was considered that accused Shaikh Yunus Shaikh Sikandar Patel (respondent No.2) has assaulted the informant by iron rod and caused him injury. The contents of the FIR would show that as against respondent No.3 – Shaikh Jakir S/o Shaikh Sikandar Patel, it is stated that he had also assaulted the informant by spade. As regards the other accused persons are concerned, it is stated that they had assaulted him by kicks and fist blows and as against one Shaikh Sardar Shaikh Yunus allegations are that he had assaulted the informant by a stick having brass handle. The learned Additional Sessions Judge has then considered the statements of the witnesses, seizure

panchnama and then it was considered that one wooden log was seized at the instance of respondent No.2. It was considered as prima facie difference between the statement of the informant and seizure of wooden log. Thereafter statement of witness Khalil Musa Shaha was considered stating that informant was having knife in his hand. The photographs are tried to be produced on behalf of respondent Nos.2 and 3 which are stated to be the part of CCTV footage in which the informant is seen with knife.

8. The copy of the charge-sheet is made available to this Court and the injury certificate issued by the Pacific Hospital, Aurangabad on 30th July 2020, which appears to be the provisional certificate, showed two injuries, one was CLW (sutured), but it is stated to be simple in nature and second injury is CT brain with undisplaced fracture involving left frontal bone extending to left zygoma and it is stated to be the grievous injury. The informant has also produced certain documents about his hospitalization i.e discharge card, wherein it has been observed that he was having traumatic head injury with fracture to left zygoma and left frontal bone. So there is no difference in those documents. Thus, it can be seen that all the documents were considered by the learned Additional Sessions Judge. Even

the informant has produced photographs about the incident, but it is not clear from where he has got those documents. Even if we consider the same as it is, we will have to then consider the photographs that have been produced by respondent Nos.2 and 3 also, which show that informant was holding knife in his hand, of which there is no explanation by him. Further, the counter FIR would disclose that the other side has also received injuries, which will have to be explained by the prosecution at the time of trial. Both the cases will have to be then tried by the same Judge and in this background, therefore, it appears that the learned Additional Sessions Judge has made the statement that role attributed to each of the accused will have to be decided at the time of trial.

9. The ratio laid down in the decisions relied by the learned Advocate for the applicant cannot be denied, however, all those parameters appears to have been observed by the learned Additional Sessions Judge while granting bail to respondent Nos.2 and 3. The prosecution witness himself is saying that the applicant – informant was holding knife in his hand. Under such circumstance, no case is made out to exercise the extraordinary powers of this Court under Section 439(2) of the Code of

Criminal Procedure, which will have to be exercised in exceptional circumstances only.

10. Before parting, the submissions about the conduct of the Advocates that has been pointed out will have to be noted. Such incidents are on the rise. Such incidents are totally unprofessional. Grant of bail does not give clean chit to any accused. The Advocate should not feel that since his client has been released on bail he himself has also concurred the world. The other Advocates should also exercise restraints and should be professional. Social media, in such a way, cannot be used by any person, especially by the Advocates. Advocacy is a noble profession and it has its glory. The persons in the legal profession have contributed much in building up of this Nation. We cannot allow the standard to go down. Merely congratulating orally to a colleague is a different thing but putting it on social platform and also sharing photographs of distributing sweets as if the concerned Advocate who had represented respondent Nos.2 and 3 has achieved sole goal is definitely deprecable. But for this purpose, even though respondent Nos.2 and 3 might have taken part in that function, or may have also incurred expenses for the sweets, the remedy cannot be under Section

439(2) of the Code of Criminal Procedure for the informant. His remedy may be elsewhere if at all he want to take up it on professional platform since he is also an Advocate.

11. In the net result, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]

asb/MAY22