

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 APPLICATION FOR CANCELLATION OF BAIL NO.144 OF 2021

HULAJI GANGARAM SHETE
VERSUS
BALAJI RAMJI SHINDE AND OTHERS

...
Advocate for Applicant : Mr. P. P. More h/f Mr. Panpatte V. S.
APP for Respondent No.3 – State : Mr. V. M. Kagne
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28.02.2022

PER COURT :

. Present application has been filed under Section 439(2) for cancellation of bail granted by this Court to present respondent Nos.1 and 2 in Bail Application No.513 of 2021 on 22.06.2021.

2. Heard learned Advocate Mr. P. P. More holding for learned Advocate Mr. V. S. Panpatte and learned APP Mr. V. M. Kagne for respondent No.3 – State.

3. This Court granted the above numbered bail application under Section 439 of the Code of Criminal Procedure. Respondent Nos.1 and 2 were arrested in connection with Crime No.137 of 2020 registered with Usman Nagar Police Station, Dist. Nanded for the offences punishable under Sections 302, 364, 143 of Indian Penal Code. The conditions

those were imposed that, (a) they shall not tamper the evidence or influence the witnesses and (b) they shall not try to contact the informant or witnesses and shall not influence them.

4. The cancellation has been prayed on account of alleged incident dated 08.07.2021 for which non cognizable offence under Sections 504, 506 read with 34 of Indian Penal Code has been lodged by the present applicant.

5. The learned Advocate for the applicant has received instructions and he submits that no further step was taken by the applicant after this non cognizable case was reported by him on 10.07.2021.

6. It is to be noted that the said non cognizable offence appears to have been registered under Section 155 of the Code of Criminal Procedure. It appears that the police have not taken any recourse to Section 155(2) of the Code of Criminal Procedure, nor the present applicant had taken further legal steps by filing private complaint before the concerned Judicial Magistrate First Class for taking further legal recourse. Under such circumstance, if authorities as well as the applicant himself has not taken action, that fact as alleged in the N.C. complaint cannot be taken as a ground for cancellation of bail. If actions are taken by this Court such as cancellation of bail on the basis

of the N.C. complaints, then every informant would come to this Court with a prayer of cancellation of bail. What is expected is that the legal recourse that is available to the informant/witnesses and/or to the police should be exhausted so that the concrete evidence can be before this Court to take extreme step of cancellation of bail. When bail is granted after considering all the merits involved, then its cancellation cannot be on the basis of mere lodging of a non cognizable offence.

7. No strong ground has been made for cancellation of bail and, therefore, question of exercising powers of this Court under Section 439(2) of the Code of Criminal Procedure won't arise. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm