

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

APPLICATION FOR CANCELLATION OF BAIL NO.145 OF 2021

ABDULLA ATIKUR RAHEMAN KHAN (CHAUDHARI)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Applicant : Mr.G.R.Syed h/f Mr.Pawan B.Pawar
APP for Respondent No.1 : Mr.V.M.Kagne
Advocate for Respondent Nos.2 & 3 : Mr.C.C.Deshpande

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 1st April, 2022

ORDER :-

1. Present application has been filed by original informant to challenge the order passed by this Court in Criminal Bail Application No.442 of 2021 dated 8th June, 2021. It will not be out of place to mention here that the present application has been drafted in such a way which states that the order passed by this Court should be recalled and/or it should be quashed and set aside which had granted bail to respondent Nos.2 and 3 under Section 439 of the Code of Criminal Procedure. Therefore, whether the application itself is maintainable is a question. The bail applications cannot be recalled or reviewed but there is a specific provision for getting it modified or cancelled. As regards the cancellation of the bail by this Court is concerned, if the

informant is agreed, then he will have to approach the Appellate Court.

2. Heard Mr.G.R.Syed, learned Advocate holding for Mr.P.B.Pawar, learned Advocate for the applicant, Mr.V.M.Kagne, learned APP for respondent No.1-State and Mr.C.C.Deshpande, learned Advocate for respondent Nos.2 and 3.

3. Present respondent Nos.2 and 3 are the original accused Nos.6 and 7 who came to be arrested on 14th August, 2020 by Chalisgaon Road Police Station, Dhule, Taluka and District Dhule, in connection with Crime No.77 of 2020, for the offence punishable under Sections 302, 323, 143, 147, 148, 149, 120-B of the Indian Penal Code. They had filed application under Section 439 of the Code of Criminal Procedure vide Bail Application No.442 of 2021, which came to be allowed on 8th June, 2021 by a detailed order. When the application was filed, the investigation was over and the charge-sheet was filed and therefore, the entire record which was made available by way of charge-sheet was considered by this Court. The CCTV footage from the nearby area was also recovered and the transcript panchanama was produced. It was noted by this Court that the presence of the applicants has been stated in the transcript

panchanama and it was then noted that the person who was given blows of knife is one Ijar @ Raja Abdul Rajjak Khan. He is a different person than present respondent Nos.2 and 3. It was also then noted by this Court that the co-accused were also arrested and recovery from them under Section 27 of the Indian Evidence Act or at the time of their arrest has been effected. Statements of the eye witnesses have been recorded and out of that record witnesses namely Mohammad Kaif Hajrat Ali Choudhari and Arbaz Khan Gulam Husen Choudhari had not stated the names of present respondent Nos.2 and 3, however, other two eye witnesses namely Nayab Khan Tahir Khan and Abdul fahad Hatimulla Khan had stated presence of respondent Nos.2 and 3. They had assigned the role of these respondents as assaulting the deceased by fists blows. Therefore, taking into consideration the role attributed to the applicants therein i.e. respondent Nos.2 and 3, the said bail application came to be allowed.

4. The learned Advocate appearing for the applicant has contended that this Court was under misconception that the role attributed to respondent Nos.2 and 3 is limited and this Court failed to appreciate the law laid down in *Mahipal Vs. Rajesh Kumar* [2019 DGLS (SC) 1560], *Ram Govind Upadhyaya Vs.*

Sudarshansingh [(2002) 3 SCC 598], Masroor Vs. State of U.P and Another [2009 AIR (SC) (Supp) 2832] and submitted that this Court can review its order or set aside its order passed earlier. It is then stated that this Court had not taken into consideration brutality of crime that is post mortem report, which shows that eight injuries out of which seven injuries are stab injuries.

5. Learned Advocate appearing for respondent Nos.2 and 3 supported the reasons given by this Court.

6. At the outset, it can be seen that this Court cannot sit as the Appeal Court on its own order. This Court had taken note of the entire charge-sheet and even as regards the death of the deceased is concerned, it has been observed that it is certainly homicidal in nature i.e. out of multiple stab injuries. However, then the role attributed to respondent Nos.2 and 3 was considered and the entire charge-sheet revealed that the role that has been attributed to them is assaulting by the fists blows. Therefore, by observing ratio laid down in the aforesaid authorities as regards the parameters those are required to be considered for an application under Section 439 of the Code of Criminal Procedure, concerned order came to be passed. If at all the informant is disagreed with the order of this Court then he

should approach the higher Court. His present application under Section 439 (2) of Code of Criminal Procedure is not maintainable before this Court. Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT