

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.110 OF 2020

Pratibha @ Pratiksha w/o Rajendra Shirsath ... Applicant

Versus

1. State of Maharashtra
2. Ramesh s/o Anna Gire
3. Sunil s/o Ramesh Gire
4. Anil s/o Ramesh Gire ... Respondents

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.111 OF 2020

Pratibha @ Pratiksha w/o Rajendra Shirsath ... Applicant

Versus

1. State of Maharashtra
2. Laxmibai w/o Ramesh Gire ... Respondents

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.112 OF 2020

Pratibha @ Pratiksha w/o Rajendra Shirsath ... Applicant

Versus

1. State of Maharashtra
2. Sandeep s/o Ramesh Gire ... Respondents

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Mr. A. S. Tilve, Advocate for the applicant in all the cases.

Mr. V. M. Kagne, APP for respondent No.1 – State in all the cases.

Mr. N. S. Ghanekar, Advocate for respondent Nos.1 to 4 in ACB/110/2020, for respondent No.2 in ACB/111/2020 and for respondent No.2 in ACB/112/2020.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 06.01.2022

Pronounced on : 27.01.2022

ORDER :-

. All these applications have been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent Nos.2 to 4, respondent No.2 and respondent No.2 in the respective applications.

2. Applicant is the original informant and wife of deceased Rajendra Shirsath.

3. On the basis of FIR lodged by the present applicant on 23.07.2020, Crime No.153 of 2020 came to be registered with Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 143, 147, 148, 149, 302 of Indian Penal Code. The accused persons came to be arrested and they had filed application under Section 439 of the Code of Criminal Procedure for grant of bail before the learned Additional Sessions Judge, Vaijapur. The respective respondents had filed different applications i.e. Bail Petition Nos.174 of 2020, 189 of 2020 and 157 of 2020 before the said Court, however, the bail order has been passed by the learned Additional Sessions Judge on 15.09.2020 and 29.08.2020 respectively in those applications. But, at

this stage itself, it can be said that that order is copy paste. The order passed in Bail Petition No.157 of 2020 on 29.08.2020 appears to be first in time and with all the necessary changes, but maintaining even the paragraphs, it is copy paste. Charge-sheet came to be filed by the investigating officer on 01.11.2020 and prior to that these applications have been filed for cancellation of bail granted to the respective respondents.

4. Heard learned Advocate Mr. A. S. Tilve for the applicant in all the cases, learned APP Mr. V. M. Kagne for respondent No.1 in all the cases and learned Advocate Mr. N. S. Ghanekar for respondent Nos.2 to 4 in ACB No.110/2020, for respondent No.2 in ACB No.111/2020 and for respondent No.2 in ACB No.112/2020.

5. It has been vehemently submitted on behalf of the applicant that the orders passed by learned Additional Sessions Judge, Vaijapur in all the bail applications are cryptic and a classic example of non application of mind. It does not adhered to the requirements of deciding a bail application, which have been enumerated in so many decisions of the Hon'ble Apex Court as well as this Court. When the learned Additional Sessions Judge had every knowledge that she was dealing with the bail applications in a murder case, then such a cryptic order was not

expected. Learned Advocate for the applicant relied on the decision in ***Shri Ram Murti Singh Vs. Brijesh Singh and Another, [(2019) 14 SCC 657]***, wherein, in a very short order, the Hon'ble Apex Court has expressed that "the Court is disturbed to note that there is no proper application of mind on the part of the learned Judge." Thereafter, reliance has been placed on the decision in ***Mahipal Vs. Rajesh Kumar Alias Polia and Another, [(2020) 2 SCC 118]***, wherein it has been observed :-

"Where a Court considering an application for bail fails to consider relevant factors, an appellate Court may justifiably set aside the order granting bail. 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. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

Further, it has been observed that :-

"Merely recording "having perused the record" and "on the facts and circumstances of the case" does not

subserve the purpose of a reasoned judicial order. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of the Supreme Court. Where an earlier application for bail has been rejected, there is a higher burden of the appellate Court to furnish specific reasons as to why bail should be granted. The same not having been done, the bail granted by the High Court is set aside.”

6. Further, reliance has been placed on the decision in ***Dr. Naresh Kumar Mangla Vs. Anita Agarwal and others, [2020 SCC Online SC 1031]***, wherein it has been observed that :-

*“20. The Constitution Bench has reiterated that the correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the Court granting bail did not consider material facts or crucial circumstances. A two judge Bench of this Court, in **Kanwar Singh Meena V. State of Rajasthan**, noted that:*

“10. Thus Section 439 of the Code confers very wide powers on the High Court and the Court of Session 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 the 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 the 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-recognised 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 the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

Further, note was taken of the decision in ***Mykala Dharmarajam Vs. The State of Telangana, [2020 (2) SCC 743]***, wherein it has been

observed :-

“9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material 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.”

Similar view was taken in ***Hariram Bhambhi Vs. Satyanarayan and Another, [2021 SCC Online SC 1010]*** and ***Bhoopendra Singh Vs. State of Rajasthan and Another, [2021 SCC Online SC 1020]***.

7. It has been further submitted that in the FIR itself, present applicant had made it clear that her husband had gone to the house of accused No.1 – Ramesh Gire at about 4.30 a.m. and, therefore, all the accused persons severely assaulted him with sticks on the ground as to why he had come to their house at night time. Therefore, it was indicating that the severe beating was given in the house of the present accused. Purpose for which the deceased had gone to the house of the accused would have been revealed by the investigating agency, but that does not mean that the accused were justified in assaulting him so

severely that he would die almost instantaneously. A cryptic order was not expected under such circumstances. The weapons have been recovered under Section 27 of the Indian Evidence Act. The postmortem report could have been seen by the Additional Sessions Judge, which could have been highlighted the severity with which deceased Raju was beaten. The charge-sheet contains provisional postmortem report and it shows that the death is unnatural (homicidal). The impugned order does not make a mention that statements of witnesses were perused. Merely by mentioning that statements of witnesses have been recorded, the job of the judge is not over. Whether it attributes any act to the accused can be definitely stated in the order. The present applicant by her written objections, which is running into 9 pages, had taken the objection in respect of grant of bail to respondent Nos.2 to 4 in Bail Application No.174 of 2020 before the learned Additional Sessions Judge. All those objections have not been dealt with and merely, it is stated that the learned Advocate for the applicant i.e. objector before the Trial Court was heard. When there is total non application of mind, such order cannot be allowed to remain. It deserves to be set aside.

8. The learned APP appearing for respondent No.1 – State in respective applications has supported the applications filed by the applicants.

9. Learned Advocate Mr. N. S. Ghanekar appearing for all the other respondents in respective applications vehemently submitted and pointed out the affidavit-in-reply filed by the respondents that they are residing in Samata Colony, Waluj (Bk.), Tq. Gangapur, Dist. Aurangabad since 2013. That is their permanent place of abode. After they were released on bail, they were attending the police station in view of the condition imposed. They have not breached any term of their bail. It is then stated that the investigating officer is having the mobile numbers of the mail accused persons. Lady accused Laxmibai is not having mobile. After the application for cancellation of bail was filed, accused Anil was called by police and was informed about the cancellation application that has been filed. Accused Anil had requested him to send the notice of the applications on the Whats App mobile. Accordingly, he has received the same, however, it was pertaining to the application that was filed against accused – Anil Ramesh and Sunil only. Respondent – Laxmibai and Sandeep, in their affidavit, have stated the same thing.

10. It has been submitted on behalf of respondents in respective applications that the learned Additional Sessions Judge, Vaijapur has taken note of the fact that at odd hours, deceased has come to the house of accused persons and in view of the fact that the accused persons had undergone the necessary custodial interrogation, seizure of weapons,

thought that the further custody of the applicants is not necessary and granted bail. No fault can be found in that order. No case is made out for cancellation of bail under Section 439(2) of the Code of Criminal Procedure. It is not maintainable at all.

11. Before the discussion is taken up, it would be necessary to point out that only paragraph No.5 of the impugned orders, which as aforesaid are only copy paste, is required to be reproduced here. It runs thus :-

“5.It is matter of record that the Investigating Officer has completed the investigation by making custodial interrogation of the applicants. The Investigating Officer further drawn the spot panchanama, seized the sticks. If the case of prosecution is considered, then the deceased went to the house of the applicant at 04.30 a.m. and no reason come forward as to why the deceased went to the house of the applicants at such odd time. In such circumstance, I found that as the custodial interrogation work is over, the applicants are justified in enlarging on bail by putting necessary conditions.”

12. This Court agrees with the statement by the learned Advocate for the applicant that these orders are classic example of non application of mind. It was not at all considered by the learned Additional Sessions Judge as to under which circumstances, the offence under Section 302 of Indian Penal Code has been committed. This Court may not go into

the aspect as to whether the offences under Sections 143, 147, 148 read with Section 149 of Indian Penal Code have been made out or not, but still the observation definitely can be made that it was the house of the accused and, therefore, whether their coming together would amount to unlawful assembly or not. Certainly there was *prima facie* evidence to show that deceased had gone to the house of accused persons at odd hours, but he was so severely beaten that it had led to his death. Interestingly, the impugned order by the learned Additional Sessions Judge does not speak about the alleged right of private defence and property which probably would be the defence of the applicants, but certainly if that defence is to be taken, then the burden would be on the accused. The Court will have to come to the conclusion after the evidence is led as to whether it was proportionate or whether accused persons had exceeded the same. It could not have been so lightly brushed aside or taken note of by the learned Additional Sessions Judge. Undergoing of police custody and seizure of weapons *per se* are not the grounds on which the bail can be granted. In the aforesaid judgments relied by the learned Advocate for the applicant, the Hon'ble Supreme Court has made the law point crystal clear, especially that was under ***Shri Ram Murti Singh (Supra)*** and ***Kanwar Singh Meena (Supra)***, which has been later on reiterated by the Constitution Bench in ***Sushila***

Agarwal Vs. NCT of Delhi, [(2020) 5 SCC 1] and even the decision in *Dr. Naresh Kumar Mangla (Supra)* is by the three judge Bench of the Hon'ble Supreme Court. In one of the further recent pronouncement on 11.01.2022 in the case of *Manoj Kumar Khokhar Vs. State of Rajasthan and Anr.*, in *Criminal Appeal No.36 of 2020 (Arising out of SLP(CRL.) No.4062 of 2020)*, the law laid down by the Hon'ble Apex Court in earlier decisions has been considered. First of all, it has been considered as to what are the requirements for consideration of bail application. In *Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr., [(2004) 7 SCC 528]*, the Apex Court has held that "although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the *prima facie* reasons justifying the grant of bail." Further, in catena of judgments, the Hon'ble Supreme Court has held that there cannot be a grant of bail in mechanical way. Note of *Myakala Dharmarajam and Ors. (Supra)* was also taken in *Manoj Kumar Khokhar (Supra)* and it has been reiterated that elaborate reasons need not be assigned for the grant of bail. What is of essence is that the record of the case ought to have been perused by the court granting bail. Following observations in *Brijmani Devi Vs. Pappu Kumar and Anr., Criminal Appeal No.1663 of 2021* disposed of on

17.12.2021 by the three judge Bench of the Hon'ble Apex Court have been reiterated in ***Manoj Kumar Khokar (Supra)***, which are thus :-

“While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.”

Further, the relevant principles laid down in ***Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]*** quoted thus :-

“(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must

not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37])

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process.”

Therefore, taking into consideration the law on this point, it can be stated that when the impugned order of grant of bail suffers from the

legal requirements, it is cryptic, showing non application of mind, then it is liable to be set aside. Therefore, present applications are certainly maintainable.

13. Now, it is required to be seen as to whether case is made out by the applicant for cancellation of bail in respect of all the accused persons. It is to be noted that when the applications were allowed, at that time, the investigation was incomplete. Charge-sheet came to be filed later on, but the police papers ought to have been seen by the learned Sessions Judge in proper perspective. The FIR is clear and it is making allegations against the accused persons indicating that they had brutally assaulted the husband of the informant in their house. The inquest panchanama and provisional postmortem report showed that there were severe injuries on his person and the manner of death was stated to be unnatural (homicidal). What was further on record when the impugned orders were opposed were the statements of witnesses. Statement of witnesses Aashabai Ramhari Shendge, Rekha Sandip Shendge, Rachna Bhanudas Gawalwad, who are the neighbours of the accused, would show that witness Rachna had given phone call to Asha and Rekha stating that something is happening in the house of accused. They could hear the sound of beating of somebody on the terrace of the accused persons. That person was crying for water. It was told to these

ladies that thief has come. These witnesses are then saying that a police person had come inside the house of accused and all of them then took deceased out of the house of accused in injured condition. Thereafter, there are statements of Police Naik Vittal Khandagale recorded on 25.07.2020, Police Constable Shyam Kale, Constable Vijay Darunte, Police Head Constable Shaikh Saleem Abdul Gaffur stating that a person had given a phone call to the landline of police station and gave information that the person who was calling is Anil Gire and they had caught hold of a thief and the police should come. Accordingly, the mobile van of police went to the house of accused and asked them about where is the thief. Thereafter, the person was brought from terrace by Anil and Sandeep followed by accused Ramesh. The police could see that, deceased was severely beaten. He was unable to walk and then he was taken near the police vehicle and thereafter, deceased became unconscious and fell down. Witness Vitthal Khandagale tried to contact his superior, but since he could not pick the phone call, the van was taken to police station without the deceased. The information was passed on and then the police again came back to the spot and then shifted deceased to hospital. Thereupon, deceased was declared dead. Thus, this was the oral statement against accused persons. Further evidence that was collected till that date was the recovery under the

statement of Anil Gire of four sticks from the terrace. *Prima facie*, then there was evidence about custodial death and in spite of having so much of evidence, the learned Additional Sessions Judge has harped upon the fact that as to for what purpose, the deceased had gone to the house of accused persons at odd hours. This is a very wrong approach and against the legal principles as stated above. The learned Additional Sessions Judge lost sight of the abovesaid material in the case and by a very cryptic and casual order, dehors and incoherent reasons, has granted bail to all the accused persons, who are before this Court as respondents. Under such circumstance, the applications deserve to be allowed. Hence, the following order :-

ORDER

- I) Applications stand allowed.
- II) The orders passed by learned Additional Sessions Judge, Vaijapur in Bail Petition Nos.174 of 2020, 189 of 2020 and 157 of 2020 in respect of present respondent Nos.2 to 4 in ACB/110/2020, respondent No.2 in ACB No.111/2020 and respondent No.2 in ACB/112/2020, are hereby set aside. In other words, the bail granted to present respondent Nos.2 to 4 in ACB No.110/2020, respondent No.2 in ACB No.111/2020 and respondent No.2 in ACB No.112/2020 stands cancelled.
- III) The respondents, who are on bail, their bail bonds stand cancelled and they are directed to surrender before the jail

authorities on or before 5.00 p.m. on 31.01.2022.

IV) In case of their failure, the learned Additional Sessions Judge, Vaijapur to issue non-bailable warrant against those accused persons, whose bail applications are cancelled now.

V) Registrar (Judicial) to forward a copy of the same to the learned Additional Sessions Judge.

[SMT. VIBHA KANKANWADI, J.]

scm