

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

APPLICATION FOR CANCELLATION OF BAIL NO.130 OF 2022

JAYWANT RAJABHAU JAGTAP
VERSUS
DASTGIR JILANI SHAIKH AND OTHERS

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Advocate for Applicant : Mr. Veer Shrikant T.
APP for Respondent/State : Ms. V.S. Choudhari
Advocate for Respondent Nos.1 & 2 : Mr. Ganesh J. Kore

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CORAM : S.G. MEHARE, J.

DATED : 18th NOVEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent nos.1 and 2.
2. The applicant, who is the father of the deceased is seeking cancellation of bail granted to respondent nos.1 and 2 by the learned Additional Sessions Judge, Omerga vide order dated 12.05.2022 in Criminal Bail Application No.31 of 2022.
3. The offence of murder has been registered against respondent nos.1 and 2 along with other co-accused.
4. Learned counsel for the applicant would submit that the deceased had illicit relations with the daughter of respondent no.1; however, he married. Hence, the daughter of respondent no.1 was asking him to close the relations. The deceased had suspicious that she had developed relation with the other co-accused. The deceased

was brutally murdered. The prosecution has the sole evidence of last seen together.

5. Learned counsel for the applicant would submit that respondent nos.1 and 2 are the residents of the same village. The offence is serious. The material aspect has not been considered by the learned Sessions Court while granting bail. Hence, the bail may be cancelled.

6. Learned APP has also argued on the same line.

7. Learned counsel for respondents nos.1 and 2 has vehemently opposed the application. He would argue that there is no substantial evidence against respondent nos.1 and 2. Since the deceased had relations with their daughter and sister, they have been arraigned as an accused in the crime. The prosecution case rests only on the circumstantial evidence. No incriminating evidence has been collected against them. Hence, the application be dismissed.

8. The law relating to the cancellation of bail has been well settled by the Hon'ble Supreme Court by catena of judgments. In the case of Dolat Ram Vs. State of Haryana, (1995) 1 SCC 349, the Hon'ble Supreme Court has laid down the law that the rejection of bail in a non-bailable case at the initial stage, and the cancellation of bail already granted have to be considered and dealt with on a different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already

granted. Generally speaking, the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of Justice or abuse of the concession granted to the accused in any manner. Apart from this, the order granting bail by the Sessions Court sought cancellation before the High Court, it must be examined that the order is well within the principles of law. The interest of justice would also require that such order should not be perverse or arbitrary.

9. Keeping in mind the view expressed by the Hon'ble Apex Court regarding the cancellation of bail, the submissions of the respective counsels are scanned.

10. Respondent nos. 1 and 2 are the father and brother of the women around whom the entire case revolves. The deceased admittedly had the relations with her; however, the deceased got married with another girl but he did not break his relations with the daughter of respondent no.1. He had suspicious against the co-accused that he developed the relations with his ex-girl-friend. Learned Sessions Court while granting bail has observed that there were no inimical terms with the deceased. Only on the circumstances, respondent nos.1 and 2 have been arrested. It also appears that the Sessions Court has considered the material placed before it. Except the case of last seen together from the mouth of the

witnesses, no other incriminating evidence has been collected against respondent nos.1 and 2. The chain of circumstances is strictly required to be proved. The prosecution has no complaint against respondent nos.1 and 2 that they have misused the liberty granted to them or they have intervened the investigation or tried to tamper with the prosecution witnesses. Considering the ratio laid down in the case cited above, it would be inappropriate to cancel the bail and curtail the liberty granted to respondent nos.1 and 2. Examining the order passed by the learned Sessions Court, it is neither perverse nor arbitrary. Only for the satisfaction of the complainant, the liberty granted to non-applicant nos.1 and 2 by the Court of law cannot be curtailed. The applicant and the State have no ground to seek the cancellation of bail. Hence, the application stands dismissed.

(S.G. MEHARE, J.)