

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

APPLICATION FOR CANCELLATION OF BAIL NO.123 OF 2021

Pooja Alias Pranjali Shrikant Khandare

...APPLICANT

VERSUS

- 1) Shrikant Dattatraya Khandare,
- 2) The State of Maharashtra

...RESPONDENTS

...
Mr.H.F. Pawar Advocate for Applicant.
Mr.V.D. Gunale Advocate for Respondent No.1.
Mr.A.M. Phule, A.P.P. for Respondent No.2 – State.
...

WITH

**CRIMINAL APPLICATION NO.2050 OF 2021
IN
APPLICATION FOR CANCELLATION OF BAIL NO.123 OF 2021**

Mohini W/o Shrikant Khandare

...APPLICANT

VERSUS

- 1) Shrikant S/o Dattatraya Khandare,
- 2) Dattatray S/o Brahmaji Khandare,
- 3) Tulsabai W/o Dattatraya Khandare,
- 4) Prabhakar S/o Manohar Patil,
- 5) The State of Maharashtra

...RESPONDENTS

...
Mr.Hanmant V. Patil Advocate for Applicant.
Mr.V.D. Gunale Advocate for Respondent No.1.
Mr.A.M. Phule, A.P.P. for Respondent No.5 – State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 25th JANUARY 2022

DATE OF PRONOUNCING ORDER : 8th JUNE 2022

ORDER :

1. Present Application has been filed by the original informant under Section 439 of the Code of Criminal Procedure for cancellation of anticipatory bail granted by this Court to respondent No.1 in Anticipatory Bail Application No.368 of 2021 on 3rd June 2021 (CORAM: R.G. AVACHAT, J.). It is made clear at this stage itself that the ground for cancellation of bail, mainly, is that the said order was sought by forging documents and placing the same before this Court as genuine at the time of said Anticipatory Bail Application. It is also on the basis of addition of other cognizable offences i.e. under Sections 465, 466, 468, 471 of the Indian Penal Code.

2. Heard learned Advocate Mr. Pawar for the applicant, learned Advocate Mr. Gunale for respondent No.1 and learned APP Mr. Phule for respondent No.2 – State.

3. It will not be out of place to mention here that Criminal Application No.2050 of 2021 has been filed for assisting APP, but it is by the first wife of respondent No.1 and she is not the informant.

4. Present informant had contended in her First Information Report (for short "FIR") that respondent No.1, who is a high rank Government officer, was serving as Executive Engineer with Public Works Department. He was 40 years old in July 2020 and the informant was 25 years of age. Respondent No.1 suppressed that he was previously married and by concealing the subsistence of that marriage, posed himself to be a bachelor thereby the consent was obtained from the informant for the marriage. According to the informant, the marriage took place in July 2020, however it was without celebration since those were the Covid-19 Pandemic days. After the marriage the informant started cohabiting with respondent No.1 and his parents. After few months of the marriage, she suddenly came across with some papers revealing that respondent No.1 was already

married. When she asked about the same, she was assaulted and thereafter the husband and the parents-in-law started harassing and ill-treating her. She lodged the FIR on 13th January 2021 vide Crime No.34 of 2021 with Udgir Rural Police Station, District-Latur for the offence punishable under Sections 498-A, 494, 506, 420 read with Section 34 of the Indian Penal Code.

5. Respondent No.1 and his relatives had approached the Additional Sessions Judge, Udgir for grant of anticipatory bail but it was rejected. Then, they all approached this Court by filing Anticipatory Bail Application No.368 of 2021 under Section 438 of the Code of Criminal Procedure. The present applicant had also filed Criminal Application No.968 of 2021 for assisting the learned APP. After hearing all the concerned Advocates and APP, this Court by detailed order, allowed the Application on 3rd June 2021.

6. Learned Advocate appearing for the applicant – informant has submitted that the offence that has been committed by respondent No.1 is serious. Even though he is the high rank Government officer, by suppressing his first marriage cheated the informant and also ill-treated and subjected her to cruelty and there is prima facie evidence against respondent No.1.

Before this Court, when the Anticipatory Bail Application was filed, it was posed that the marriage had not taken place at all. Since there was strained relationship between respondent No.1 and his earlier wife, it was told that after the dissolution of the first marriage, he would perform marriage and thereby it was tried to be stated that respondent No.1 was never in Udgir when the alleged second marriage had taken place. Respondent No.1 produced certain official documents to show that he was not present in the house of the informant, as the marriage had taken place in the house due to pandemic situation. However, now those documents have turned down to be false and fabricated documents and a report has been given by the Investigating Officer to the concerned Court for addition of Sections 465, 466, 468, 471 of the Indian Penal Code. The custodial interrogation of respondent No.1 is necessary and therefore anticipatory bail granted by this Court deserves to be cancelled. Reliance has been placed on the decision in ***Pradeep Ram Vs. State of Jharkhand and another, AIR 2019 SC 3193***, wherein it has been held thus:-

“Where after grant of bail to an accused, further cognizable and non-bailable offences are added:- (i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal

of bail, the accused can certainly be arrested. (ii) The investigating agency can seek order from the Court u/S. 437(5) or 439(2) of the Cr.P.C. for arrest of the accused and his custody. (iii) The Court, in exercise of power u/S. 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power u/S. 437(5) as well as S. 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order or cancelling of earlier bail. (iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

7. The same decision was relied by this Court in ***Nana @ Narsing Vishwarasrao Nayak and others vs. State of Maharashtra, 2021 All M.R. (Cri) 2718***, wherein the order of cancellation of bail under Section 439(2) of the Code of Criminal Procedure passed by the trial Court for the offence under the provisions of Maharashtra Control of Organized Crime Act, was challenged in the Writ Petition. This Court held that in view of ***Pradeep Ram Vs. State of Jharkhand and another*** (supra) the request by the prosecution for cancellation of bail can be

interpreted within the four corners of the said decision by the Hon'ble Apex Court.

8. It will not be out of place further to mention here that learned Advocate for the applicant has tried to argue on the merits of the case also as to how Section 420 of the Indian Penal Code is attracted. However, that cannot be gone into in view of the fact that co-equal Bench has made certain observations in the earlier order that prima facie the facts do not disclose involvement of those ingredients. The learned Advocate for the applicant therefore, prayed for cancellation of anticipatory bail and taking respondent No.1 in custody and handing over him to the Investigating Officer for further investigation.

9. Learned APP reiterated the fact that the anticipatory bail application came to be granted by this Court when the investigation was at very initial stage and as the investigation progressed it was revealed that the consent for the marriage was obtained by respondent No.1 by keeping the informant in dark. Further at the time of making application for anticipatory bail before this Court, respondent No.1 had appended certain documents showing that on 2nd July 2020 (that was the date of marriage) he was present in his office at Aurangabad Division,

Aurangabad, which appear to be fabricated. Learned APP is relying on the affidavit-in-reply filed by PSI Dinesh Digambar Shingankar, attached to District Special Branch, Nanded, who had initially carried out the investigation when he was posted at Udgir. He has stated that he had recorded the statements of the witnesses and especially the statement of the first wife of respondent No.1, which revealed that his first marriage was subsisting on 2nd July 2020. Further, the tracking of the Mobile Number and the CDR as well as SDR and the tower location collected would show that on 2nd July 2020 respondent No.1 was in Udgir. The statement of the driver on the Government vehicle of respondent No.1 reveals that the log book which was sought to be relied upon by respondent No.1, was in possession and custody of respondent No.1 himself for about three months prior to the date of driver's statement. It further reveals that the driver has not made the entries in the log book but it was in the custody of respondent No.1 himself. Another document was the communication dated 2nd July 2020 by respondent No.1 in his official capacity from his office situated in Aurangabad. In that connection also statements of the witnesses i.e. the employees working under respondent No.1 have been recorded, who have stated that the said manipulation in the outward register has

been made at the instance of respondent No.1. This shows that respondent No.1 is misusing his position to fabricate the Government record and therefore, the Sections have been added. Custodial interrogation of respondent No.1 is necessary.

10. Learned Advocate appearing for respondent No.1 has resisted the application by saying that this Court had considered all the necessary facts and circumstances as well as the allegations made against respondent No.1 when anticipatory bail application came to be granted. In fact this Court had not even relied on the documents those were produced by respondent No.1. Learned Advocate for respondent No.1 has relied on the affidavit-in-reply filed by respondent No.1. In this affidavit, respondent No.1 has stated that the source of document which is produced by the applicant has not been disclosed. The charge-sheet is not yet filed. It is not clear as to how the informant has obtained that document and therefore inquiry needs to be made. There is no ground for cancellation of bail as there is absolutely no forgery done or no document has been fabricated by him. Respondent No.1 denied that there was marriage between him and the applicant on 2nd July 2020. According to him, the addition of offences is at the behest of the applicant with an intention to implicate him. He was very much present in his

office at Aurangabad on that day. Respondent No.1 is fighting his legal battle with his first wife and it appears that his first wife has joined hands with the applicant with ill intention. Learned Advocate for respondent No.1 has also relied on the communication by Superintending Engineer Manoj R. Awalgaonkar to Police Inspector, Udgir Police Station dated 24th August 2021 explaining as to how the communications are not forged or fabricated. He has also stated that the contents of the log book are correct and this communication is in response to the questionnaire sent by the Police Inspector i.e. Investigating Officer.

11. Learned Advocate appearing for respondent No.1 is also relying on the decision in ***Pradeep Ram Vs. State of Jharkhand and another*** (supra) and submitted that in the said decision it has been observed that the accused can surrender and apply for bail for newly added cognizable and non-bailable offences or the investigating agency can seek order for the arrest of the accused and his custody. No such application has been filed by the Investigating Officer before the concerned Magistrate. Further reliance has been placed on the order passed by this Court in ***Anticipatory Bail Application No.1137 of 2021 and companion matter*** decided on 22nd February 2022,

wherein after relying on ***Pradeep Ram Vs. State of Jharkhand and another*** (supra), as well as ***Nana @ Narsing Vishwarasrao Nayak and others vs. State of Maharashtra***, (supra), this Court granted anticipatory bail to the applicants therein wherein the further cognizable offences came to be added.

12. At the cost of repetition, it is made clear that this Court cannot enter and revisit those contents in the FIR which was lodged by the applicant on 13th January 2021. When the matter was before this Court for grant of anticipatory bail, those newly added Sections were not added at all. Now the objection has been raised by respondent No.1 about Exhibit-C, page No.129, which is the communication from the Investigating Officer to the learned J.M.F.C., Udgir dated 11th June 2021 and it appears that originally it was scanned copy of which photo copy has been appended to the present application. How this document came in the possession of the applicant has been questioned. It will not be out of place to mention here that even the Investigating Officer can share such communication to the informant if the informant needs and Investigating Officer agrees for that. It is only the letter that was shared and then the informant, who appears to be a vigilant litigant, can definitely rely on such

document. In one of the recent pronouncement by the Apex Court in ***Jagjeet Singh and others vs. Ashish Mishra @ Monu and another*** (Criminal Appeal No.632 of 2022) decided on 18th April 2022, it has been observed in Paragraph Nos. 16, 19 and 20 as under:-

“16. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The ‘victim’ — the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish ‘crime’ had surreptitiously turned its back on the ‘victim’, the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.

19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim’s rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring

the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative "to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more.

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a 'victim' under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial."

13. Taking into consideration the above said observations, it can be said that getting copy of such communication from the Investigating Officer cannot be taken as objectionable act on the part of the applicant. At this stage itself however, objection can

be taken in respect of documents which have been produced by respondent No.1 at Exhibit-R-1 on page Nos.159 and 160. Respondent No.1 has not disclosed in his affidavit-in-reply as to how he got the copies of those documents. He is not the author of those documents and the questionnaire was not to respondent No.1 which was sent by the Police Inspector. In fact, he being the accused, he could not have replied. Secondly, merely because he is working in the same office, that does not authorize him to take out the copies of those communications and present the same before the Court of law. The another aspect which is required to be considered is the statements of those clerks in respect over-writing in outward register and also the driver in respect of log book of the official vehicle given to respondent No.1, which has been recorded under Section 161 of the Code of Criminal Procedure. Now, the Superintending Engineer Mr. Manoj Awalgaonkar is taking side of respondent No.1. The CDR and SDR of the Mobile Phone of respondent No.1 which have been collected by the Investigating Officer appear to be showing the location of respondent No.1 at a different place. Then the question would be for the trial Court to address at the appropriate stage, as to whether importance can be given to the

CDR and SDR or to the official communication on behalf of the office of respondent No.1.

14. At this stage the Investigating Officer has come to the conclusion that prima facie the documents which were produced before this Court by respondent No.1 along with his anticipatory bail application are forged and fabricated and therefore, he has taken decision to add Sections 465, 466, 468, 471 of the Indian Penal Code. He has given report to that effect to the concerned Magistrate. At this stage then the ratio laid down in ***Pradeep Ram Vs. State of Jharkhand and another*** (supra) would be applicable. When such cognizable and non-bailable offences are added then the accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In the event of refusal of bail, the accused can certainly be arrested. Definitely, here the option that was available for respondent No.1 was to approach the appropriate Court under Section 438 of the Code of Criminal Procedure in respect of apprehension of arrest in view of addition of offences. Further as per ***Pradeep Ram Vs. State of Jharkhand and another*** (supra), such event will give option to the investigating agency to seek order from the concerned Court under Section 437(5) or 439(2) of the Code of Criminal Procedure for arrest of the accused and his custody. No

doubt, from the communication dated 11th June 2021 by the Police Inspector it cannot be gathered that any such further step under Section 437(5) or 439(2) of the Code of Criminal Procedure was taken by the investigating agency. Only in the event of such application by the investigating agency the concerned Court before whom such application would have been made, could have exercised the powers under Section 437(5) or 439(2) of the Code of Criminal Procedure. But herein this case, respondent No.1 was already on bail and therefore clause “(iv)” as per ***Pradeep Ram Vs. State of Jharkhand and another*** (supra) will come into place, which specifically states that in a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain order to arrest the accused from the Court which had granted the bail. Here the bail has been granted by this Court and therefore, the Investigating Officer could have approached this Court for directions seeking arrest of respondent No.1. Again one thing will have to be clarified that respondent No.1 has not come with the case that he had no knowledge about the addition of Sections at a later stage by the Investigating Officer. Respondent No.1 has

not approached this Court once again under Section 438 of the Code of Criminal Procedure. Even the Investigating Officer has not chosen the path that has been made available as per clause “(iv)” in ***Pradeep Ram Vs. State of Jharkhand and another*** (supra). Under such circumstance, the victim – informant has come forward with this Application. Again turning towards the observations in ***Jagjeet Singh and others vs. Ashish Mishra @ Monu and another*** (supra), in Paragraph Nos. 23 and 24, it has been observed thus:-

“23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim’s right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of ‘State’ in the proceedings, therefore, does not tantamount to according a hearing to a ‘victim’ of the crime.

24. A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in

an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony."

15. Therefore, when the right is available to the victim – informant, she was justified in filing this Application under Section 439(2) of the Code of Criminal Procedure. Further, in ***Jagjeet Singh and others vs. Ashish Mishra @ Monu and another*** (supra) in Paragraph No. 41 it has been observed thus:-

" 41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent-Accused of his legitimate right to seek enlargement on bail on relevant considerations."

16. We are here concerned with clause (iii) above i.e. denial of victims' right to participate in the proceedings. Therefore, present Application is definitely maintainable.

17. No doubt, it is to be noted that while deciding anticipatory bail application, this Court had not referred to any of those documents which were produced by respondent No.1 to support his plea of alibi. This Court would not have gone into those details because as regards plea of alibi is concerned, it is for the accused to prove that plea or defence at the time of trial. But now when the investigation has progressed and with the revelation of the documents in the form of CDR, SDR of respondent No.1's Mobile Phone as well as tower location, showing his location at Udgir on 2nd July 2020, coupled with the alleged manipulation in the Government record, for which statements of the driver as well as clerk under Section 161 of the Code of Criminal Procedure have been recorded, then definitely it is a serious turn to the case and taking into consideration the allegations, definitely custodial interrogation of respondent No.1 would be necessary.

18. Another aspect is also required to be considered, whether custodial interrogation is necessary or not would be the second

question, but when there was an opportunity to the accused to approach this Court, in spite of knowledge of addition of the cognizable and non-bailable offences against him, yet he has not approached this Court, then definitely the recourse was available to the victim – informant under Section 439(2) of the Code of Criminal Procedure.

19. The first wife of respondent No.1 has filed application for intervention / assist to APP. But that cannot be allowed. Her dispute with respondent No.1 is on different footing and she has already approached the concerned Court and therefore Application filed by the first wife of respondent No.1 deserves to be rejected.

20. The fact here is that the first wife is now coming before the Court stating that her marriage is still subsisting. The evidence has been up till now collected to show that respondent No.1 has performed marriage with the informant, applicant herein and considering the allegations by the informant, as well as Investigating Officer stating it on oath that respondent No.1 is misusing his authority and has tried to create certain documents, which is definitely a serious matter, for which thorough investigation is required. The Investigating Officer has now

stated in his affidavit-in-reply that custodial interrogation of respondent No.1 is necessary, and therefore, the Application deserves to be allowed. Hence following order:

ORDER

(i) Application For Cancellation of Bail No.123 of 2021 stands allowed.

(ii) The order passed by this Court in Anticipatory Bail Application No.368 of 2021 on 3rd June 2021 so far as granting anticipatory bail to respondent No.1, stands set aside.

(iii) Respondent No.1 – Shrikant Dattatraya Khandare to surrender before the Investigating Officer on or before 17th June 2022 at 5.30 p.m.

(iv) Criminal Application No.2050 of 2021 stands rejected.

[SMT. VIBHA KANKANWADI , J.]