

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

APPLICATION FOR CANCELLATION OF BAIL NO.166 OF 2021

MANOHAR SAHEBRAO KALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Applicant : Mr.Sachin S. Panale

APP for Respondent No.1 : Mr.V.M.Kagne

Advocate for Respondent No.2 : Ms.P.A.Salve h/f. Mr.S.J.Salunke

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 1st April, 2022

ORDER :-

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure by the original informant challenging the grant of bail to original accused No.2 i.e. present respondent No.2 under Section 439 of the Code of Criminal Procedure by the learned Additional Sessions Judge, Ambajogai, Dist.Beed in Sessions Case No.46 of 2020 below Exhibit 27 on 18th January, 2021.

2. Heard Mr.S.S.Panale, learned Advocate for the applicant, Mr.V.M.Kagne, learned APP for respondent No.1-State and Ms.P.A.Salve, learned Advocate holding for Mr.S.J.Salunke, learned Advocate for respondent No.2.

3. On the basis of the First Information Report (FIR) lodged by the present informant, Crime No.216 of 2020 came to be

registered under Sections 302, 498(A), 201, 323, 504, 506 read with Section 34 of the Indian Penal Code (IPC) and under Sections 3, 4 of the Dowry Prohibition Act, against present respondent No.2 and others. The daughter of the present informant got married to the son of present respondent No.2 on 17th February, 2019. According to the informant, after four months of marriage, the son-in-law had started making illegal demands. He demanded amount of Rs.2,00,000/- for purchase of Car, however, the informant could not comply with the same and thereafter, the husband and in-laws started giving cruel treatment to the deceased daughter of the informant. There was also demand of gold ring for the mother-in-law which was also not fulfilled. According to the informant, his daughter Manisha was beaten with belt by the husband of the deceased in presence of the informant. Manisha had then made complaint on 23rd July, 2020 before the cousin stating that the present respondent No.2 used to come by drinking liquor and thereafter, he as well as the husband and mother-in-law used to assault her on the count as to why the gold ring has not been given. Manisha was pregnant of three months at that time. She was left back to her matrimonial home on 30th July, 2020. Even on that day, the husband had assaulted Manisha with belt. On 5th August, 2020 at about 07:00 a.m., he received a phone call from cousin

brother of son-in-law that he should come to the matrimonial home. When the informant went there, he found dead-body of his daughter lying on the ground in the bed room. He found assault marks on her body and also froth was oozing from her mouth alongwith blood. The son-in-law told him that Manisha had committed suicide by consuming insecticide. There was no smell of insecticide and therefore, the dead-body was sent for post mortem and in the post mortem certificate, it was stated that the death is due to assault and therefore, FIR was lodged invoking offence under Section 302 and other Sections.

4. The respondent No.2 came to be arrested and thereafter, he had filed application under Section 439 of the Code of Criminal Procedure before the learned Additional Sessions Judge, Ambajogai. It has been submitted on behalf of the applicant that learned Additional Sessions Judge failed to consider that there was evidence against respondent No.2 and the concerned Judge has wrongly applied observations made by this Court from the order granting bail to the mother-in-law. Act of each accused ought to have been considered and it has been wrongly stated that the main allegations are against the son-in-law. Learned Advocate for the applicant, therefore, prayed for cancellation of bail.

5. Ms.P.A.Salve, learned Advocate holding for Mr.S.J.Salunke, learned Advocate for respondent No.2 supported the reasons given by the learned Additional Sessions Judge for grant of bail to respondent No.2 and also pointed out that by filing Criminal Writ Petition No.551 of 2021, the present respondent No.2 and other accused have challenged the order passed below Exhibit 48 by learned Additional Sessions Judge, Ambejogai passed on 7th April, 20221 in Sessions Case No.46 of 2020. That application was filed for having further investigation.

6. After the investigation is over, charge-sheet came to be filed on 17th September, 2020 and it can be seen that the order granting bail to respondent No.2 under Section 439 of the Code of Criminal Procedure was passed on 18th January, 2021. No doubt, the learned Additional Sessions Judge ought to have considered the material before him in view of the charge-sheet independently and ought not to have only relied on the observations made by this Court in Bail Application filed by the mother-in-law of the deceased yet this Court can definitely consider the evidence on record. If we consider the statements of the witnesses, then it is to be noted that the main allegations are against the son-in-law. The role attributed to present respondent No.2 is that he used to come under the influence of liquor every day and used to instigate the mother-in-law and

husband of the deceased for harassing Manisha. There are also allegations about the illegal demands, however, as regards the offence under Section 302 of the Indian Penal Code is concerned, definitely taking into consideration the probable cause of death as "Evidence of multiple underscalp contusion with multiple contusion over body with pulmonary oedema Final opinion reserved pending for accessory examination reports" it would indicate that there appears to be prima-facie evidence about the homicidal death. Definitely the death is within the period of seven years of marriage and also under unnatural circumstance but the dead-body was found in bed room of the deceased and therefore, at this stage, there is a room to say that the main allegations are against the husband. When the investigation is over and nothing was required to be recovered from respondent No.2, the learned Additional Sessions Judge was justified in granting bail under Section 439 of the Code of Criminal Procedure. No such circumstance has been pointed out which will allow this Court to exercise the exceptional powers under Section 439(2) of the Code of Criminal Procedure. Application for Cancellation of Bail, therefore, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE