

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

**APPLICATION FOR CANCELLATION OF BAIL
NO.169 OF 2021**

Sanjay Govind Gaikwad

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Vidyarani W/o Sandipkumar Todkar

...RESPONDENTS

...
Mr.Mahesh S. Bhosale Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1 - State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 15th FEBRUARY, 2022

ORDER :

1. Applicant is the original informant who is seeking cancellation of anticipatory bail granted by learned Additional Sessions Judge, Aurangabad to respondent No.2 in Bail Application No.1305 of 2021 on 28th July 2021.

2. Applicant is father of deceased Tushar who had committed suicide on 24th June 2021. In his First Information Report, he has

stated that deceased was knowing respondent No.2 since about four years prior to the First Information Report. Deceased Tushar was ordinarily resident of Thane and he had received phone call on 22nd June 2021. He informed the informant that the phone was from one Sandip / Sandy. Then he took his dress in a bag and went away. Then on 23rd June 2021 around 4.30 p.m. when informant's wife contacted Tushar, he told that he would be coming till dinner. However, on 24th June 2021 around 7.30 a.m. to 8.00 a.m. informant's wife received phone call from one Police Head Constable Hivrale stating that Tushar has met with an accident and has been admitted to Ghati Hospital, Aurangabad. Informant, his wife and another son came to Aurangabad and found the dead body of Tushar. The last rites were performed and thereafter informant came to Satara Police Station, Aurangabad on 17th July 2021. He was shown a suicide note left by Tushar and after reading it, the First Information Report came to be lodged.

3. Respondent No.2 filed Bail Application No.1305 of 2021 under Section 438 of the Code of Criminal Procedure. The said application came to be allowed by the Additional Sessions Judge, Court No.12, Aurangabad on 28th July 2021. Present Application

has been filed under Section 439(2) of the Code of Criminal Procedure for its cancellation.

4. It has been contended on behalf of the applicant – informant that the learned Additional Sessions Judge has not considered the facts of the case properly. Name of respondent No.2 has been specifically mentioned in the suicide note. The seriousness of the crime has not been considered. In the suicide note itself it is stated that respondent No.2 had instigated the deceased by mental harassment, to commit suicide. The application ought to have been rejected. On the contrary, the learned Additional Sessions Judge went on to conclude that there is no instigation as contemplated under Section 107 of the Indian Penal Code. The concerned Court failed to consider that respondent No.2 was married lady, however, she was in relation with deceased. She has used the deceased who was an unmarried person. The physical and mental harassment given by her as well as the instigation and actual role of the husband of respondent No.2 Sandipkumar Todkar has not been considered and therefore, bail that has been granted to respondent No.2 deserves to be cancelled.

5. It is not necessary even to issue notice to respondent No.2, taking into consideration the contents of the First Information Report and the contents of the suicide note. Copy of the said suicide note has been made available in this Petition itself.

6. It appears that deceased Tushar was having love affair / in relation with respondent No.2, who appears to be already married. According to Tushar he had made all the efforts to keep respondent No.2 happy but she had taken disadvantage of the same and she used to call him whenever she needed. Due to lock down, he could not meet her about a month. But after the lock down was lifted, she again called him. He then says that she kept him with her for those days as per her wish and they enjoyed and when he asked her as to whether he can stay more, she said no. Thereafter there was dispute between them. He then states that she has given him mental harassment. He wanted to resolve the dispute but could not and then he states that there is proof about their relationship with their friends and he would be ending his life for the sake of that girl. It is also then stated that he is unable to live without her.

7. The above said contents of the suicide note would speak that something went wrong in their relationship which Tushar could not sustain. The learned Additional Sessions Judge has rightly observed that, prima facie Section 107 and Section 306 of the Indian Penal Code will not be attracted taking into consideration the contents of the suicide note. The Courts have every kind of sympathy in cases of death but when it comes to an offence, then the Courts should see whether that death amounts to an offence or not. The relatives of the deceased would be definitely at loss because of the loss of life of the near and dear one but the Courts cannot function on the basis of feelings of the relatives.

8. Whatever remarks have been made by the concerned Court while dealing with bail application as well as by this Court while deciding this application are prima facie and definitely the same are not binding on the trial Court. The trial Court will have to come to its own conclusion on the basis of the evidence that would be adduced. When it comes to balancing the rights of the persons by the Court, then if prima facie it is seen that no offence is transpiring, then definitely the Court would exercise the discretion in favour of the accused who is seeking the bail.

9. No ground is made out to cancel the bail as cancellation of bail is a serious affair and it cannot be done for the feelings of the father of the deceased. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]

asb/FEB22