

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

936 APPLICATION FOR CANCELLATION OF BAIL NO.173 OF 2021

ABHIJIT PRABHAKAR KALYANKAR

VERSUS

GANESH BALAJI SIDALWAD AND ANOTHER

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Mr. V.A. Chavan, Advocate h/f Mr. Govind A. Kulkarni, Advocate for the  
applicant

Mr. Satej S. Jadhav, Advocate for the respondent No.1

Mrs. R.P. Gaur, APP for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12<sup>th</sup> JANUARY, 2022.

**ORDER :**

1 Present application has been filed under Section 439(2) of the  
Code of Criminal Procedure, 1973 by the original informant.

2 Present respondent No.1 was arrested in connection with Crime  
No.289/2020 dated 08.07.2020 registered with Bhokar Police Station, Dist.  
Nanded, for the offence punishable under Section 302, 201 of the Indian  
Penal Code. He had filed Bail Application No.1499 of 2020 under Section  
439 of the Code of Criminal Procedure before this Court. The said

application came to be allowed by imposing conditions on 27.01.2021. Following was the order passed therein.

**ORDER**

1                    Application stands allowed.

2                    Applicant Ganesh Balaji Sidalwad, who has been arrested, in connection with Crime No.289/2020 dated 08.07.2020 registered with Bhokar Police Station, Dist. Nanded, for the offence punishable under Section 302, 201 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand).

3                    The applicant shall not tamper with the evidence of the prosecution, in any manner.

4                    He shall not indulge in any criminal activity.

5                    If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6                    He shall not enter the jurisdiction of village Bhosi, Tq. Bhokar till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number. So also he should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7                    Bail before Trial Court.

3           The present informant has come with a case that after the accused-respondent No.1 was released by this Court and the condition was imposed that 'he shall not indulge in any criminal activity'; yet, thereafter he has indulged in such activity and offence under Section 3 punishable under Section 25 of the Indian Arms Act came to be registered against him vide Crime No.285/2021 and it has been registered with Bhagya Nagar Police Station, Nanded, Dist. Nanded. It is then also stated that thereafter he has again threatened the informant on 20.08.2021 by going to village Bhosi in violation of the condition imposed on him and for which the non cognizable offence has been registered with Bhokar Police Station, Dist. Nanded under Section 506 of the Indian Penal Code. He has, therefore, prayed for cancellation of the said bail.

4           Heard learned Advocate Mr. V.A. Chavan holding for learned Advocate Mr. Govind A. Kulkarni for the applicant, learned Advocate Mr. Satej S. Jadhav for the respondent No.1 and learned APP Mrs. R.P. Gaur for the respondent No.2.

5           The learned Advocate Mr. V.A. Chavan holding for learned Advocate Mr. Govind A. Kulkarni for the applicant has vehemently submitted supporting the application and he further submitted that even at the time of granting bail by this Court to the respondent No.1, his bail application was

opposed by the present applicant by filing Criminal Application No.217 of 2021, which was for assist to APP. Now, after the commission of the crime the respondent No.1 is threatening the informant and, therefore, there is threat to the life of the applicant. When the respondent No.1 has breached the term of bail, his bail deserves to be cancelled.

6            Learned APP supported the submissions on behalf of the applicant-informant.

7            Learned Advocate appearing for the respondent No.1 submitted that as per his instructions the offence, which has now been registered with Bhagya Nagar Police Station, Nanded, is a trap against the respondent No.1. It has been falsely shown that the present respondent No.1 was found with a country made pistol. In fact, in that offence the respondent No.1 has now been released on bail. Similarly, the non cognizable offence has been lodged by the informant with ulterior motive. The respondent No.1-accused has never gone to village Bhosi and he is abiding the terms of the bail. Even if now also this Court may modify the order further and keep the attendance of the respondent No.1 to the Bhagya Nagar Police Station, which will ensure that there will not be a danger to the life of the informant.

8            At the outset, it is to be noted that in Bail Application No.1499 of

2020 when this Court had released the applicant therein i.e. present respondent No.1, conditions were imposed, as aforesaid, and those conditions were imposed in order to ensure safety to the witnesses as well as avoiding tamper of the evidence in any manner as well as any criminal activity by the present respondent No.1. This respondent No.1 is in fact a 20 years old boy and it was thought that he could not come in contact with hardened criminals. However, it appears that after the offence i.e. Crime No.285/2021 has been lodged with Bhagya Nagar Police Station, Nanded under the Arms Act, that is, for carrying country made pistol, his age is not required to be considered now. The prosecution story in this case is that the Local Crime Branch received secret information and thereafter the raid was conducted. The information that was received was that two persons were holding pistols. It is then stated that on the road at the spot they could find two persons running from a room in the house belonging to one Balasaheb Renge. Those two persons were caught hold of and then their names were asked; one was respondent No.1 and another was one Sachin Parmeshwar Shinde. Their person was searched in presence of two panchas and two pistols were found from them, respectively, and in addition to that from the respondent No.1 herein, two live cartridges were also found. They were the country made pistols. They were arrested at the spot and the panchnama and other activities are stated to have been prepared. Those two accused

persons were produced before the Magistrate. Police custody was granted and after they were taken in Magisterial Custody, it appears that by order dated 30.08.2021 the concerned Magistrate released them on bail from the First Information Report in that case i.e. Crime No.285/2021 registered with Bhagya Nagar Police Station, Nanded. The offence has taken place on 26.08.2021 and after that on 31.08.2021 NC was registered at Bhokar by the present informant for the alleged threat given by the respondent No.1 to him at Bhosi on 20.08.2021. The NC complaint appears to have been given after much delay and, therefore, that need not be considered for cancellation of the bail. But, definitely, the other offence, which has been registered with Bhagya Nagar Police Station, Nanded, it certainly needs consideration, in view of condition Nos.4 and 5. As regards the condition No.5 imposed in the earlier bail application, which was granted to respondent No.1, it was submitted on behalf of the respondent No.1 that liberty was given to the prosecution, that too, for moving an application under Section 439(2) of the Code of Criminal Procedure before the Trial Court, this application is not maintainable. This Court does not agree with the said submissions. That liberty was granted to the prosecution, that does not mean that the informant cannot knock the doors of this Court when such criminal activity is noted by him of the respondent No.1. There are in fact, strict rules for cancelling the bail which is granted after the application of mind by a Court. However,

when it comes to the breach of conditions imposed on the bail, then, the Court has to be strict, in a sense that with certain purpose conditions are imposed and if they are violated and the accused persons are allowed to put certain excuses, especially in the form that they have been falsely implicated in the subsequent crime, then, there will be no meaning to the terms imposed. Though in the subsequent case, the respondent No.1 has been now released on bail, now, what has come before this Court is the prima facie proof about violation of the condition and, therefore, present application needs to be allowed. Hence, following order.

### **ORDER**

1           Application stands allowed.

2           The bail granted to the respondent No.1 viz. Ganesh Balaji Sidalwad in Crime No.289/2020 dated 08.07.2020 registered with Bhokar Police Station, Dist. Nanded, for the offence punishable under Section 302, 201 of the Indian Penal Code, 1860 on 27.01.2021 stands cancelled.

3           Respondent No.1 shall surrender before the Jail authorities at Nanded on 17.01.2022 before 11.00 a.m.

4           In case of failure on the part of the respondent No.1 to surrender before Jail authorities, the Trial Court, before whom the Sessions case is

pending, shall issue non bailable warrant against the respondent No.1 and get his presence secured.

5 Registrar (Judicial) to transmit the copy of this order, immediately.

( Smt. Vibha Kankanwadi, J. )

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