

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.161 OF 2020

NANASAHEB BALASAHEB GAIKE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Mr. Y. V. Kakade h/f Mr. N. V. Gaware, Advocate for applicant.
Mr. A. M. Phule, APP for respondent No.1 – State.
Mr. N. D. Kendre h/f Mr. V. B. Deshmukh, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01.03.2022

ORDER :-

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

2. Heard learned Advocate Mr. Y. V. Kakade holding for learned Advocate Mr. N. V. Gaware for the applicant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. N. D. Kendre holding for learned Advocate Mr. V. B. Deshmukh for respondent No.2.

3. Present applicant had filed First Information Report vide Crime No.188 of 2019 with Shevgaon Police Station, Dist. Ahmendnagar on 05.05.2019 in respect of an incident allegedly taken place around 2.00

p.m. on 04.05.2019. It was registered for the offence punishable under Sections 307, 326, 327, 143, 147, 148, 149, 323, 504, 506, 341 of Indian Penal Code. Respondent No.2 was shown as accused No.5 in the FIR and accused No.2 in the charge-sheet. Present respondent No.2 had filed application for bail under Section 439 of Code of Criminal Procedure before learned Additional Sessions Judge, Ahmednagar vide Criminal Miscellaneous Application No.1302 of 2019. The said application came to be allowed on 19.07.2019. It is the order under challenge in this application.

4. It has been vehemently submitted on behalf of applicant-informant that the learned Additional Sessions Judge failed to consider the seriousness of the offence, the manner in which it has been committed. The informant and his father had sustained grievous injuries. Later on the father of the informant succumbed to the injuries and, therefore, offence under Section 302 of Indian Penal Code came to be added. Perusal of the post-mortem report would show that father of the informant had sustained 10 surface injuries and there were corresponding internal injuries. The probable cause of death was "Head Injury". The injury certificate of the informant would also show that he had sustained two grievous injuries. Specific role was attributed to respondent No.2. The assault on the injured persons was with the sole

intention of killing them. Respondent No.2 had assaulted informant's father with stone which resulted in his death. In other words, the respondent No.2 has caused death of informant's father. There is voluminous evidence collected against respondent No.2, however, it has not been considered at all by the learned Additional Sessions Judge. The order granting him bail is cryptic. It was also not considered that the accused persons are having muscle power and there is every possibility of tampering with the evidence. Applicant would be deprived of fair trial in that case. The activities of respondent No.2 would be curtailed only if he is kept behind bars. Therefore, his bail order deserves to be cancelled.

5. Per contra, the learned Advocate for respondent No.2 has supported the reasons given by the learned Additional Sessions Judge and submitted that no grounds have been made for cancellation of the bail.

6. At the outset, perusal of the FIR would show that the presence of respondent No.2 has been shown by the informant; however, no role has been attributed to him. There is no mention in the FIR that the deceased was assaulted by respondent No.2 by stone. Supplementary statement of the informant has been recorded on 07.5.2019 and 09.05.2019. In these statements, he has assigned role to respondent No.2 and has stated that

he had assaulted deceased by stone. Thus, *prima facie* it appears to be improvement. What was the necessity to have his supplementary statement on subsequent two occasions is not disclosed in those subsequent statements. The benefit of it should go to respondent No.2.

7. Another fact to be noted is that the applicant has not provided entire charge-sheet for the perusal of this Court. He cannot pick and choose the documents.

8. The bail which was granted to respondent No.2 was under Section 439 of Code of Criminal Procedure. Nothing was to be recovered from him. There is no such evidence produced on record to show that the stone has been recovered and it has connection to the injuries noted on the person of deceased or the informant. All the documents, which were made available to the learned Judge, appears to have been considered by him. Therefore, there is proper application of mind. When a reasoned order has been passed, it cannot be cancelled only on the say of aggrieved person. There is no merit in this application. Application therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm