

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

APPLICATION FOR CANCELLATION OF BAIL NO.168 OF 2020

Gulab Abbas Mulla

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Pirasab Nawaj Mulla,
- 3) Shahrukh Nawaj Mulla,
- 4) Samad Mainuddin Mulla,
- 5) Nawaj Mainuddin Mulla

...RESPONDENTS

...
Mr.Vivek V. Bhavthankar Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1 – State.
Mr.S.B. Munde Advocate h/f. Mr.V.D. Gunale Advocate
for Respondent Nos.2 to 4.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 25th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 8th JUNE 2022

ORDER :

1. Present application has been filed by the original informant

under Section 439(2) of the Code of Criminal Procedure to challenge the order dated 4th November 2020 passed by the learned Additional Sessions Judge, Udgir in Criminal Misc. Application (Bail) No.131 of 2020 granting anticipatory bail to accused Nos.2 to 5 (respondent Nos.2 to 5) in connection with Cr. No.200 of 2020 for the offence punishable under Sections 307, 452, 435, 436, 440 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Bhavthankar for the applicant, learned APP Mr. Kagne for respondent No.1 – State and learned Advocate Mr. Munde holding for learned Advocate Mr. Gunale for respondent Nos.2 to 4. In order to cut short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. On the basis of First Information Report (for short “FIR”) lodged by the present applicant, the said offence has been registered. It has been now investigated and charge-sheet has also been filed. Therefore, the question is, whether the purpose will be served of cancelling the anticipatory bail granted to respondent Nos.2 to 5 when the investigation is already

complete without their arrest. In each and every case arrest is not necessary. Further as regards present respondent Nos. 2 to 5 are concerned, it is necessary to consider what was the role attributed to them.

4. Perusal of the FIR would show that it was lodged on 13th October 2020 in respect of an incident that had allegedly taken place on 10th June 2020. That means when the offence was registered, there was already delay of about four months. However, the FIR itself says that the informant had gone to Walandi Police Outpost for lodging the report but it was not recorded and the injured was referred for medical treatment. Then the informant went to Deoni Police Station on 11th June 2020 and gave complaint application, however, no offence was registered. He then approached the Superintendent of Police on 15th June 2020 and again to D.I.G., Hon'ble Minister for Home Affairs etc., on 17th June 2020 and then he approached the J.M.F.C. with an application for taking cognizance of the matter under Section 156(3) of the Code of Criminal Procedure and thereafter on the basis of the order passed by the learned Magistrate, the FIR has been lodged. Thus, it is to be noted that

there appears to be much delay in collecting the evidence by the Police.

5. At the time of deciding anticipatory bail application, the learned Additional Sessions Judge had taken note of the delay and the fact that the spot panchnama could be prepared only after four months, yet Police had seized certain articles. They had recorded statements of eye witnesses and also statement of Abbas Mulla under Section 164 of the Code of Criminal Procedure by the Magistrate. It was thereafter noted that nothing is required to be recovered at the instance of the present respondent Nos.2 to 5 and therefore anticipatory bail was granted. If we peruse the charge-sheet then it can be seen that a child of four years namely Rehan had received injury. He sustained incised wound on the chin and it is stated to be simple. This fact was noted by the learned Additional Sessions Judge and it has been observed that eye witnesses had seen setting the house of the informant to fire and therefore it cannot be said that ingredients of Section 307 are not attracted. It was observed that the intention will have to be seen and when the house was set to fire by pouring petrol, prima facie there was intention. In spite of these observations, it was considered that

since nothing is required to be recovered from the present respondent Nos. 2 to 5, the application was allowed and stringent conditions have been imposed.

6. There are statements of eye witnesses and as per the FIR, accused Nos. 1 and 2 are the sons of accused No.4. Accused Nos.3 and 4 are real brothers and there is dispute in respect of land between the informant and the accused persons. It is then stated that due to the land dispute said act has been done. Whether, with such motive prosecution would be able to prove the case beyond reasonable doubt, would be decided at the time of trial. But when now the investigation is complete, charge-sheet is filed and custodial interrogation is not required for any recovery, with conditions when the anticipatory bail is granted, no interference is required.

7. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]