

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.180 OF 2021

SUBHASH S/O SHIVRAM HIWALE
VERSUS
KANIFNATH S/O MANIK MAVAS AND ANOTHER

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Advocate for Applicant : Mr. S. R. Bodade
Advocate for Respondent No.1 : Mr. Soheal Subhedar h/f Mr. N. S.
Ghanekar
APP for Respondent No.2-State : Mr. B. V. Virdhe

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 14-03-2022

ORDER :

1. The application has been filed under Section 439 (2) of Cr.P.C. by the original informant for cancellation of bail granted to respondent No.1 by this Court on 04-01-2021 in Bail Application No.1275 of 2020.
2. Respondent No.1 was arrested in connection with Crime No.28 of 2020, dated 13-01-2020, registered with Newasa Police Station, District Ahmednagar, for the offence punishable under Section 302, 201, 177, 120-B r.w.34 of IPC. He was in jail since 14-01-2020.
3. The learned Advocate for the applicant submits that after this Court had released respondent No.1 on bail, he was threatened. In

fact, respondent No.1 had tried to approach applicant with an intention that the applicant/informant should withdraw the allegations in the FIR. He had earlier gave information to police about such threats given by respondent No.1 but no action was taken. Ultimately he filed written complaint on 07-08-2021, still no cognizance has been taken, only non-cognizable offence has been registered. The applicant is constantly under fear. It will not give fair trial to the applicant also, and therefore, the bail granted to respondent No.1 deserves to be cancelled.

4. Learned Advocate for respondent No.1 supported the reasons given by this Court while granting bail to respondent No.1 and submitted that the allegations about giving threats and attempt to tamper with the evidence of the prosecution, are false.

5. This Court had considered all the documentary evidence while considering the bail application. The bail was granted and conditions were imposed that he shall not tamper with the evidence of the prosecution. It was considered that the case was dependent on the circumstantial evidence and the fact that the charge-sheet was filed only against present applicant and co-accused Shubham Pawar. As against other three accused persons concerned, report under Section

169 of Cr.P.C. was filed.

6. The applicant has now come with a case that threat was given to him for taking the case back and non-cognizable offence has been registered on 07-08-2021. It has not been brought on record either by the applicant or by the prosecution that the police had taken further action in the nature of permission under Section 155 (2) of Cr.P.C. for the inquiry nor the applicant had filed any private complaint before the concerned Magistrate. When the authenticity of the complaint which has been treated as non-cognizable has not been tested, this Court cannot curtail the liberty of the respondent No.1 on such ground. Hence, the application therefore stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.