

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

933 APPLICATION FOR CANCELLATION OF BAIL NO.194 OF 2021

GANESH BABURAO RAUT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. N.S. Ghanekar, Advocate for the applicant

Mr. B.V. Virdhe, APP for the respondent No.1

Mr. R.S. Sarvadnya, Advocate for respondent Nos.2, 4 and 5

Mr. S.R. Patil and Mr. M.B. Karande, Advocates for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10th MARCH, 2022

ORDER :

1 Present application has been filed under Section 439(2) of the Code of Criminal Procedure, 1973 by the original informant for cancellation of bail granted to respondent Nos.2 to 5 by learned Additional Sessions Judge, Bhusawal, Dist. Jalgaon in Criminal Bail Application Nos.550/2021, 310/2021, 373/2021 and 164/2021 by order dated 21.09.2021, 22.07.2021, 12.07.2021 and 15.06.2021 respectively, in connection with Crime No.34/2021 dated 03.02.2021 registered with Police Station, Raver, Dist.

Jalgaon, for the offence punishable under Section 302, 201 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. N.S. Ghanekar for the applicant, learned APP Mr. B.V. Virdhe for the respondent No.1, learned Advocate Mr. R.S. Sarvadnya for respondent Nos.2, 4 and 5 and learned Advocates Mr. S.R. Patil and Mr. M.B. Karande for the respondent No.3. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 At the outset, it is to be noted that the charge sheet was filed after the completion of the investigation on 30.04.2021. The copy of the charge sheet is made available. Perusal of the said charge sheet would show that in Postmortem Report column No.17 there were in all 16 injuries and it is opined that the cause of death is asphyxia due to strangulation, therefore, definitely it was a homicidal death of the father of the present applicant. However, the case is stated to be based on circumstantial evidence. There is no direct evidence. Even the First Information Report was lodged by the Police Constable in respect of death of unknown person by unknown person. After the investigation, it is stated that the deceased was assaulted on suspicion that he had come to steal articles and then all of them had taken that unknown person behind Bhut Bangla on Barhanpur road. After he was

assaulted there, also he was strangled and the dead body was disposed of there. The evidence is in the nature of discovery under Section 27 of the Indian Evidence Act and further circumstances are that they were seen together etc. It is to be noted that all the applications were filed under Section 439 of the Code of Criminal Procedure. That means, all the accused persons were arrested. The police had ample opportunity to make investigation in respect of the same and when every opportunity was there and now the bail has been granted, taking into consideration the evidence that has been collected, it need not be cancelled. Cancellation of bail is a serious affair and it cannot be done casually, just because the informant wishes so. Due to the death of his father definitely he has suffered a lot, but at the same time when the matter is subjudice and the guilt of the accused persons is yet to be proved, his emotions alone cannot over power the liberty of the accused persons. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)