

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

**APPLICATION FOR CANCELLATION OF BAIL NO. 196 OF 2021**

**SAVITA AABAJI BIRAJDAR  
VERSUS  
THE STATE OF MAHARASHTRA AND ANR.**

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the applicant.

Mr. B. V. Virdhe, APP for the respondent/State.

Mr. S. S. Thombre, Advocate for respondent No. 2.

**CORAM       :       SMT. VIBHA KANKANWADI, J.  
DATED       :       13.04.2022**

**PC :-**

01.           Present application has been filed under section 439(2) of the Cr.P.C. by the original informant to challenge the grant of bail under section 438 of the Cr.P.C., by the learned Additional Sessions Judge, Omerga, Dist. Osmanabad dated 27.09.2021 in Bail Application No. 142 of 2021.

02.           On the basis of FIR lodged by present applicant on 11.09.2021 with Lohara Police Station for the offences punishable under section 306, 341, 504, 506 read with section 34 of the Indian Penal Code, it is to be noted that in the FIR in all six persons have been shown as accused and now investigation is over and charge-sheet has been filed against all of them.

Present respondent No.2 is accused No.1.

03. The informant-applicant has stated in her FIR that she resides with her son Rushikesh and daughter Radha. They have eight acres land at Tavshigad. Out of that one acre land is stated to have been mortgaged by entering into registered document in favour of Kamlabai Bhalchandra Pawar, from whom the informant's husband Aabaji had taken loan of Rs.4 lakhs on 15.03.2019. A separate document stating that amount is to be returned within four years and then the land would be returned by her has been executed. The informant then says that one Indubai Anand Giri had offered liquor to Aabaji on various occasion and on 22.02.2021 she has got written a bond in respect of plot which was admeasuring 2000 sq. ft. situated at village Kate-Chincholi. She as well as her son resisted execution of bond and thereafter they have filed a suit in Lohara Court in respect of the transaction. The informant further states that agricultural land belonging to respondent No.2 Umesh Birajdar is adjacent to the land belonging to the informant. According to her, there was road from the field of respondent No.2 for going to the field of the informant but respondent No.2 has closed the said road by erecting a gate and putting it under lock. Many times respondent No.2 was

requested by the informant and her family members that he should not keep the road under latch. The informant states that when she, her son, husband and one Gundu Sambhaji Jadhav were at home on 09.08.2021 at that time accused Pandurang Giri, Anand Giri and Indubai Giri went to the home of the informant and started demanding repayment of amount of Rs.3 lakhs. They told that if the amount is not given, they will take possession of the plot. The husband of the informant felt defamed in presence of the persons and under depression started saying that he would commit suicide. The informant further states that she as well as her husband was saying accused Kamalbai Pawar and Dadasaheb Pawar that they should accept the amount of Rs.4 lakhs and return the land, but they were not ready. The husband of the informant committed suicide by consuming insecticide on 19.08.2021. When it was noticed that he consumed pesticide he was asked as to why he did the act, then he told all those facts about the harassment by respondent No.2 and other accused persons. Aabaji was taken to local hospital as well as Solapur hospital. He ultimately succumbed on the next day. According to the informant, when later on she was cleaning the house, she found a chit in the diary of her husband, which was a suicide note blaming all the accused persons.

04. Thus, it can be seen from the contents of the FIR that all those three transactions or persons with whom Aabaji was having grievance had nothing to do with each other. The transactions between Kamalabai and Aabaji and Indubai and Aabaji were different and it had nothing to do with respondent No.2 nor the alleged act of restraining the road of the deceased for going towards field by respondent No.2 was having any concern with other co-accused. Still the Investigating Officer has invoked section 34 of the IPC.

05. We are more concerned with respondent No.2 against whom the allegation is that he had put lock to the road by erecting gate and thereby restrained Aabaji from going towards his field. Aabaji had every remedy to get that obstruction removed. He could have approached Mamlatdar's Court or could have approached Tahsildar or he could have approached the Civil Court with appropriate remedy. The alleged act of putting barricade and lock by respondent No.2 even if accepted as it is, will not amount to instigation under section 107 and/or under section 306 of the IPC. The entire record in the form of statements of witnesses as well as contents of the FIR as well as alleged suicide note is silent as to when the alleged barricade was erected and

when requests were made to respondent No.2 by Aabaji and the informant for removing obstruction. The proximity will have to be shown by the prosecution. Under such circumstance, the order passed by the learned Additional Sessions Judge, Omerga granting bail under section 438 of the Cr.P.C. to respondent No.2 is perfectly legal and does not require any kind of interference.

06. The application stands rejected.

**[SMT. VIBHA KANKANWADI, J.]**