

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

APPLICATION FOR CANCELLATION OF BAIL NO.206 OF 2021

**DNYANDEO SHRIPATI SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.N.N. Jagdale, Advocate for the applicant.

Ms.Vaishali Patil – Jadhav, APP for the respondent/State.

Mr.C.C. Deshpande, Advocate for respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 14.03.2022**

PC :-

01. Present application has been filed under Section 439 (2) of the Cr.P.C. by the informant to challenge the order dated 11.10.2021 passed by the learned Additional Sessions Judge, Aurangabad allowing bail application No. 1721 of 2021 under Section 439 of Cr.P.C. in connection with Crime No. 131 of 2021 registered with Bidkin Police Station, Aurangabad for the offence punishable under Section 302, 201, 120(B), 109 read with Section 34 of Indian Penal Code.

02. Heard Mr. N.N.Jagdale, learned Advocate for the applicant, Ms. Vaishali Patil-Jadhav, learned APP for respondent-State and Mr.

C.C.Deshpande, learned Advocate for respondent No. 2.

03. Perusal of the FIR would show that there was political rivalry between present applicant-informant and respondent No. 2. In fact, the FIR is against unknown person and thereafter it is stated that further acts of respondent No. 2 were revealed that and he has been then connected to the crime. Now the investigation is over and charge-sheet has been filed. The contents of the inquest panchanama and post-mortem report would show that it is homicidal death but we are required to see whether there is prima-facie evidence that has been collected against respondent No. 2 to show that he is the author of the said murder. It is also not in dispute that present respondent No. 2 was the Sarpanch of the village at that time. Learned Additional Sessions Judge has rightly observed that merely because respondent No. 2 is connected with political party, he is Sarpanch and there is rivalry between deceased and respondent No. 2, will not be a ground to reject the application. The quality of evidence that has been collected will have to be considered. The informant or his family members are not eye witnesses to the incident. They have stated about the earlier disputes between the deceased and respondent No. 2. Statements under Sections 161 of Cr.P.C. as well as 164 of

Cr.P.C. of the witnesses would show that certain witnesses had seen the applicant talking with the deceased earlier night. But then all of them are saying that deceased did not return at the night time and in the morning he could be found in unconscious state near Mhasoba Temple in injured and dead condition. The persons who lastly seen the deceased and respondent No. 2 appear to have not felt that there is danger to the life of the deceased. None of the family members accompanied him.

04. The evidence that has been collected against the present respondent No. 2 is in the form of statements of co-accused under Section 27 of the Indian Evidence Act and discovery of the articles, tower location of mobile. Thus, it can be said that case is resting on circumstantial evidence. Therefore, the Sessions Judge was justified in releasing respondent No. 2 under Section 439 of Cr.PC.

05. Learned Advocate appearing for applicant has pointed out that Sheelabai Kantarao Shinde has lodged report with said Police Station vide Crime No. 27 of 2022 under Sections 324, 504, 506, read with Section 34 of the IPC against respondent No. 2 and other three persons. It is stated that

when she was at home, at about 6.30 p.m. on 22.01.2022 all accused persons came to her house and started saying that they should take back the case. She told that since her husband has been murdered, she will not take back the case, but then respondent No. 2 started saying that they have purchased the Court and nobody will do anything against them. She was abused so also her family members were abused and threatened. They pelted stones, as a result of which son of informant Sheelabai sustained injury. Learned Advocate for the applicant, therefore, submitted that there is threat to the life of the witnesses and therefore, it is necessary that the bail granted to respondent No. 2 should be cancelled.

06. It is to be noted that the condition has been imposed while Additional Sessions Judge has released respondent No. 2 on bail. It has been stated that the applicant i.e. present respondent No. 2 shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer. When such condition is clearly mentioned and still according to Sheelabai threat has been given, it is for her to move the same Court which had imposed condition for cancellation of bail,

if any, for breach of terms and conditions. The applicant should approach to same Court first and not directly to the Appellate Court.

07. On the basis of present application exceptional powers under Section 439 (2) of Cr.P.C. cannot be exercised. The application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]