

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.209 OF 2021

Laxman Changdev Bhagwat

... Applicant

Versus

1. The State of Maharashtra
2. Suresh Haribhau Savai
3. Satish Suresh Savai
4. Yogesh Suresh Savai

... Respondents

...

Mr. V. S. Kakde h/f Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicant.

Mr. V. M. Kagne, APP for respondent No.1 – State.

Mr. Shaikh Tarek Mobin H., Advocate for respondent Nos.2 to 4.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25.02.2022

ORDER :-

. Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. V. S. Kakde holding for learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for applicant, learned APP Mr. V. M. Kagne for respondent No.1 – State and learned Advocate Mr. Shaikh Tarek Mobin H. for respondent Nos.2 to 4.

3. The present applicant has filed First Information Report vide Crime No.474 of 2021 with Shrirampur Police City Police Station, Dist.

Ahmednagar on 17.07.2021 for the offence punishable under Sections 384, 341, 323, 504, 506 of Indian Penal Code. It was against respondent Nos.2, 3 and 4. The accused persons i.e. present respondent Nos.2 to 4 filed application under Section 438 of the Code of Criminal Procedure before the learned Additional Sessions Judge, Shrirampur. It came to be allowed on 06.08.2021 by imposing certain conditions. If we consider the impugned order, it can be seen that it is a well reasoned order. Ingredient of each and every offence has been considered along with the punishment that has been prescribed. It has been rightly held that none of the offences are more than 10 years of imprisonment, rather it can be seen that none of them are prescribing imprisonment of more than 7 years of each. Naturally the directions of the Apex Court in ***Arnesh Kumar Vs. State of Bihar and another, [(2014) 8 SCC 273]*** would be applicable. The Investigating Officer then should show that there is good ground for arresting the accused persons as contemplated under Section 41-A of the Code of Criminal Procedure. The reply or objection given in writing by the present applicant before the learned Additional Sessions Judge have also been considered by him separately. Contents of the FIR would show that the informant had taken loan of Rs.13,00,000/- from applicant No.1 and he had agreed to repay the said amount within two years. According to him accused - Suresh Savai had

promised him that he would take agreement to sell in respect of five acres of the land from the informant, but then he has actually got the sale deed done in favour of one Wable, who is his relative. According to the informant, he has repaid the amount of Rs.13,00,000/-, yet he was told that still amount of Rs.8,00,000/- is outstanding. He then says that since about a month prior to the FIR, the accused persons started harassing him by saying that he should repay the amount of Rs.30,00,000/- which is towards interest. Informant says that he was proceeding towards Court at about 11.00 a.m. on 14.07.2021, at that time accused persons restrained him and after assaulting him, they told that unless he take back the case lodged by him against them he as well as his family members will not be kept alive. When people started gathering, those persons left. He then went to pesticide shop and took chemical rogor. Thereafter, he went to a place nearby onion market and sat below a tree. He then called his friend and told that he is committing suicide. He then consumed the poisonous substance and became unconscious. He regained consciousness in the hospital from where he has lodged the FIR. Definitely, from the contents of the FIR, so many questions are arising and they have been rightly considered by the learned Additional Sessions Judge. Whether asking repayment of loan amounts to extortion, is a question. Further, the applicants have not

stated as to which document he has produced to show that he has repaid the entire loan amount. It is also not told by him as to which steps he had taken against said Wable, in whose favour the sale-deed was executed by him. The relationship between the accused persons and Wable is not made clear. Important point to be noted is that though the informant has given that transcript of conversation between him and his friend, no offence has been registered by police in that respect. Whether he had given that transcript to police or not is also a question. When a reasoned order has been passed, there is no question of interference by this Court in the liberty that has been restored in the accused. No case is made out to exercise powers under Section 439(2) of the Code of Criminal Procedure. Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm