

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**23 APPLICATION FOR CANCELLATION OF BAIL NO.210 OF 2021
IN BA/1445/2019**

Vitthal Vyankat Waghmare ... Applicant

Versus

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|----|-----------------------------|-----------------|
| 1. | The State of Maharashtra | |
| 2. | Bhimrao s/o Zatinga Gaikwad | |
| 3. | Nagabai w/o Bhimrao Gaikwad | ... Respondents |

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Mr. V. M. Maney and P. P. Deshmukh, Advocate for applicant.

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

Mr. Shaikh Ashraf Patel, Advocate for respondent Nos.2 and 3.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14.03.2022

PER COURT :

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure by the original informant for cancellation of bail granted to respondent Nos.2 and 3 by this Court in Bail Application No.1445 of 2019 on 03.03.2020. After hearing the learned Advocate for the applicant, he submits that he is not pressing this application as against respondent No.3 in view of the fact that she had not made application bearing Civil Miscellaneous Application No.20 of 2021 before District Judge-1, Nilanga under the Guardians and Wards Act

and, therefore, the application stands disposed of as withdrawn as against respondent No.3.

2. Heard learned Advocate Mr. V. M. Maney for the applicant, learned APP Mr. B. V. Virdhe for respondent No.1 and learned Advocate Mr. Shaikh Ashraf Patel for respondent Nos.2 and 3.

3. It has been vehemently submitted on behalf of the applicant – informant that his daughter was given in marriage to Vijaykumar Bhimrao Gaikwad, who is the son of respondent Nos.2 and 3. The daughter has left 9 years old son in the custody of applicant. Statement of the deceased was recorded as FIR vide Crime No.65 of 2019, later on the daughter of the applicant succumbed to the burn injuries on 15.04.2019 and offence under Section 302 of Indian Penal Code came to be added. Now, the Sessions Case bearing No.32 of 2019 is pending before the learned Additional Sessions Judge, Nilanga for the offences punishable under Sections 302, 498-A, 323, 504 read with Section 34 of Indian Penal Code against the husband of the deceased and present respondent Nos.2 and 3 parents-in-laws. All three of them had filed Bail Application No.1445 of 2019 before this Court for releasing them on bail under Section 439 of the Code of Criminal Procedure. When this Court was not inclined to grant any relief to the husband, that application was

withdrawn as against him, but as regards the respondent Nos.2 and 3 are concerned, it came to be allowed and following conditions came to be imposed :-

- “a) They shall not try to contact the child or witnesses till conclusion of the trial.
- b) They shall not tamper the evidence or influence the witnesses.”

Thereafter, on 26.08.2021, an application has been filed under Section 10 of the Guardians and Wards Act, 1880 and Section 6 of the Hindu Minority and Guardianship Act, 1956 by the husband and present respondent No.2 before the learned District Judge-1, Nilanga for the custody of the child. The learned Advocate appearing for the applicant has taken this Court through the contents of the said application and submitted that though the condition has been imposed on the respondent Nos.2 and 3 that they shall not try to contact the child or the witnesses till the conclusion of the trial, this is another attempt by the respondents to tamper with the evidence of the prosecution by seeking the custody of the child and, therefore, in view of the said breach of condition, the bail granted to respondent No.2 deserves to be cancelled.

4. Per contra, the learned Advocate appearing for respondent No.2 (since the application is withdrawn as against respondent No.3 the

contentions are now restricted to respondent No.2 only) submitted that the Sessions Case is part heard. Only three witnesses are remaining to be examined and the trial may be over within next 2-3 months. Under such circumstance, some time be given and the respondent No.2 need not be asked to surrender his bail or in other words, the bail granted to respondent No.2 need not be cancelled.

5. As aforesaid the respondent No.2 is facing trial for the offence punishable under Sections 302, 498-A, 323, 504 read with Section 34 of Indian Penal Code. As on today, it is stated that the husband is still behind the bar, as he has not been released on bail by any of the Courts. The son of the deceased, who was then 9 years old, appears to be the star witness. This Court had taken note of his statement under Section 161 as well as under Section 164 of the Code of Criminal Procedure and it is stated that he has narrated specifically as to how the incident had occurred. It was told by him that applicant Nos.2 and 3 i.e. the present respondent Nos.2 and 3 had caught hold of his mother and the applicant No.1 i.e. his father set his mother on fire by pouring kerosene. Thus, what is expected in the Sessions Case that the son would depose against the father. With this background, the condition was imposed that respondent Nos.2 and 3 shall not contact the child or other witnesses till the conclusion of the trial. In spite of that, when the application was

filed for getting the custody of the child, it has been stated that the applicant had taken the child in his custody on 27.03.2019 and kept him with the parental house of the deceased. It is then stated that they are not allowing the applicants therein, especially the applicant No.2 i.e. present respondent No.2 to meet the child. It has been said “सामनेवाला हा अर्जदार नं.१ व २ तसेच आजी सौ. नागीन यांची श्रेयसची भेट हावू देत नाही. त्यामुळे ते व्यथित आहेत. श्रेयस यांना भेटण्याचा व बोलण्याचा अर्जदारानी प्रयत्न केल्यास सामनेवाला श्रेयसला दूर धेवून जातो बोलू भेटू देत नाही.” Further, it is stated that even though the father is in jail, he can speak with the son on phone, that means even the husband of the deceased i.e. the father of the child has intention to speak with son, though restrained by this Court. It has been tried to be submitted on behalf of respondent No.2 that since the father and grandfather have right over the son/grandson, they had filed the application. It can be definitely stated that question of right will come later, when there is restriction imposed on them by a legal order. It is not necessary that every right should be ascertained when it is restrained by a legal order. Respondent No.2 has not challenged the said condition before the Higher Authority and, therefore, he is bound to follow/obey the said condition, if he wanted to enjoy the liberty that has been granted by way of bail order. Filing of the said application is nothing but an attempt to contact the child and it is for the obvious

reason to have favourable deposition by pressurizing. The father is in jail and the grandfather, though on bail, has restricted liberty. They could have waited till the conclusion of trial and then could have filed same application for getting the custody of the child, but they preferred not to wait and, therefore, it amounts to attempt to tamper with the evidence of the prosecution. We cannot predict that, said application could not have been granted and, therefore, filing of that application cannot be taken as attempt to tamper with the evidence of the prosecution. Result apart even the filing itself can be said to have been restrained and taking into consideration the recitals in the application, it is certain that the respondent No.2 had tried to contact the child, but when he was restrained, the application has been filed. Under such circumstance, the application deserves to be allowed as against respondent No.2. The bail granted by this Court to respondent No.2 deserves to be cancelled for the acts done by him. Hence, the following order :-

ORDER

- I) Application stands disposed of as withdrawn as against respondent No.3.
- II) The application stands allowed as against respondent No.2 – Bhimrao s/o Zatinga Gaikwad.

III) The bail granted by this Court to respondent No.2 - Bhimrao s/o Zatinga Gaikwad in Bail Application No.1445 of 2019 on 03.03.2020 in respect of Crime No.65 of 2019 (Sessions Case No.32 of 2019) stands cancelled.

IV) Respondent No.2 to surrender either before the Superintendent of Jail, District Prison, Latur or before the learned Additional Sessions Judge, Nilanga before 5.00 p.m. on 17.03.2022.

V) If he fails to remain present/surrender before the abovesaid authorities, the learned Additional Sessions Judge to secure his presence by executing Non Bailable Warrant.

VI) Learned Registrar (Judicial) to send copy of this order immediately to the Court of Additional Sessions Judge, Nilanga.

VII) Stay granted to the further proceedings in respect of Miscellaneous Civil Application No.20 of 2021 pending before the learned District Judge-1, Nilanga by the order of this Court on 01.02.2022 to continue till the conclusion of Sessions Case No.32 of 2019.

After pronouncement of the order, learned Advocate for respondent No.2 seeks stay to this order for approaching the Hon'ble Apex Court. However, in view of the detailed order, the said prayer is rejected.

[SMT. VIBHA KANKANWADI, J.]

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