

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

**APPLICATION FOR CANCELLATION OF BAIL NO.213 OF 2021
IN BA/1123/2021**

. Rameshwar S/o Macchindra Bhutkar ..Applicant

VERSUS

1. State of Maharashtra

2. Pankaj Changdeo Bankar ..Respondents

...
Advocate for Applicant : Mrs.Rashmi S. Kulkarni
APP for Respondent No.1 : Mr.A.M.Phule
Advocate for Respondent : Mr.Joydeep Chatterji

...
CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 9th March, 2022

DATE OF PRONOUNCING ORDER : 6th June, 2022

ORDER :-

1. Present application is filed by original informant for cancellation of bail under Section 439(2) of the Code of Criminal Procedure. The application filed by present respondent No.2 i.e. Bail Application No.1123 of 2021 came to be allowed by this Court on 22nd November, 2021. It is also to be noted that further prayer has been made that respondent No.2 be directed to report to the Police Station periodically that means modification of the condition imposed to the bail. Further condition that has been prayed to be annexed to the bail is that respondent No.2 should

not contact or try to communicate any witness who has been named in the list of prosecution witnesses till the conclusion of the trial. It appears that these prayers in respect of addition or modification of condition is in the alternative.

2. Heard Mrs.Rashmi S.Kulkarni, learned Advocate for applicant, Mr.A.M.Phule, learned APP for respondent No.1 and Mr.Joydeep Chatterji, learned Advocate for respondent No.2.

3. It can be seen from the tenor of the submissions made on behalf of the applicant that the applicant wants to now restrict himself to the fact alleged that respondent No.2 had suppressed his criminal antecedents from this Court and that was also not pointed out by the Investigation Agency and if that would have been pointed out, this Court would have taken some different view. In addition to that by way of amendment which has been pleaded that after the filing of the present application when respondent No.2 came to know about this application, two persons visited to the house of the informant on 17th December, 2021 and threatened him that if the Bail Application of respondent no.2 gets cancelled then the applicant will not let alive and would suffer the same fate as his brother. He has filed Non-Cognizable Report in respect of that incident vide NCR

No.207 of 2021 invoking offence punishable under Sections 504, 506 of the Indian Penal Code (IPC).

4. It has been pointed out by the learned Advocate for the applicant that in his application for bail before this Court respondent No.2 has suppressed pendency of RCC No.64 of 2016 i.e. Sessions Case No.357 of 2016 for the offence punishable under Sections 120-B, 307, 353, 332, 333, 336, 143, 147, 148, 149, 427, 224, 188, 506 of the IPC, under Section 7 of the Criminal Law Amendment Act, under Section 4 of the Prevention of Damage to Public Property Act and under Section 37(1)(3) punishable under Section 135, 142 of the Maharashtra Police Act. This crime has been registered with Sonai Police Station, Tq.Newasa, Dist.Ahmednagar. It is also stated that another offence vide RCC No.129 of 2016 i.e. Sessions Case No.44 of 2016 on the basis of FIR No.I-64 of 2016 came to be registered against respondent No.2 almost under the same Sections and both these cases are pending. By suppressing this fact, respondent No.2 came before this Court and even the prosecution agency failed to point out the criminal antecedents. This Court has also not imposed further conditions and simply allowed the application. Taking disadvantage of the same, when this application was filed, respondent No.2 gave threat to the

informant. Therefore, the fair trial is withheld because of the acts of respondent No.2. The bail granted by this Court deserves to be set aside.

5. Reliance has been placed by the learned Advocate for the applicant on the decision of this Court in *Hiranand Vs. State of Maharashtra and Others* [2014 (2) Bom.C.R.(Cri) 440]. In the said application the order passed by this Court itself was challenged on the ground of suppression of material fact apart from the merits of the case and violation of condition of attendance. This Court had taken note of the suppression of criminal antecedents by the respondent accused therein. He was facing 13 criminal matters since 1989 till 2011. This Court then cancelled the bail application and asked respondent No.2 to surrender. This order was challenged before the Hon'ble Supreme Court in *Deepak Hiralal Mewani Vs. Hiranand @ Dabbu Kimmatram Aswani and Another* [MANU/SCOR/9244/2014], wherein the Hon'ble Supreme Court had refused to interfere after considering the material and asked the petitioner therein to surrender before the High Court.

6. Further reliance has been placed on the decision in *State and Others Vs. Amarmani Tripathi and Others* [AIR 2005 SC

3490], wherein the bail bonds were cancelled on the ground of breach of condition. Further reliance has been placed on the decision in *Panchanan Mishra Vs. Digambar Mishra and Others* [AIR 2005 SC 1299] wherein it has been observed that “the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case, the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulges in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also creates problems of law and order situation”.

7. The learned Advocate appearing for respondent No.2 submitted that this Court had taken into consideration the charge-sheet that was filed, statements of the witnesses and the role that was described as against respondent no.2 as wielding of

pistol only. He had not assaulted deceased Ganesh and then he was simply standing there with pistol in his hand. No exceptional circumstance has been pointed out by the informant applicant for cancellation of bail. He relies on the decision in *Vikramjit Singh Vs. State of M.P. [AIR 1992 SC 474]* wherein it has been held that “when the High Court grants bail to an accused then the Co-ordinate Bench of the same Court will not be justified in cancelling the said bail when no new or advanced grounds are shown”. The learned Advocate for respondent No.2 however claimed ignorance about criminal antecedents of respondent No.2.

8. As aforesaid prayer for modification of the conditions to the bail is in the alternative but then firstly we are required to consider as to whether respondent no.2 had suppressed material fact from this Court. Copy of the Bail Application filed by respondent no.2 before this Court i.e. Bail Application No.1123 of 2021 has been supplied. Ground No.(L) is intentionally reproduced as it is:-

“(L) The applicant permanently resides at the given address, has roots in society, does not have criminal antecedent and would not abscond.”

9. Therefore, when the criminal antecedents were not disclosed though infact they were, it has been reflected by this Court in its order stating in Paragraph No.3 that the applicant has no criminal antecedents. But it will not be out of place to mention here that the respondent-State has filed affidavit of Anil Baban Katake (Police Inspector attached to Local Crime Branch, Ahmednagar), who has stated that the charge-sheet was filed by earlier Police Inspector - Dilip S.Pawar and thereafter, deponant took charge. As regards the Bail Application is concerned, he says that inadvertently at the time of filing say before the Sessions Court and this Court, he / Investigation Agency had not pointed out the criminal antecedents of accused i.e. respondent No.2 and then unconditional apology of the Court has been sought. Now also he has not given details of RCC No.129 of 2016 i.e. Sessions Case No.44 of 2016, but from his affidavit what could be revealed is another crime against respondent No.2 vide RCC No.64 of 2016 i.e. Sessions Case No.357 of 2016. Interestingly, respondent No.2 has filed affidavit-in-reply but he is totally silent on the point as to why he had not mentioned his criminal antecedents. He gives a different version. He says that his brother-in-law engaged an Advocate to file Bail Application and the brother-in-law was not aware of pendency of cases against him when the matter was before the learned Sessions

Court, Ahmednagar and therefore, he had not apprised the Advocate about those facts. It is stated that the said act on his part is unintentional but due to ignorance of his brother-in-law. Thus, it can be taken that now he is accepting that criminal cases are pending against him, still in his affidavit-in-law, he has not given details that how many cases are pending against him and the details of cases in which he is acquitted or convicted. If respondent No.2 is still not ready to disclose facts in entirety then it can be definitely said that the order of this Court was passed in ignorance of those criminal antecedents and believing in the representation of the applicant therein (respondent No.2 herein) that there are no criminal antecedents against him. The two cases which are filed against him are under Sections 307, 353 etc. of the IPC. It will have to be stated that still these cases might be pending because respondent No.2 had an opportunity to place on record the recent status of these cases yet he has not produced it that means when he was on bail in those two cases, he is involved in the further case under Section 302 of the IPC. Though, this Court has held that role attributed to him is wielding of pistol and he has not assaulted the deceased but the important point that is to be noted is that it was aimed towards the deceased. The evidence that has been collected shows that the present respondent No.2 and co-accused - Arjun Mahale had

stopped the deceased to have safe escape from the brutal attack. It can also be then inferred that if the deceased would have tried to escape then the present respondent No.2 was in a position to shoot him. The intention was very much clear. Therefore, when respondent No.2 was on bail in earlier two cases under Section 307 of the IPC, he is now involved in subsequent offence under Section 302 of the IPC. Certainly, if there would have been disclosure of those two cases then this Court would not have granted him bail. The bail order passed by this Court is certainly obtained by suppressing the facts and therefore, the said order deserves to be set aside. Hence, the following order:

ORDER

- (i) Application stands allowed.
- (ii) The Order passed by this Court in Bail Application No.1123 of 2021 on 22nd November, 2021, thereby granting bail to respondent No.2 in ACB No.213 of 2021, is hereby set aside. In other words, the bail granted to present respondent No.2 in ACB No.213 of 2021 stands cancelled.
- (iii) Respondent No.2 – Pankaj Changdeo Bankar, who is on bail, his bail bonds stand cancelled and he is directed to surrender before the concerned trial Court forthwith.
- (iv) In case of failure on the part of respondent No.2, the trial Court would be at liberty to take appropriate action for securing his presence and taking him to judicial custody.

(v) The Registrar (Judicial) to forward a copy of this order to the concerned trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT