

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

924 APPLICATION FOR CANCELLATION OF BAIL NO.221 OF 2021

SAHADEV PRABHU HARALE

VERSUS

HARISHCHANDRA REVA @ REVAPPA RATHOD AND ANOTHER

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Mr. V.C. Patil, Advocate h/f Mr. S.A. Nagarsoge, Advocate for the applicant

Mr. A.S. More, Advocate for the respondent No.1

Mrs. V.N. Patil-Jadhav, APP for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24th FEBRUARY, 2022

ORDER :

1 Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure, 1973, for cancellation of bail granted by the learned Additional Sessions Judge, Osmanabad on 30.11.2021 in Criminal Bail Application No.497/2021 in respect of offence vide Crime No.246/2021.

2 Heard learned Advocate Mr. V.C. Patil holding for learned Advocate Mr. S.A. Nagarsoge for the applicant, learned Advocate Mr. A.S. More for the respondent No.1 and learned APP Mrs. V.N. Patil-Jadhav for the

respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that he had lodged First Information Report vide Crime No.246/2021 with Osmanabad Rural Police Station, Dist. Osmanabad for the offence punishable under Section 143, 147, 148, 149, 307, 427 of the Indian Penal Code. The informant himself is an Advocate and has specifically stated that the respondent No.1 instigated the others and by saying that the Advocate is not allowing them to catch fish, in order to commit murder of the informant, the respondent No.1 had pushed him in the flowing canal. As a result of which, he had sustained severe injury to his head. In spite of the resistance by the present applicant the application came to be granted. The applicant had pointed out the criminal antecedents of the respondent No.1; yet, a blanket order has been passed. The order is illegal and the seriousness in the offence has not been considered at all. The C.T. Scan report and M.R.I. Report were not considered and, therefore, the said order deserves to be cancelled.

4 Per contra, the learned Advocate appearing for the respondent No.1 supported the reasons given by the learned Additional Sessions Judge. It is stated that an elaborate order has been passed considering various decisions passed by this Court as well as the Hon'ble Supreme Court. Therefore, when the reasoned order has been granted and the liberty has

been restored in favour of respondent No.1, it cannot be so curtailed at the whims of the applicant, who himself is an Advocate and has legal knowledge.

5 At the outset, it can be said that an elaborate order appears to have been passed by the learned Additional Sessions Judge. Whatever criminal antecedents are shown, they appear to be against co-accused and many of them appear to be at the instances of the applicant himself. In fact, the paragraph No.4 of his say before the learned Additional Sessions Judge respondent No.1 has stated that how many cases have been filed against applicant and his family members. Two cases for the offence punishable under Section 307 of the Indian Penal Code have been filed against him, two cases for the offence punishable under Section 395 etc. of the Indian Penal Code have been filed against him; one case is under Section 353 of the Indian Penal Code. It is not only that criminal antecedents of the accused is required to be considered, but, it has to be considered, as to whether the informant is also having criminal antecedents, in order to come to the conclusion as to whether there is element of truth in the contents of the FIR.

6 Informant claims to be the adviser of one Vishal Fishery Co-operative Society. It is to be noted that he does not say that he is a legal adviser. For the professional advises whether the informant was entitled to give that advise, would be a question, because an Advocate cannot take up

any other assignment apart from the legal equipment. It was alleged that the present applicant was possessing a sickle but he has not used. When a person is holding sickle in his hand, whether he would try to commit murder of another person just by pushing him in flowing water, is also a question. Medical papers were considered, which showed that there were some injuries caused to the informant but certainly it is opined that the injuries are not caused by sickle. Statements of witnesses were also considered, wherein improvement appears to have been made regarding theft of 150 k.gs. of fishes by the accused persons. List of criminal cases against the accused were also considered which were supplied by the present applicant-informant, however, the learned Additional Sessions Judge rightly says that further information has not been given, as to whether those cases are still pending or disposed of. The cases cited by the parties have also been considered and when on the basis of the evidence that was before the Court it was held that the applicant is entitled for the anticipatory bail, then, the order that has been passed is legal and no fault can be found. The application appears to be not filed with bona fide intention. It deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)