

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

APPLICATION FOR CANCELLATION OF BAIL NO.217 OF 2021

. The State of Maharashtra ..Applicant

VERSUS

. Jayesh s/o Sarangdhar Patil ..Respondent
(Original accused No.2)

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**WITH
APPLICATION FOR CANCELLATION OF BAIL NO.222 OF 2021**

. The State of Maharashtra ..Applicant

VERSUS

1. Mayur Sarangdhar Patil

2. Mahesh Sarangdhar Patil ..Respondents
(Original accused/applicant)

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APP for Applicant-State : Mr.V.M.Kagne
Advocate for Respondents : Mr.Hemantkumar F. Pawar

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 6th April, 2022

DATE OF PRONOUNCING ORDER : 6th June, 2022

ORDER :-

1. Both the applications are filed by the applicant-State under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted by the learned Additional Sessions Judge, Bhusawal under Section 439 of the Code of Criminal Procedure on 6th October, 2021 and 29th October, 2021 respectively in

connection with Crime No.103 of 2021, registered with Bhusawal Taluka Police Station, District Jalgaon, for the offence punishable under Sections 302, 307, 326, 324, 323, 504 read with Section 34 of the Indian Penal Code (IPC).

2. Heard Mr.V.M.Kagne, learned APP for the applicant State and Mr.H.F.Pawar, learned Advocate for the respondents.

3. Perusal of the First Information Report (FIR) lodged by one Subhash Shamrao Koli resident of M.I.D.C. Road, near Panchmukhi Hanuman Temple, Sakegaon, Tq.Bhusawal, on 14th June, 2021 would show that it is in respect of an incident that has been allegedly taken place at 08:00 p.m. on 13th June, 2021. He has stated that his brother-in-law namely Ashok Narayan More used to run a Brick Kiln about 15 to 20 years ago and for water for the business, the informant, through his mediation, had made available that water from the agricultural land of one Sarangdhar Pandit Patil, which was adjacent farmer. The rent/rate for the water was fixed @ Rs.15,000/- per year. The said Brick Kiln business was closed after one year by the brother-in-law of the informant. He had paid some amount but around Rs.3,000/- to Rs.4,000/- were outstanding. Around 07:30 p.m. on 13th June, 2021, the informant had gone for purchase of electric items. He

found that accused Mahesh Sarangdhar Patil with Rajendra Diwakar Bhole were standing near shop by name National Medical. Accused Mahesh called the informant but the informant did not go towards accused Mahesh and he went to the shop and started purchasing the items. At that time, accused Mahesh came to the shop and without saying anything, he started assaulting the informant. He was joined by his brother Jayesh Patil. All of them had assaulted the informant by kicks and fists blows. The informant was rescued and was taken to his home. When the nephews of the informant by name Ishwar Koli, Nilesh Baliram Sonawane and Rahul Santosh Koli got to know about the incident, they went to the house of accused Mahesh and started asking as to why the informant was assaulted. At that time, Mahesh, Jayesh and Mayur assaulted the nephews of the informant. Mahesh assaulted Ishwar by an iron pipe on his head. Jayesh assaulted Nilesh with an axe on his head and neck. Mayur and Jayesh assaulted Rahul by an axe on his back and legs. They were rescued by the people nearby and taken to the hospital.

4. The learned APP for the applicant-State submitted that taking into consideration seriousness of the offence, the learned Additional Sessions Judge ought to have shown that much

maturity while passing the orders. Further fact is that due to the said assault, injured Nilesh Sonawane succumbed to the injuries on 21st June, 2021 while undergoing treatment with Dr. Ulhas Patil Medical College and Hospital, Jalgaon. The post mortem report Column 17 would show that there were 13 surface injuries on the body of deceased Nilesh and there were corresponding internal injuries. The cause of death that has been given is "head injury". After completion of the investigation, the charge-sheet was filed on 8th September, 2021 that means at the time of passing the orders in respect of the respondents, the entire charge-sheet was before the learned Additional Sessions Judge, however, he has passed a very cryptic order. It was wrongly observed that the respondents have no criminal antecedents. Infact respondent Jayesh was already convicted and sentenced to suffer imprisonment for life in Crime No.57 of 2011 registered with Warangaon Police Station for the offence punishable under Sections 302, 323, 353, 504, 506, 341 read with Section 34 of the IPC. The statements of the witnesses have been recorded and most of them are the eye witnesses, who have stated in support of the prosecution. Active role was played by the respondents and the respective weapons used in the commission of the offence have been recovered under Section 27 of the Indian Evidence Act. When there was *prima-facie* evidence

against the respondents, it was not at all referred and a very cryptic order has been passed, which cannot be allowed to be sustained. Learned APP has taken this Court through the entire charge-sheet while making submissions. He, therefore, submitted that the impugned orders deserve to be set aside and the respondents deserve to be taken in custody.

5. Learned Advocate appearing for the respondents in both the cases has submitted that the way in which the learned Additional Sessions Judge has passed the order, he may not be able to strictly support the entire contents, but when the entire charge-sheet was available before the concerned Court, it ought to have been considered. He, however, supports the fact that the applications filed by the respondents ought to have been allowed taking into consideration the fact that there was a cross complaint vide Crime No.102 of 2021, which was instituted prior in time with the same Police Station. The said cross complaint under Sections 307, 143, 147, 148, 149, 504 of the IPC and under Section 37(1), 37(3) punishable under Section 135 of the Maharashtra Police Act came to be registered against the deceased and the other alleged injured witnesses. He further submitted that the contents of the FIR would disclose that the incident has happened at two places; one is near the electric

shop and another is in-front of house of accused Mahesh Patil. If we consider the role attributed to accused Mahesh in the incident that has taken place near electric shop, at the most offence under Section 323 of the IPC can be attracted which is a bailable offence. Thereafter, the informant had gone to his home and after he had narrated the incident, his nephews had gone to the house of accused Mahesh. Informant says that he had followed the nephews so that he can avoid any untoward incident. He does not say that he was assaulted second time by the respondents. This fact shows that the nephews of the informant were the aggressors. The respondents were justified in protecting themselves and their property when they were attacked. The statements of the witnesses including the injured would show that the injured nephews of the informant were the aggressors. Therefore, the Bail Applications filed by the respondents ought to have been allowed. Accordingly, they were allowed. The reasons might not be happily worded.

6. The learned Advocate appearing for the respondents also submitted that in the cross complaint, when applications under Sections 439 of the Code of Criminal Procedure were made by the nephews of the informant – Ishwar Koli, Vishal Koli and Subhash Koli, the same Judge has released them on bail on 30th

September, 2021 and if we consider the reasons given by the learned Judge, they are copy paste and word to word identical. With all the seriousness the learned Advocate appearing for the respondents has pointed out that the concerned judge (Mr.S.P.Dorle), who was the then Additional Sessions Judge / Special Judge at Bhusawal, District Jalgaon, has passed similar orders that means word to word same reasons assigned in many cases. The copies of the orders passed in various applications by the same Judge, taken through the internet, have been produced for the perusal of this Court. Those are the orders in Criminal Bail Application Nos.516 of 2021, 548 of 2021, 577 of 2021, 652 of 2021 and it was submitted that these are the few orders, which he has downloaded and there are so many similar orders those have been passed by the same Judge. He submitted that it is unfortunate for the accused persons that though they have got the relief but because of such cryptic orders, the other side may get a chance to file an appeal or get it cancelled. The learned Judge was absolutely not applying his mind and he appears to have made a format of the order with some changes about the facts alleged in the FIR. He has further kept the same reasons for allowing the applications. He also submitted that the concerned Judge is not in service now. The learned Advocate for the respondents, therefore, further submitted that when all the

material is before this Court, this Court may independently come to the conclusion as to whether the respondents were entitled to the relief of bail or not.

7. It was pointed out by the learned APP for the applicant that in Sessions Case No.129 of 2014, respondent Jayesh Sarangdhar Patil was accused No.5 and he was sentenced to suffer imprisonment for life by the learned Additional Sessions Judge-2, Bhusawal on 9th April, 2019, for the offence punishable under Section 302 read with Section 34 of the IPC and sentenced has been imposed under other offences also. Learned APP also pointed out that respondent Jayesh has filed an appeal challenging his conviction by filing Criminal Appeal No.410 of 2019 and in that appeal he had filed Criminal Application No.1509 of 2019 for suspension of sentence. The Division Bench of this Court by order dated 18th June, 2019 has suspended the sentence and directed his release on bail.

8. It is to be noted that each case is required to be considered independently first and then if there is any cross complaint or the cumulative effect of the same will come at a subsequent stage for consideration even at the time of considering the Bail Application. We can consider the ratio laid down by the Hon'ble

Apex Court in *Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli) and Another* [(2021) 6 SCC 230] wherein the Hon'ble Apex Court has elaborated on the consideration that govern the grant of bail. It was emphasized that recording of reasons by a Judge is not a task in formality, but an exercise of judicial accountability and transparency, which makes the decision available for further scrutiny at the touchstone of reason and justice. This was again reiterated by the Hon'ble Apex Court in *Hariram Bhambhi Vs. Satyanarayan and Another* [2021 SCC Online SC 1010]. In *Ramesh Bhavan Rathod* (supra) the Hon'ble Apex Court observed as under:

"39. Grant of bail under Section 439 CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice....

40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail

“without discussing the evidence in detail” taking into consideration:

- (1) the facts of the case;*
- (2) the nature of allegations;*
- (3) gravity of offences; and*
- (4) role attributed to the accused.”*

9. Further reliance can be placed on the observations in *Mahipal Versus Rajesh Kumar Alias Polia and another*, [(2020) 2 Supreme Court Cases 118], which reads as under:

“13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee Vs. State of W.B., CRM No.272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v Ashis Chatterjee [(2010) 14 SCC 496] : [(2011) 3 SCC (Cri) 765]. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order of the High Court, D.K.Jain, J., speaking for a two-Judge Bench of this Court, held: (SCC pp. 499-500, paras 9-10)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in

compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal."

10. Similar ratio has been laid down in *Myakala Dharmarajam and Others etc. Vs. The State of Telangana and Another* [2020 Cri. L.J.1457]. Further, following observations in *Brijmani Devi*

Vs. Pappu Kumar and Anr., Criminal Appeal No.1663 of 2021 disposed of on 17.12.2021 by the three judge Bench of the Hon'ble Apex Court have been reiterated in *Manoj Kumar Khokar Vs. State of Rajasthan and Anr, in Criminal Appeal No.36 of 2020* (Arising out of SLP (CRL.) No.4062 of 2020, which are thus :-

“While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.”

Further, the relevant principles laid down in Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496] quoted thus :-

“(a) Insistence on recording of reasons is meant to

serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37])

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process.”

11. Cryptic reasons are no reasons at all and this Court is really shocked to see that the concerned Judge has literally made a

format for bail orders, may it be for the bail applications where the accused is charged for the offence punishable under Sections 302, 307 or even 354 and under POCSO Act, Arms Act etc. There cannot be uniformity in reasons like 'copy paste'. When we have earlier considered as to what are the requirements those are to be seen by a Court while dealing with an application under Section 439 of the Code of Criminal Procedure, it cannot be taken by the Sessions Judges or Additional Sessions Judges as a formality to touch these points and pass a cryptic order. In *Kanwar Singh Meena Vs. State of Rajasthan [(2012) 12 SCC 180]* the Hon'ble Apex Court has observed as under :

"Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. The Court must not undertake meticulous examination of the evidence collected by the Police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial."

12. Therefore, what was required from the learned Additional Sessions Judge, Bhusawal is that he should have considered the material that was placed before him in the charge-sheet under Section 173 of the Code of Criminal Procedure while deciding the bail applications filed by the respondents. Instead of carrying out

desired exercise, he has adopted a cryptic way. In one of the recent pronouncements by the Hon'ble Apex Court in *Manoj Kumar Khokhar. Vs. State Of Rajasthan and Another [(2022) 3 SCC 501]*, the Hon'ble Apex Court has again considered all the above-said decisions as well as some other earlier pronouncements by the Hon'ble Apex Court. The Three Judges Bench decision in *Brijmani Devi Vs. Pappu Kumar and Another* (Criminal Appeal No.1663 of 2021 disposed on 17th December, 2021) was relied which reiterated that "*while considering application for grant of bail, a prima-facie conclusion may be supported by the reasons and must be arrived after having regard to the vital facts of the case brought on record*". A cryptic order or orders which have now been demonstrated as a copy paste format orders cannot be allowed to be sustained.

13. The learned Additional Sessions Judge appears to have considered the statement made on behalf of respondent - Jayesh that there are no criminal antecedents against him. The copy of the bail petition filed by him before the learned Additional sessions Judge has been made available. It is totally silent on the point that he was convicted for the offence punishable under Sections 302 etc. of the IPC and has been sentenced to suffer imprisonment for life and he has been released on bail by

suspending the sentence by the Appellate Court. Therefore, the order that was passed in favour of respondent - Jayesh also suffers from suppression of material fact. When on bail under suspension of sentence, it is alleged that he has committed second offence also under Sections 302, 307 of the IPC. If that fact would have been disclosed, the result might have been different. Here not only the respondent - Jayesh deserves to be blamed but the prosecution agency also. The prosecution / Investigating Officer appears to have not pointed out about the criminal antecedents against the accused Jayesh before the concerned Court.

14. The charge-sheet would show that the statements of witnesses, especially the injured Ishwar Koli and Rahul Rajendra Sapkale show that respondent Jayesh had assaulted deceased Nilesh by an axe on his head and neck. The said axe has been recovered from respondent Jayesh under Section 27 of the Indian Evidence Act. As aforesaid, the post mortem report conveys that there were 13 surface wounds with internal injuries and probable cause of death is "head injury". There are also statements of eye witnesses who have stated that such incident has taken place and there was active role by respondent Jayesh. As regards the other respondents Mayur Patil and Mahesh Patil

are concerned, there appears to be no criminal antecedents but the evidence against them in the form of statements of the injured witnesses as well as eye witnesses would show that they had used iron rod and axe to cause the injuries. We can see even similar reasons in between the orders of respondent Jayesh and respondents Mayur and Mahesh given by the concerned Judge. When there is active role in the crime and cryptic order is passed, it cannot be allowed to be sustained. As regards the stand taken by the respondents that the injured and the deceased were the aggressors is concerned, it would be the matter of evidence. So also the fact that they are involved as accused in cross complaint which was filed earlier to the present FIR., whether the accused persons were acting in right of private defence will have to be considered by the trial Court after evidence is laid. It cannot be considered at all now.

15. Taking into consideration all these aspects, the impugned orders passed by the learned Additional Sessions Judge, Bhusawal on 6th October, 2021 and 29th October, 2021 deserve to be set aside. At the most, liberty can be given to the respondents to approach the same Court for bail, if the trial does not get over within a reasonable period.

16. Before parting, it will have to be observed that the approach of the then learned Additional Sessions Judge, Bhusawal was totally wrong. When he is sitting in the chair of a Judge then he should have understood that there is no short cut at any stage of the proceeding. At each and every stage of a proceeding, the Judge should apply his or her mind and it can be reflected only through the orders and judgments those are passed. An order cannot be passed in a mechanical way and at the cost of repetition it can be said that there cannot be a format of a bail order atleast under Section 439 of the Code of Criminal Procedure before the Sessions Judge or Additional Sessions Judge. Since a statement has been made that the concerned Judge is no longer in service, this Court refrain itself from giving any directions against him on the administrative side. With the aforesaid observations, following order is passed :-

ORDER

(i) Applications stand allowed.

(ii) The orders passed by learned Additional Sessions Judge, Bhusawal, District Jalgaon in Criminal Bail Application Nos.605 of 2021 and 664 of 2021 dated 6th October, 2021 and 29th October, 2021 respectively are hereby set aside. In other words, the bail

granted to present respondents in ACB No.217 of 2021 and ACB No.222 of 2021 stands cancelled.

(iii) The respondents, who are on bail, their bail bonds stand cancelled and they are directed to surrender before the learned Additional Sessions Judge, Bhusawal on 9th June, 2022 before 05:00 p.m. Thereupon, the learned trial Judge to take them in custody.

(iv) In case of failure on the part of the respondents to surrender, the learned Additional Sessions Judge, Bhusawal to issue non-bailable warrant against the respondents / accused persons and secure their custody.

(v) The respondents are at liberty to approach the concerned Court for bail, if the trial does not get concluded within a period of one year from today.

(vi) The Registrar (Judicial) to forward a copy of this order to the learned Additional Sessions Judge, Bhusawal.

(SMT. VIBHA KANKANWADI)
JUDGE

Later on :-

17. After the pronouncement of the order, the learned Advocate appearing for the respondents submits that the order be stayed for a period of four weeks as his clients intend to challenge the present order before the Hon'ble Apex Court.

18. Taking into consideration the wish expressed that the respondents want to challenge the order before the Hon'ble Apex Court, the time to surrender is extended till 30th August, 2022.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT