

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.191 OF 2019

Bhausahab s/o Arjun Bhosle ... Applicant
Versus

1. The State of Maharashtra
2. Gorakhnath so Udhav Bhosle
3. Narayan s/o Gorakhnath Bhosle ... Respondents

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WITH

APPLICATION FOR CANCELLATION OF BAIL NO.192 OF 2019

Bhausahab s/o Arjun Bhosle ... Applicant
Versus

1. The State of Maharashtra
2. Sharad s/o Dattatray Bhosle ... Respondents

...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.193 OF 2019

Bhausahab s/o Arjun Bhosle ... Applicant
Versus

1. The State of Maharashtra
2. Machindra s/o Udhav Bhosle ... Respondents

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Mr. G. J. Pahilwan, Advocate for applicants in all the applications.

Mr. V. M. Kagne, APP for the respondents – State in all the applications.

Mr. R. R. Chandak, Advocate for respondent No.2 in ACB Nos.191/2019 and 193/2019.

Mr. M. C. Ghode, Advocate for respondent No.2 in ACB/192/2019.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09.03.2022

ORDER :-

. All these applications have been filed by the original informant challenging the bail granted to respondent Nos.2 and 3 in ACB

No.191/2019, respondent No.2 in ACB No.192/2019 and respondent No.2 in ACB No.193/2019 in connection with Crime No.66 of 2019 registered with Chaklamba Police Station, Tq. Georai, Dist. Beed for the offences punishable under Sections 307, 324, 147, 148, 149, 323, 504 and 506 of Indian Penal Code and under Section 4 and 27 of the Indian Arms Act. The respondent Nos.2 and 3 in ACB No.191 of 2019 are posed as accused Nos.4 and 5 and they had filed Criminal Miscellaneous Application No.159 of 2019 before the learned Additional Sessions Judge, Beed, who granted them bail by order dated 26.04.2019. Respondent Nos.2 in ACB No.192 of 2019 had filed Criminal Miscellaneous Application No.224 of 2019 and his bail application came to be allowed on 19.06.2019, whereas respondent No.2 in ACB No.193 of 2019 had filed Criminal Miscellaneous Application No.276 of 2019 and it came to be allowed on 13.06.2019.

2. Heard learned Advocate Mr. G. J. Pahilwan for the applicants in all the applications, learned Advocate Mr. R. R. Chandak for respondent Nos.2 and 3 in ACB/191/2019 and for respondent No.2 in ACB/193/2019, learned Advocate Mr. M. C. Ghode for respondent No.2 in ACB/192/2019 and learned APP Mr. V. M. Kagne for the respondents – State in all the applications.

3. The learned Advocate for the applicant – informant has vehemently submitted that the learned Additional Sessions Judge has not considered the gravity of the offence and the injuries those were sustained by the informant and others. The injury certificates were also not considered in proper perspective. There were stab injuries on the person of applicant. Miscellaneous Criminal Application Nos.159 of 2019 and 224 of 2019 came to be allowed under Section 438 of the Code of Criminal Procedure, whereas Miscellaneous Criminal Application No.276 of 2019 came to be allowed under Section 439 of the Code of Criminal Procedure. The charge-sheet came to be filed and the case has been committed to the Court of Sessions, which is now bearing Sessions Case No.160 of 2019. The bail applications ought not to have been considered liberally.

4. Per contra, the learned Advocates representing the respective respondents supported the reasons given by the learned Additional Sessions Judge while releasing the respective accused persons on bail and submitted that their clients have been falsely implicated.

5. It is to be noted that detailed orders have been passed by the learned Additional Sessions Judge, Beed. While passing the respective orders, role of each of the accused, who had filed the application, had

considered and the police papers also considered. The prosecution story was that the informant – applicant is resident of Marutichiwadi Tq. Georai, Dist. Beed. There is dispute between his family and family of Machindra Uddhav Jadhav i.e. accused No.1 in connection with a road towards field and that dispute is pending before Tehsil Office, Georai. He has also stated that on account of the said road dispute, there are cases against each other and they are pending in the Court. According to him, he as well as one Rushikesh Jagdale had gone to their field at about 3.00 to 3.30 p.m. on 21.03.2019, at that time, accused Nos.1 to 5 were celebrating a party below Neem tree in the field of one Sharad Bhosle, which is adjacent to the field of applicant. After those persons saw the informant and Rushikesh, they came towards them. Accused Anil Bhosle was holding knife, Machindra Bhosle was holding *Gupti*, Sharad was holding iron pipe, Gorakh Bhosle and Narayan Bhosle was holding sticks. After saying that he had dragged them to Court and he should take back those cases, Machindra Bhosle told that he would eliminate them on that day. Applicant says that in the fear of assault, he as well as Rushikesh ran away from that spot towards road, however, those five persons caught hold of them. Anil Bhosle stabbed into his stomach with knife. Machindra assaulted him by *Gupti*. When Rushikesh tried to rescue him, Machindra assaulted him also by *Gupti*.

In the meantime, one Manik Jagdale and Satish Bhosle came. They were also assaulted by Sharad by iron rod, who received covert injury. Satish Bhosle was assaulted by Machindra Bhosle by *Gupti*. Gorakh Bhosle and Narayan had assaulted informant by sticks. Informant says that his intestine literally came out of the stomach and because of the heavy bleeding also, he became unconscious. He was taken to Government Hospital, Beed, where he was operated.

6. As regards Gorakh and Narayan are concerned, the learned Additional Sessions Judge had correctly assessed their role by stating that they are not the persons, who had used knife as well as *Gupti*. According to the informant, they had used stick and had caused covert injury to the applicant. There is no reason for arriving at a conclusion that the said order is perverse. In fact, it is a perfectly legal order taking into consideration the role attributed to them and, therefore, ACB No.191 of 2019 deserves to be rejected.

7. As regards ACB No.192 of 2019 is concerned, it is challenging the order of granting bail to Sharad Bhosle. According to the informant, Sharad Bhosle had assaulted one Manik Jagdale by iron pipe on his back, head and legs. The injury certificate of Manik Jagdale would show that he had received two injuries and both of them are CLW on right

clerical and back respectively. Type of weapon is stated to have been used as knife and it is said to be not grievous, that means it was simple injury. As per the FIR itself, respondent No.2 Sharad had not assaulted the informant. This fact has been considered by the learned Additional Sessions Judge. It has been specifically observed that the provisional Medico Legal Certificate of Manik Jagdale does not indicate any injury by hard and blunt object, by iron pipe and, therefore, no fault can be found in grant of discretionary relief under Section 438 of the Code of Criminal Procedure in favour of the accused.

8. ACB No.193 of 2019 challenges the order of bail granted to Machindra Bhosle. It is to be noted that he has been granted bail under Section 439 of the Code of Criminal Procedure. It is to be noted that accused Machindra came to be arrested on 06.05.2019 and he has undergone the police custody till 13.05.2019. The investigation that was carried out uptill then was considered by the learned Additional Sessions Judge. It was brought to the notice of the learned Judge through police papers that the weapon allegedly used by the Machindra has been recovered under Section 27 of the Indian Evidence Act. Thereafter, he has considered the Medico Legal Certificate of the informant taking into consideration the allegations made against this accused Machindra. It was alleged that Machindra had assaulted

informant Bhausahab as well as Rushikesh Jagdale by *Gupti* on their back and to Satish Bhosle on his thigh. The Medico Legal Certificate states that it was the stab injury and the type of weapon which could be used was stated as knife. Even as regards Medico Legal Certificate of Satish is concerned, it is the same. All the way it says about use of knife and it is not stated that the injuries were or could have been by *Gupti*. The injuries sustained by Satish Bhosle as well as Rushikesh Jagdale were stated to be simple. Taking into consideration these discrepancies and the investigation that was carried out would prompted the learned Judge to held that further physical custody of the applicant is not required and therefore, his application has also been allowed.

9. It is also to be noted that the learned Additional Sessions Judge while allowing all the applications has imposed necessary conditions. Now, it has been tried to be stated that after the orders are passed, non cognizable offences have been registered against those accused persons at the behest of the informant since informant says that the accused persons are threatening him as well as the witnesses. Bunch of the copies of the non cognizable cases have been produced, however, it is to be noted that neither the police have taken cognizance in a sense that no permission appears to have been sought under Section 155(2) of the Code of Criminal Procedure, nor the applicant – informant has filed any

private complaint in respect of those incidences. Mere filing of non cognizable case will not be sufficient under such circumstance to exercise the power of cancellation of the bail. There are legal modes available to the applicant in that respect. Under such circumstance, no reasonable, much less exceptional ground is pointed out to cancel the impugned order. All the applications, therefore, stand rejected.

[SMT. VIBHA KANKANWADI, J.]

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