

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.320 OF 2018
IN
BAIL APPLICATION NO.918 OF 2017**

Moortidevi widow of Bhup Singh

...Applicant

Versus

The State of Maharashtra and Ors.

...Respondents

....

Ms Anajali Awasthi for the Applicant.

Mr. M.G. Patil, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 20th APRIL, 2022.

P.C.:-

1. By this application under Section 439(2) of the Cr.P.C. the Applicant has sought cancellation of bail granted by the coordinate Bench of this Court vide order dated 14/11/2017 in Bail Application No.918 of 2017.

2. Ms Anjali Awasthi, learned counsel for the Applicant seeks cancellation of bail mainly on the ground that the Complainant was not heard in the matter, that the prosecution had not filed reply and that the order of bail was obtained by suppressing material facts. She further states that CCTV footage clearly shows presence of the Respondent -

accused at the place of the incident, despite which observations are made that Respondents were not present at the place of commission of the offences. She states that order, which is passed without hearing the Applicant and by suppressing material facts is liable to be cancelled. In support of the her submissions learned counsel for the Applicant has relied upon judgment of Supreme Court in ***Budhia Swain and Ors. vs. Gopinath Deb and Ors. (1999) 4 SCC 396*** and ***Jagjeet Singh and Ors. vs. Ashish Mishra and Ors. in Criminal Appeal No.632 of 2022.***

3. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The records indicate that Respondent Nos.2 and 3, were arrested in Crime No.12 of 2016 (earlier registered as 92 of 2016 with MIDC Police Station) for offences under Section 120-B, 193, 182, 201 and 302 r/w. 34 of the IPC. It was alleged that on 04/10/2015 Sandeep Gadoli (deceased), who was allegedly a known gangster had killed a person by name Ashok Gurjar and crime was registered against him for the said offence. On the same day i.e. 04/10/2015 one Binder Gurjar also fired at injured Sandeep Gadoli and his companion Manish Khurana. A special investigation team was constituted by DCP, West Gurgaon to investigate both the cases. On 06/02/2016 the Crime Branch received

information that the deceased had reached Mumbai and that he was staying in Room No.107, Ground floor, Airport Metro Hotel in Mumbai. Special Investigation Team from Gurgaon proceeded to Mumbai. The said team went to Room No.107 and when they tried to nab him he opened fire at the police officials. As a measure of self defence, the officials fired back and as such Sandeep Gadoli was injured. One of the constables had also suffered injury on the left side of his head. Sandeep Gadoli was taken to the hospital and he was declared dead before arrival.

5. On the basis of the statement of PSI-Praduman Yadav FIR bearing C.R. No.92 of 2016 was registered at MIDC Police Station for the aforestated offences. Subsequently, investigation was transferred to Crime Branch at Mumbai and carried out by the SIT headed by Assistant Commissioner of Police of Crime Branch. In the course of the investigation, Respondent Nos.2 and 3, police constable and head constable, of Haryana State Police Force and the other co-accused came to be arrested for committing murder of Sandeep Gadoli. Upon completion of the investigation charge sheet came to be filed against Respondent Nos.2 and 3 and the other co-accused.

6. The bail application filed by Respondent Nos.2 and 3 in Sessions Case No.754 of 2016, arising from the said crime, was dismissed

by the Sessions Court. The Respondent Nos.2 and 3 thereupon filed application under Section 439 of Cr.P.C., being Bail Application No.918 of 2017, before this Court, which came to be allowed by this Court (Coram : A.M. Badar, J.) on 14/11/2017.

7. It is to be noted that said Bail Application was filed after filing of the charge sheet. Paragraph 6 of the order dated 14/11/2017 reveals that this Court had perused the entire charge sheet, which was annexed to the application. Hence, I am unable to accept the contention of the learned counsel for the Applicant that the transcript in the form of CCTV footage was not produced before the Court while allowing the said application and that the same was suppressed.

8. A perusal of paragraph 5 of the said order also reveals that prosecution had opposed the application on the ground that statement of witnesses as well as CCTV footage clearly show the presence of Respondent Nos.2 and 3 at the place of the incident. This submission was not accepted by this Court. This Court has observed that the statements of the witnesses reveal that the Respondent Nos.2 and 3 had proceeded from Gurgaon to Mumbai under written permission of Commissioner of Police, Gurgaon, to apprehend the deceased, who was accused in Crime No.1271 of 2015 for offence under Section 302 of the IPC. It was further

observed that the actual overt act attributed to the Respondent Nos.2-Jitendra was that after the incident he had taken service revolver of accused Praduman Yadav and kept it with him and so far as Respondent No.3-Deepak Kumar Karan is concerned, the evidence against him is to the effect that he had broken the CCTV camera. It was further observed that Camera No.1 shows last firing at 11.23.35 hours. It was observed that the CCTV footage does not show that he was present at the scene of occurrence at the time of actual commission of crime and that Camera No.5 shows that he had come to the spot after the incident. In view of above, I am unable to accept the contention of learned counsel for the Applicant that bail was obtained by suppressing material facts.

9. In ***Budhia Swain*** (supra) the Hon'ble Supreme Court has held that a court can recall an order if the order suffers from inherent and patent lack of jurisdiction, if the order is obtained by fraud or collusion, that there has been a mistake by the court prejudicing a party or a judgment has been rendered in ignorance of the fact that a necessary party had not been served or was dead and the estate was unrepresented. In ***Jagjit Singh*** (supra) the Hon'ble Supreme Court has held that the victim has right to be heard. In the instant case the order was not obtained by fraud or by suppressing material facts and the order is not

patently illegal or without jurisdiction. In view of above and in the absence of supervening circumstances, bail granted on merits by the coordinate Bench cannot be cancelled solely on the ground that the victim was not heard, particularly when the grievance raised by the victim has now been considered.

10. Considering the above facts and circumstances, in my considered view, the Applicant has failed to make out a case for cancellation of bail. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)