

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.18 OF 2022

(AMOL MADHUKARRAO MOKASHI & OTH...VS.. STATE OF MAH. THR. PSO PS BELTARODI,
NAGPUR CITY & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B.Jawade, Advocate for Applicants.
Shri V.A.Thakre, A.P.P. for Non-applicant No.1/State.
Shri A.M.Jaltare, Advocate for Non-applicant Nos. 2 to 4.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 21, 2022.

1. Heard learned counsel for the respective parties.
2. This is an application for cancellation of bail granted by the Additional Sessions Judge-2, Nagpur to the non-applicant Nos.2 to 4 vide order below Exh.1, dated 22nd December 2021 in Misc. Criminal Application No 3789 of 2021 in Crime No.558 of 2021, registered with Police Station, Beltarodi, Nagpur for the offences punishable under Sections 452, 427, 504, 506 read with Section 34 of the Indian Penal Code.
3. The learned counsel for the applicants submits that the learned Sessions Judge has granted bail to the non-applicant Nos. 2 to 4 on irrelevant considerations and has not taken into consideration the First Information Report (FIR) in its entirety.

4. It is submitted that the impugned order was passed even without looking into the case diary. He, therefore, submits that sufficient ground is available for the applicants to seek cancellation of the bail.

5. On the other hand, the learned A.P.P. states that the State has moved an application for cancellation of bail before the Sessions Judge, in view of the fact that subsequent to bail granted to the non-applicant Nos.2 to 4, one more crime was registered against them vide Crime No.15 of 2022 on 12/01/2022 and the same is pending.

6. Shri Jaltare, learned counsel for the non-applicant Nos. 2 to 4 strongly opposed the application and submits that there is no perversity in the order granting bail to the respondent Nos. 2 to 4 and in view of the fact that no permissible ground is raised in this application for cancellation of bail, he prays for rejection of the present application.

7. To consider the rival contentions, I have perused the contents of the FIR and also the order dated 22nd December 2021 granting anticipatory bail granted to the non-applicant Nos.2 to 4.

8. The FIR No.558 of 2021 was registered at the instance of the applicant No.1. Whereas, the present application has been moved by in all five applicants. The offences are punishable under Sections 452, 427, 504 and 506 of the Indian Penal Code.

9. As far as Sections 427, 504 and 506 of the Indian Penal Code are concerned, all these offences are bailable. The offence of house trespass is punishable under Section 452 of the Indian Penal Code which is non-bailable and the maximum punishment for the same is seven years imprisonment.

10. Before going further, it would be relevant to consider the findings recorded by the learned Sessions Judge while granting bail to the non-applicant Nos. 2 to 4. Paragraph 10 reads thus:

“10. In the instant case, from the first information report, it is apparent that the complainant’s property has not been damaged or destroyed. The allegation of the complainant is that he questioned the accused persons from his courtyard and then went inside his house and thereafter three accused followed him in his house and imparted threats as alleged. So on non bailable offence under Section 452, Indian Penal code, the allegations are simplicitor trespassing and then threatening. Obviously for those allegations of Section 452, Criminal Procedure code when the accused have already attended the police station, custodial interrogation of the accused would not be necessary. Therefore, the interim protection granted by this court can be confirmed. ...”

11. In light of the above observations, I revert back to the allegations made in the FIR. About Section 452 of the Indian Penal Code, the allegations are that the non-applicant Nos.2 to 4 entered into the house of the

complainant i.e. the applicant No.1 and they threatened him.

12. As far as the allegations in respect of damage caused to 12 different properties owned by the persons other than the applicant No.1, nothing has been brought on record to show that any criminal complaint was lodged by the owners of those plots against non-applicant Nos.2 to 4 for the alleged crime and on failure to take action by the police any private complaint was filed by them. However, it is pointed out that some of them are before this Court in this application as applicant Nos.2 to 5.

13. In the circumstances, no error is committed by the learned Sessions Court in observing that no damage or destruction is caused to the property of the complainant.

14. As far as Section 452 of Indian Penal Code is concerned, the Court has observed that for the said purpose custodial interrogation is not necessary.

15. Even while arguing this case, the applicants could not point out that why custodial interrogation is necessary.

16. It is settled law that while granting bail even if some findings are recorded improperly, but, if the ultimate conclusion is sustainable in the eyes of law such findings cannot be termed as perverse.

17. The Hon'ble Supreme Court of India in the case of *Puran Vs. Rambilas*¹ has observed thus:

“10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram vs. State of Haryana. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

18. Thus, the grounds namely, supervening circumstances or perversity are some of the grounds which are permissible for cancellation of bail.

19. As I have already observed that there is no perversity in the reasons recorded by the learned Sessions Court while granting bail. As far as supervening circumstances are concerned, subsequent registration of the offence against the non-applicant Nos. 2 to 4 for the offences punishable under Sections 325, 294, 504 and 506 read with Section 34 of the Indian Penal Code or breach of the conditions is concerned, the State has rightly moved application for cancellation of bail before the same Court i.e. Sessions Court.

20. In that view of the matter, I do not find any merit in the present application, accordingly I pass the following order:

The application is **rejected**.

It is made clear that the observations made in this order shall not be influenced by the learned Sessions Judge while considering the application moved by the State for cancellation of bail against the non-applicant Nos. 2 to 4.