

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 105 OF 2022

Bhimrao S/o Zingruji Taywade,
aged about 58 years, Occ. Labour,
R/o Village Antora (Juna),
Tal. Ashti, District Wardha

.... **APPELLANT.**

// VERSUS //

1. The State of Maharashtra,
through the Police Station Officer,
Police Station Ashti, Dist. Wardha.
2. Vinayak S/o Marotrao Ghavat,
Aged 46 years, Occ. Service
(Head Constable attached to Ashti PS),
R/o Police Quarter, in front of Model
School, Pulgaon Road, Arvi
Tah. And Dist. Wardha

.... **RESPONDENTS.**

CRIMINAL APPEAL NO. 106 OF 2022

Bhimrao S/o Zingruji Taywade,
aged about 58 years, Occ. Labour,
R/o Village Antora (Juna),
Tal. Ashti, District Wardha

.... **APPELLANT.**

// VERSUS //

1. The State of Maharashtra,
through the Police Station Officer,
Police Station Ashti, Dist. Wardha.
2. Rajesh S/o Shriram Thakare,
Aged 35 years, Occ. Cultivator,
R/o Village Antora, Tah. Ashti,
Distt. Wardha.

3. Gajanan S/o Pundlikrao Ambekar,
aged 54 years, Occ. Cultivator,
R/o village Kinhala, Tah. Ashti,
Distt. Wardha.

....RESPONDENTS.

Shri Sanket A. Puranik,, Advocate for Appellant in both the criminal appeals.

Shri Sagar Ashirgade, APP for the respondent/State in both the criminal appeals.

Shri Rishikesh M. Mardikar, Advocate for the respondent no.2 in Criminal Appeal No. 105 of 2022.

Shri Rajnish R. Vyas, Advocate for the respondent no.2 and 3 in Criminal Appeal No. 106 of 2022.

CORAM : ANIL S. KILOR, J.

DATED : 25th APRIL, 2022.

ORAL COMMON JUDGMENT :

In both the appeals under Section 14-A of the Atrocities Act, the appellant is praying for cancellation of bail of the accused in Crime No. 3 of 2022 registered on 1st January, 2022 at Ashti Police Station, Dist. Wardha for the offence punishable under Sections 354A(1)(i), 294, 506 of Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. I have heard learned counsel for the respective parties.

3. Shri Puranik, learned counsel for the appellant in both the appeals argues that on irrelevant consideration the bail has been granted by the learned Sessions Judge, Wardha vide order dated 13th January, 2022 in Criminal Bail Application Nos. 2 of 2022 and 7 of 2022.

4. It is submitted that the offence is very serious and the article used by the accused persons to beat the son of the appellant has not yet recovered by the police.

5. He further submits that one of the staff members of the police in his statement during the investigation has narrated the complete story which supports the case of prosecution about the assault by the accused person to the victim in the police station.

6. Learned counsel for the appellant further submits that the accused persons are criminal and they are roaming freely in the society because of bail granted by the learned Sessions Court. He therefore prays that the bail granted to the accused persons in the aforementioned crime may be cancelled.

7. Learned counsel for the appellant points out there was

an incident of stone pelting on the date when the application for grant of regular bail was listed before the Sessions Court. He submits that the said incident is sufficient to point out that there are supervening circumstances which can be a ground for cancellation of bail. Learned counsel for the appellant has placed reliance of Hon'ble Supreme Court in the judgment of **Jagjeet Singh and others Vs. Ashish Mishra** dated 18th April, 2022 passed in Criminal Appeal No. 632 of 2022.

8. On the other hand Shri Ashirgade, learned Additional Public Prosecutor fairly submits that the State has not moved any application for cancellation of bail as there are no supervening circumstances available in this case.

9. Shri Mardikar, learned counsel for the respondent no.2 in Criminal Appeal No. 105 of 2022 opposed the bail and submits that in this case the chargesheet has been filed and the investigation is completed. He submits that there is no perversity committed by the learned trial Court while granting bail to the accused persons. He therefore submits that no ground is made out by the appellant

for cancellation of bail. He therefore, prays for rejection of bail.

10. Shri Vyas, learned counsel appearing for the respondent nos. 2 and 3 in Criminal Appeal No. 106 of 2022 has submitted that the alleged incident of stone pelting was occurred on 13th January, 2022 when the accused were in jail.

11. He submits that the appellant has not taken the said complaint of stone pelting to its logical end after finding that the police have not taken action after lodgement of the said complaint.

12. It is further submitted that a petition is pending before the Division Bench of this Court seeking transfer of investigation (CBI).

13. He further argues that all other offences are bailable and the maximum punishment would be five years.

14. He lastly argues that the accused persons were in jail from 1st January, 2022 till the date of grant of bail i.e. 13th January, 2022. Learned trial court after considering the fact that the custody of the accused persons is no more required the bail was granted.

15. I have perused the chargesheet and also contents of the First Information Report. Before considering the rival contentions of the parties for consideration it would be appropriate to reproduce the findings recorded by the learned Sessions Court while granting bail. Paragraph 9 of the order dated 13th January, 2022 is relevant which read thus:

“9. The alleged incident has taken place on 29/12/2021. However, FIR is lodged on 01/01/2022. There is no explanation at all by respondent regarding delay in lodging of FIR. This unexplained delay, creates reasonable doubt about the genuineness of prosecution case. It also transpires that the material investigation is over. The statement of all important relevant witnesses have been recorded. Muddemal property Mobile phone is seized from co-accused Rajesh and Gajanan, panchanama of spot is prepared. So, no material part of investigation appears to be pending. There is no recovery and discovery from accused, his presence is also not required for custodial interrogation. Hence, practically no purpose is likely to serve by continuing further detention. There is no material on record about bad antecedents of accused. The accused is public servant and a police employee. So far as apprehension expressed by prosecution is concerned, appropriate conditions can be imposed on accused to ensure that he is not interfering into prosecution case and contaminating their evidence. Accused is young by age and his family is likely to suffer adversely if he is kept in jail for longer period. The cases of Corona infection are increasing at this juncture. The possibility of infection in jail due to overcrowding cannot be ruled out.”

16. The learned Sessions Court has taken into consideration the delay of two days in lodging the First Information Report. The Sessions Judge has observed that for the incident dated 29th December, 2021, First Information Report was lodged on 1st January, 2022 and no explanation has been offered for such delay. The learned Sessions Court therefore has observed that unexplained delay creates doubt about the genuineness of the prosecution story.

17. The learned Sessions Court has further observed that the statement of all important relevant witnesses have been recorded, muddemal property viz mobile phone was seized from co accused Rajesh and Gajanan and the panchanama of spot is prepared.

18. Learned trial Court has further observed that there is no recovery and discovery to be made from the accused and as such their presence is not required for custodial interrogation. The Court has also taken into consideration the criminal antecedents of the accused persons.

19. The Hon'ble Supreme Court in the case of Jagjeet Singh and others Vs. Ashish Mishra has observed thus:

29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse, or is founded upon irrelevant materials adding vulnerability to the order granting bail, an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of **Kanwar Singh Meena V. State of Rajasthan**, wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:

“10.... 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... The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to

the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crime because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

[Emphasis supplied]

20. Thus, from the above observations of the Hon’ble Supreme Court of India it is clear that where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

21. In this case it has been argued by the learned counsel for the appellant that the bail was granted on irrelevant materials, however, nothing has been pointed out what irrelevant material the Court has considered while granting bail.

22. Similarly, nothing has been pointed out to show that the order of granting bail is perverse. Moreover, there are no supervening or overwhelming circumstances. Thus, no case is made out for cancellation of bail.

23. In that view of the matter as no case is made out by the appellant for cancellation of bail, I am of the opinion that both the appeals need to be dismissed. Accordingly, I pass the following order.

ORDER

i. Both criminal appeals are dismissed.

JUDGE

S.K.Nair