

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

CRIMINAL APPLICATION (APPLN) NO. 39 OF 2022

(Sau. Jyoti Vijay Tiwari ..**Versus** ..The State of Maharashtra thr. PSO. Shivaji Nagar
PS Khamgaon, Dist. Buldhana and another.)

Office Notes, Office Memoranda of Court's or Judge's Order
Coram, appearances, Court's Orders
or directions and Registrar's order

Shri A.D.Bhate, counsel for applicant.
Shri V.A.Thakre, APP for the non-applicant No.1/State.
Shri R.M.Daga, counsel for non-applicant Nos. 2 and 3.

CORAM : ANIL S. KILOR, J.

DATED : 20/08/2022

1. This is an application seeking cancellation of anticipatory bail granted by the Additional Sessions Judge, Khamgaon, District Buldhana vide order dated 04/04/2022 passed in ABA No.29/2012, to accused Nos.5, 12 and accused Guljma Shah.

2. The learned counsel for the applicant submits that the offence is serious. However, the learned Trial Court without taking into consideration the relevant factors for exercise of discretion while granting bail, granted pre-arrest bail to the accused.

3. It is further submitted that, on irrelevant considerations and material, mechanically the bail was

granted to the accused and as the order is perverse it needs to be set aside in the interest of justice.

4. The learned counsel for the applicant has drawn attention of this Court to the injury report and the medical papers of the injured and argued that, the learned trial Court has discarded it while granting of pre-arrest bail. He, therefore, submits that, the order granting pre-arrest bail needs to be cancelled as it suffers from perversity.

5. The learned APP supports the present application and submits that, it is a well settled law that, if the order granting bail is perverse or based on irrelevant considerations, such order needs to be cancelled even if there are no supervising circumstances.

6. Whereas, on the other hand, Shri Daga, learned counsel for the respondent supports the order granting bail. He submits that, the applicants are on bail from last about four months and there are no supervening circumstances in this case.

7. It is submitted that, unless overwhelming circumstances are available, the bail cannot be cancelled. For this purpose, he has placed reliance on the judgment of the

Hon'ble Supreme Court of India in the case of *X V/s State of Telangana and another*¹

8. It is submitted that, it is a well settled law that, even if the findings recorded by the Court while granting bail are not properly recorded but the ultimate conclusion of granting bail is sustainable in the eyes of law, such order cannot be termed as perverse.

9. The learned counsel for the respondent further submits that, the learned trial Court on considering the allegations and material available on record, has rightly granted pre-arrest bail to the respondents accused and therefore, it cannot be faulted on the ground that the reasons recorded by the learned Trial Court are not properly recorded.

10. In the backdrop of submissions made by both the parties, I have perused the Charge-sheet, the FIR and the applications.

11. As per the record, the applicant herein is the mother of injured -Aman Vijay Tiwari. Dolly who is the wife of Aman, is the first cousin of accused Akash Gajanan Dhurande.

1 (2018) 16 SCC 511

12. Aman and Dolly prior to their marriage, were acquainted with each other since long. Their acquaintance turned into a romantic relationship, which was vehemently opposed by the family of Dolly, since they belong to different castes and communities. However, Aman and Dolly got married against the wishes of Dolly's father, in November-2021.

13. The marriage of Aman and Dolly infuriated Dolly's family as according to them, the marriage brought dishonour to their clan and community. Therefore, to avenge this they launched a manhunt for Aman and Dolly, so as to catch hold of them and to kill them. Therefore, fearing for their lives, the couple was forced to go into hiding since their marriage, so as to save themselves from clutches of Dolly's family.

14. In order to force the couple to come out, an FIR was registered against Dolly at Shivaji Nagar Police Station, Khamgaon for the offence punishable under Section 380 of the Indian Penal Code, through the accused Akash Dhurande.

15. The plan was to either got Dolly arrested or to force her attendance at Police Station in garb of investigation and thereby to catch hold of the couple.

16. Dolly succeeded in securing anticipatory bail. The learned Sessions Judge, in the order of anticipatory bail, made notable observation to the effect that, FIR was a plot to catch hold of the couple and also found that the couple faces threats.

17. In the meantime, Dolly repeatedly made complaints about threat to her life and her husband and sought protection. However, the Police did not act and the couple continue to hide for their lives.

18. In the night of 04/01/2022, Dolly and Aman along with the applicant went to Shivaji Nagar, Police Station to submit a copy of representation, seeking Police Protection. As soon as they came out therefrom, and started proceeding towards their house in an Auto-rickshaw, the accused carried out a deadly attack on them.

19. The accused waylaid and surrounded them, dragged them out of auto-rickshaw assaulted Aman with deadly weapon and attempted to murder him. However, because of timely intervention of Police, the accused fled away.

20. That immediately after the incident, the applicant lodged the report on 05/01/2022 at Shivaji Nagar, Police Station, Khamgaon against the accused and

accordingly crime was registered as Crime No.08/2022 for the offences punishable under Sections 307, 341, 143, 147, 148, 149, 323, 506, 34 of the Indian Penal Code and read with Section 135 of the Maharashtra Police Act. During the investigation, Sections 120-B, 363, 511 and 212 of Indian Penal Code, 1860, were also added as evidence supporting the same surfaced.

21. From the above narration, it can be seen that the attack was premeditated by forming unlawful assembly with common intention and was the part of criminal conspiracy to eliminate Aman.

22. The said assault left Aman profusely bleeding and seriously injured. Initially, he was taken to Government Hospital wherefrom, he was referred to Silver City Hospital, Khamgaon. Since, his condition was deteriorating. Aman was thereafter rushed to Ozone Hospital, Akola. His condition was so critical that he had to undergo an emergency life saving surgery. Thereafter, Aman underwent prolonged treatment and hospitalization for about 3 weeks.

23. To sum up the above referred recital, it can be said that, it was an unsuccessful attempt of honour killing.

24. The Hon'ble Supreme Court of India in the case of *Bhagwan Dass v/s State (NCT) of Delhi*², has observed that honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrages, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them.

25. As I have observed that, this is a case of an unsuccessful attempt of honour killing, the above referred observations show the seriousness and nature of present offence.

26. In this case, the attack on Aman was so brutal that, he sustained multiple injuries including stab injuries and head injury which were sufficient in normal course to cause death.

27. The Hon'ble Supreme Court of India time and again has held that there is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in

2 (2011) 6 SCC 396

general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.

28. I may also profitably refer for this purpose the judgment of the Hon'ble Supreme Court of India in the case of *Ash Mohammed ..vs.. Shivraj Singh*³, which reads thus :

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally

3 (2012) 9 SCC 446

laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

29. At this juncture, in the light of above referred observation of the Hon'ble Supreme Court of India, it is pertinent to note that, in such a heinous crime in this case, the trial Court had granted interim pre-arrest bail to the accused Nos. 2,3,5,7,8,11,12,13 and Guljma, ignoring the material showing unlawful assembly with common intention and also conspiracy on the part of the accused, to eliminate Aman. The confirmation of the said interim bail is impugned in this application.

30. In the above referred backdrop, at this stage, it is necessary to examine whether the learned trial Court has considered the relevant factors or principles to be considered while exercising discretion to grant bail.

31. However, before considering the reasons recorded by the learned trial Court, it would be appropriate to refer to para-30 of the judgment in the case of *Jagjeet Singh and others V/s Ashish Mishra @ Monu and another*⁴ reiterating the basic principles which a Court must bear in

4 2022(2) R.C.R.(Criminal)788

mind while deciding an application for grant of bail, laid down in plethora of decisions, which read thus:-

"30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of Prasanta Kumar Sarkar vs Ashis Chatterjee and another., (2010) 14 SCC 496, after taking into account several precedents, elucidated the following:

"9...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."*

32. In the light of the above observations, I will now move to the findings recorded by the learned trial

Court, while granting pre-arrest bail to the respondent accused, which are as follows:-

“11. Here while deciding the bail application it is to be seen that already these accused/applicants are released on ad-interim bail and there is no submission made that they have committed breach of condition. On perusal of case diary it is seen that the specific role is attributed to these accused and the statement of witnesses for the same are already recorded, video footage is also obtained. The vehicle is already seized and about explaining the role of accused, the statement of witnesses recorded. Under such circumstances, now as the investigation is in progress and will conclude in due course. All possible evidences are already collected regarding these applicants so ad-interim relief which was granted already can be confirmed.”

33. After going through the observation recorded by the learned trial Court while granting pre-arrest bail in this case, it is evident that while exercising discretion the learned Trial Court has not taken into consideration, the principles referred herein-above, as regards the grant of bail namely, whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; character, behaviour, means, position and standing of the accused; reasonable apprehension of the witnesses being influenced; and danger, of justice being thwarted by grant of bail.

34. It is thus, evident that, on irrelevant consideration and material, pre-arrest bail was granted. Furthermore, on perusal of the observations of the trial Court, it can safely be said that, the learned Trial Court has mechanically granted bail, in this case.

35. There is no doubt that, the factors which have to be taken into consideration while granting bail and while considering the prayer for cancellation of bail, are different.

36. The Hon'ble Supreme Court of India in the case of *Jagjeet Singh & others vs Ashish Mishra @ Monu and another(supra)*, as reads 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 the 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](#) (2012) 12 SCC 180, 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....It is further clear that, 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 crimes 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.”

37. I may also profitably refer to a decision of the Hon’ble Supreme Court of India in the case of *Puran Vs. Rambilas and another*⁵ where:

“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

5 (2001) 6 SCC 338

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.”

38. From the above referred observations of the Hon’ble Supreme Court of India, it is evident that the 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. It is further clear that, 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 recognized 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 crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society.

39. In the circumstances, the judgment in the case of *X V/s State of Telangana and another (supra)* cited by the respondent accused, is of no help to the accused.

40. After going through above referred para-11 of the impugned judgment, wherein the learned trial Court has recorded reasons, it can be seen that, on irrelevant

considerations and material, the bail was granted. It is further clear that the learned Trial Court has not taken into consideration, the principles referred herein-above, as regards the grant of bail namely, whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; character, behaviour, means, position and standing of the accused; reasonable apprehension of the witnesses being influenced; and danger, of justice being thwarted by grant of bail.

41. In the present matter, as I have held that the bail was granted to the respondent/accused persons ignoring the material and evidence on record and without considering the factors which ought to have taken into consideration by the trial Court while considering the prayer of the accused for grant of pre-arrest bail and as the order was passed mechanically without assigning any proper reason for grant of pre-arrest bail in such a heinous crime, I have no hesitation to hold that the order granting pre-arrest bail to the respondents/accused is perverse and liable to be cancelled to meet the ends of justice. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.

- b) The order granting pre-arrest bail in connection with crime No.08/2022, dated 04/04/2022, is hereby cancelled.
- c) The respondents/accused shall surrender before the Police on or before 05/09/2022.
- d) The Superintendent of Police, Buldhana is hereby directed to make inquiry into the matter why no steps were taken in this case for cancellation of bail considering the seriousness of the offence and submit the report within four weeks from today.
- e) Registry to communicate this order to Superintendent of Police, Buldana, forthwith.

Place this matter on **14/09/2022** for compliance.

[ANIL S. KILOR, J.]