

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

CRIMINAL APPLICATION (APPLN) NO.61 OF 2022

(SMT. ANUPRIYA SUNIL DIVARE....VS.. STATE OF MAH. THR. POLICE STATION HOUSE
OFFICER, YAVATMAL & ANR.)

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

Court's or Judge's orders

Shri V.D.Darne, Advocate for Applicant.
Shri V.A.Thakre, A.P.P. for Non-applicant No.1/State.
Shri A.A.Naik, Advocate for Non-applicant No.2.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 24, 2022.

1. Heard.
2. This is an application seeking cancellation of bail granted by the Additional Sessions Judge, Yavatmal vide order dated 13/05/2022 passed in Criminal Bail Application No. 75 of 2022 to the non-applicant No.2.
3. Shri Darne, learned counsel for the applicant submits that the complainant lodged complaint at Yavatmal Rural Police Station on 03/02/2022 and offence came to be registered on 04/02/2022. It is further alleged that when she was sitting in the courtyard along with her husband Sunil Divare and son Rudraksh Divare that time Vaibhav Prabhakar Sonankar, Pawan Prabhakar Sonankar, Rohit Bhopade, Ramu Jaiswal and the present non-applicant No.2- Amar Jaiswal and Suraj Shrawan Manwar came in the courtyard and asked the husband of the present applicant to take back the complaint which was lodged by her deceased

husband in Yavatmal Rural Police Station and as the husband of the complainant refused to take back the complaint, Rohit Bhopade fired two bullets in the air and one on the wall and after that on the body of husband of the complainant and in that assault the husband fell down, at that time Vaibhav Prabhakar Sonankar, Pawan Prabhakar Sonankar assaulted by an axe on the head and Amar Jaiswal and Ramu Jaiswal and the present applicant assaulted by the iron rod on head of the deceased and when the applicant tried to save the life of her husband Suresh Pathrikar caught hold to the applicant and Suraj Manwar assaulted to the applicant by axe on her thigh. In the said brutal attack the husband of complainant/applicant died. On the complaint of the applicant, Yavatmal Rural Police registered the Crime vide Crime No.59 of 2022.

4. 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.

5. 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.

6. 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 bail. He, therefore, submits that, the order granting pre-arrest bail needs to be cancelled as it suffers from perversity.

7. 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 supervening circumstances.

8. Shri Naik, learned counsel for the respondent No.2 submits that at the time of incidence the applicant was not present at the spot. But he was in the engagement ceremony at Ner. He, therefore, submits that out of rivalry the applicant was named in the F.I.R.

9. Shri Naik, learned counsel for the respondent No.2 further submits that some of the eyewitnesses have not seen the applicant at the spot whereas, they disclosed the names of accused Nos. 1 to 3 only. Thus, he argued that the learned trial Court has rightly granted bail to the applicant and as there are no supervening or overwhelming circumstances available, this Court may not interfere with the discretion exercised by the trial Court.

10. He, lastly submits that even if some observations are not properly recorded by the learned trial Court while granting bail, however, as the ultimate conclusion of the

learned trial Court is sustainable in the eye of law. Therefore, the impugned order cannot be termed as perverse. He accordingly submits that the ground of perversity is also not available in this case. Thus, he prays for rejection of the present application.

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

12. 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*¹, 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 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".

13. 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.

14. 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*¹ reiterating the basic principles which a Court must bear in 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."*

15. 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:-

"7. On perusal of photographs of engagement ceremony and affidavits of relatives, there are ground to believe that the applicant was attending engagement ceremony at Ner.

Therefore, I find substance submission of the learned advocate of accused/applicant.

8. However, on perusal on record there is a role of applicant that he was present with co-accused. There is no overtact or any active involvement. To extent of allegations in respect of assault by iron rod on thigh of informant, there is no such injury by iron rod noticed in medical report on thigh of informant. Therefore, there is substance to believe that alleged weapon was not used by applicant.

9. Applicant is behind bars since 08/02/2022, almost 100 days are over. Considering all facts in total, presence of applicant can easily secure before the court. Hence, application is allowed.”

16. From the above referred observations, it is evident that the learned trial Court has relied upon the photographs showing that the respondent No.2 was at Ner in an engagement ceremony. Further the Court has observed that no overtact nor any active involvement is alleged against the applicant. It is further observed that as regards the assault by iron rod on the thigh of the informant there is no such injury by iron rod noticed in the medical report and therefore, there is substance to believe that the alleged weapon was not used by the applicant.

17. Thus, the observation sufficiently demonstrate that the trial Court has not at all taken into consideration the allegation that the accused formed unlawful assembly with common intention to eliminate the deceased. Further ignoring that the offence is registered under Section 149 of

the Indian Penal Code along with other offences, the Court has discussed about the overtact or active involvement of the applicant in the alleged offence.

18. As far as photographs of the engagement ceremony is concerned, it is a matter of trial, because if the respondent is claiming alibi he has to establish it by leading cogent evidence. Thus, only on the basis of the photographs, *prima-facie* it cannot be said that the applicant was not present on the spot at the time of the incidence. To arrive at such conclusion some more evidence will require.

19. Thus, after going through the observation recorded by the learned trial Court while granting 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 course, of justice being thwarted by grant of bail.

20. 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.

21. 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.

22. 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 wellrecognised 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.”

23. 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*¹ 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 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.”

24. 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.

25. After going through paragraphs 7, 8 and 9 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.

26. 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 bail in such a heinous crime, I have no hesitation to hold that the order granting bail to the respondents/accused is perverse and liable to be cancelled to meet the ends of justice. Accordingly, I pass the following order:

- i) The application is **allowed**.
- ii) The order dated 13/05/2022, passed by learned Additional Sessions Judge, Yavatmal in Criminal Bail Application No.75 of 2022 granting bail to non-applicant No.2 in Crime No. 59 of 2022, registered with respondent No.1 Police Station is hereby quashed and set aside and thereby bail granted to the non-applicant No.2 is hereby cancelled.

The criminal application is **disposed of** in the above terms. Pending application(s), if any shall stand disposed of.

JUDGE

At this stage, learned counsel for the non-applicant No.2 submits that the applicant is on bail from last three months and therefore, he prays for keeping the order of cancellation of bail in abeyance for 15 days from today, so as to enable the applicant to apply afresh for bail.

The learned counsel for the applicant and learned A.P.P. strongly oppose the request.

However, considering the circumstances of the present case, the order of cancellation of bail is kept in abeyance for fifteen days from today so as to enable the applicant to apply afresh for bail.

In case of filing of the application for grant of bail by the applicant with a prayer for grant of interim bail and if copy of such application is supplied two days in advance to the concerned A.P.P., the learned trial Court, on surrender of the applicant, is requested to consider the prayer of the respondent No.2 for grant of interim bail on the same day and decide the application for bail within three weeks thereafter.

JUDGE

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