

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

CRIMINAL APPLICATION (APPLN) NO.62 OF 2022

(SMT. ANUPRIYA SUNIL DIVARE....VS.. STATE OF MAH. THR. POLICE STATION HOUSE OFFICER,
YAVATMAL & RAMKUMAR @ RAMU KISAN JAISWAL)

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.Thakare, 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.74 of 2022 to the non-applicant No.2/accused.
3. Shri Darne, learned counsel for the applicant submits that the complainant lodged a complaint at Yavatmal Rural Police Station on 03/02/2022 and thereupon, 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 Bhople, Amar Jaiswal and the present non-applicant No.2-Ramkumar @ Ramu 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 Bhople 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 the present non-applicant-Ramkumar Jaiswal 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.

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 working on his petrol pump at Wadgaon Jungle. 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 non-applicant No.2 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 argues that the applicant was not present

along with other co-accused. He was working on his petrol pump at Wadgaon Jungle at Ghatanji road. There are various CCTV cameras installed on petrol pump which supports the case of the applicant. Thus, he prays for rejection of the present application.

11. Considering the above referred arguments of the respective parties, I may 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.”

12. In the teeth of the above referred observations, it needs to be appreciated that, the learned trial Court verified the CCTV footage personally and thereupon has arrived at a conclusion that at the time of incident, the applicant was not present at the spot.

13. As the applicant is seeking cancellation of bail on merit, I thought appropriate to see the CCTV footage in presence of the learned counsel for the respective parties.

14. On perusal of CCTV footage, it is revealed that the non-applicant No.2 initially left the petrol pump at 17.43 hours on a two wheeler and returned at around 18.05 hours. Thereafter, he left immediately on foot. He later on returned and seen in his office at 19.56 hours.

15. The alleged incident took place at 19.30 hours.

16. As per the learned counsel for the applicant, the distance between the spot of incident and the said petrol pump, is about 30 k.m. and thus, according to him, it is possible that after commission of offence at 19.30, he reached the petrol pump at 19.56.

17. Whereas, as per the learned counsel for the non-applicant No.2/accused, the distance between the spot of incident and the said petrol pump, is more than 60 k.m. and therefore, it is not possible to reach the petrol pump from the spot of incident in 26 minutes, after commission of offence at 19.30 hours.

18. The learned counsel for the applicant and the non-applicant No.2 have relied upon the Google Map in support of their respective submissions on distance.

19. However, one thing is certain that at the time of incident, the applicant was not present at the petrol pump and he reached petrol pump after about 26 minutes after the time of incidence i.e. 19.30 hours.

20. Therefore, the issue will be, what is the exact distance and whether it is possible for the non-applicant No.2/accused to reach within that much of time to the petrol pump, after commission of the offence. And therefore, it will be a matter of trial.

21. In the circumstances, giving benefit of doubt to the non-applicant No.2/accused, I am not inclined to interfere with the order of the learned trial Court, granting bail to the non-applicant No.2/accused. Accordingly, I pass the following order:

The application is **rejected**.

JUDGE

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