

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

CRIMINAL APPLICATION (APPLN) NO.74 OF 2021

(RAJKUMAR DEVIDAS PAWAR...VS.. STATE OF MAH THR. PSO PS PARATWADA, AMRAVATI & ANR.)

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

Court's or Judge's orders

Shri M.P.Kariya, Advocate for Applicant.
Shri M.J.Khan, A.P.P. for Non-applicant No.1/ State.
Shri S.V.Sirpurkar, Adv. a/w. Shri T.U.Tathod, Adv for N.A. No.2.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 28, 2022.

1. Heard learned counsel for the respective parties.
2. The applicant has approached this Court by filing this application under Section 439(2) of the Code of Criminal Procedure for cancellation of bail as granted by the learned Additional Sessions Judge-1, Achalpur in Criminal Bail Application No. 378 of 2021 in Crime No. 264 of 2021, registered with Police Station, Paratwada for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
3. Shri Kariya, learned counsel for the applicant submits that by recording perverse findings the learned Sessions Judge has granted bail to the non-applicant No.2. It is submitted that the learned Sessions Judge has not applied its judicious mind while granting the bail and also failed to consider the factors which need to be considered while granting bail. For this purpose, he has placed

reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Prasanta Kumar Sarkar ..vs.. Ashis Chatterjee and another*¹, dated 29/10/2010.

4. Shri Kariya, learned counsel for the applicant has drawn attention of this Court to the statements of eyewitnesses, Post Mortem Report, Injury Report of the non-applicant No.2, recovery of knife under Section 27 of the Code of Criminal Procedure, seizure of clothes of the non-applicant No.2 and First Information Report, registered against the non-applicant No.2 and submit that there is criminal antecedents to the discredit of the non-applicant No.2 and looking to the injuries, mentioned in the Post-Mortem Report, it was a brutal murder.

5. It is submitted that there is every possibility that the non-applicant No.2 would pressurize the prosecution witnesses and if the order granting bail is not cancelled there would not be possibility of conducting the trial in a fair manner. He, therefore, submits that this is a fit case for cancellation of bail granted to the non-applicant No.2. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Brij Nandan Jaiswal ..vs.. Munna@ Munna Jaiswal and another*², and the judgment of the Karnataka High Court in the case of *Mr. Imran & oth..vs.. State of Karnataka and others*³, dated 26/08/2021 passed in **Criminal Writ Petition No. 2557 of 2021.**

¹ Cri.Appeal No.2086/2010

² (2009) 1 SCC 678

³ Cri. W.P. No. 2557/2021

6. It is submitted that the trial Court, while granting bail to the respondent No.2, has not considered the nature and gravity of the accusation, severity of the punishment in the event of bail, likelihood of repetition of the offences and the reasonable apprehension of the witnesses being influenced.

7. It is submitted that a person who carries knife all the time in the pocket would pressurize or influence the witnesses and therefore, he submits that by allowing the present application the bail granted to the non-applicant No.2 may be cancelled.

8. On the other hand, Shri S.V. Sirpurkar, learned counsel for the non-applicant No.2 submits that the incident took place out of the road-rage and it was not premeditated. It is submitted that at the most explanation (4) to Section 300 of the Indian Penal Code will apply. He has pointed out from the statement of witnesses, on which the applicant is relying upon, that it sufficiently shows that the incident took place out of a sudden provocation.

9. He would submit that the statements of the witnesses who have stated the name of the non-applicant No.2 first time, were recorded after three days of the incident.

10. It is further submitted that after the bail was granted to the non-applicant No.2 on 04/08/2021, in last seven months, there is not a single complaint about abuse of concession by the non-applicant No.2 or repetition of any offence.

11. Shri Sirpurkar, learned counsel for the non-applicant No.2 has drawn attention of this Court to the condition put by the trial Court in the order granting bail to the non-applicant No.2, whereby the non-applicant No.2 has been prohibited from entering within the vicinity of the witnesses where they are residing. It is submitted that the non-applicant No.2 will not enter into Paratwada city, if this Court directs.

12. It is submitted that the learned trial Court cannot record the finding on merits of this matter while considering the bail application and therefore, the trial Court rightly recorded *prima facie* observations within the parameters which need to be considered at the time of grant of bail.

13. He further submits that the factors to be considered at the time of grant of bail and for cancellation of bail are different. For this purpose, he has placed reliance on the judgments of the Hon'ble Supreme Court

of India in the case of *Puran..vs..Rambilas*⁴ *Savitri Agrawal..vs..State of Maharashtra*⁵, *Dolat Ram & oth...vs..State of Haryana*⁶, and *X ..vs.. State of Telangana*⁷.

14. On the other hand, the learned A.P.P. has fairly stated that the State has not filed any application for cancellation of bail on the ground of breach of condition or any complaint about tampering of witnesses or the evidence of the prosecution or misuse of liberty by the applicant.

15. To consider the rival contentions of the parties, I have perused the record and the order passed by the learned trial Court granting bail.

16. Before considering the contentions of the rival parties, it will be appropriate to refer to the reasons recorded by the learned trial Court while granting bail, which reads thus :

“7. I have gone through the contents of application, say filed by the prosecution and copy of charge-sheet. It appears that letter given by Paratwada Police Station to pahchas that unknown person committed murder. It also appears that statements of three persons recorded immediately after the incident who were eye witnesses of the incident were not disclosed name of

4 (2001) 6 SCC 338
5 (2009) 3 SCC 325
6 (1995) 1 SCC 349
7 (2018) 16 SCC 511

the applicant. Witness Mohanlal Nandwanshi has not disclosed name of the applicant to police when police came on the spot of incident on the very same day but he keep mum till three days. So other witnesses namely Shubham and Tushar had not disclosed name of the applicant to police when police come on the spot of the incident on the very same day i.e. 03/05/2021 and after nine days their statements recorded by the police. So also statement of Mohanlal Nandwanshi shows that incident occurred sudden and grave provocation. Considering aforesaid entire facts and circumstances of the case prima facie case is made out to release the applicant on bail on stringent condition. ...”

17. In the case of *Dolat Ram* (supra) in para No.4 the Hon’ble Supreme Court has held thus:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail.

However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

18. The Hon’ble Supreme Court of India in the case of *Puran ..vs.. Rambilas* (supra) has held 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 v. 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.”

19. From the above referred observations of the Hon'ble Supreme Court of India, it is clear that the rejection of the bail is in the non-bailable case and at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail, already granted. The grounds for cancellation of the bail broadly which interferes or attempts to interfere with the due course of administration of justice or evasion or attempt to evade in due course of justice or abuse of concession granted to the accused, in any manner. It is further observed that these instances are merely illustrative and not exhaustive, one such ground for cancellation of the bail would be where ignoring the material and evidence on record a perverse order granting bail is passed in a heinous crime. Such an

order would be against the principles of law. The interest of justice would require that such a perverse order be set aside and the bail be cancelled.

20. In the teeth of the above referred law, I revert back to the facts of the present case:

In this case, the alleged incident took place on 03/05/2021 and the name of the non-applicant No.2 was first time disclosed by three eyewitnesses on 05/05/2021 and 06/05/2021. The statements of these witnesses, if taken into consideration, it can be seen that the alleged incident took place out of the sudden provocation.

21. The non-applicant No.2 was granted bail on 04/08/2021 and in last about seven months, there is not a single supervening instance of any interference or attempt to interfere in the investigation by the non-applicant No.2 or abuse the concession granted to the accused in any manner or evasion or attempt to evade in due course of justice. In that view of the matter, the only ground then remains is to find out whether the findings recorded by the trial Court are perverse.

22. Shri Kariya, learned counsel for the applicant, has argued that in view of the judgment in the case of *Prasanta Kumar Sarkar*(supra), the trial Court while granting bail to the non-applicant No.2, ought to have

recorded findings with the following factors, viz.:

- (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.

23. It is submitted that as the learned trial Court has not given its findings on all these factors, the order granting bail to the non-applicant No.2 needs to be set aside.

24. There is no dispute that these are the factors which need to be considered at the time of grant of bail. However, while considering the application for cancellation of bail, the basis to consider such application is different. It is a settled law that while considering the application for grant of bail the Court shall not give findings on merits of the matter.

25. In this case, the learned trial Court has rightly observed that in the letter given by Paratwada Police to panchas it was mentioned that the offence was committed by unknown person.

26. The police have not recorded statement of any eyewitness immediately after the incident, where the witnesses of the incident disclosed the name of the non-applicant No.2. The statements were recorded after two days of the incident and in those statements, first time, the name of the non-applicant No.2 was disclosed.

27. Moreover, even from those statements, it is clear that the incident took place out of a sudden provocation and in such a case explanation (4) to Section 300 of the Indian Penal Code would apply.

28. Thus, in absence of any case of the applicant that the non-applicant No.2 has breached the condition of bail or he attempted to interfere with the investigation or misused the concession granted to him and also in absence of any perversity in the order granting bail by the trial Court, I am of the opinion, that no case is made out by the applicant for cancellation of the bail.

29. The judgment relied upon by the learned counsel for the applicant in the case of *Imran ..vs. State of Karnataka* (supra) is based on the facts in the said case which are distinguishable. Therefore, the said judgment

would not help the applicant for the purpose of this very application.

30. As far as judgment in the case of *Brij Nandan Jaiswal* (supra) is concerned, there is no dispute about the law laid down in the said judgment that the complainant can always question the merits of the order granting bail if the order is not validly passed or the order is passed without taking into consideration the pros and cons of the matter, particularly in serious cases like murder and in such matters some reasons justifying grants are necessary.

31. In the present case, such justification and reasons are recorded by the learned trial Court within permissible limits of grant of bail. 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**.

JUDGE

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