

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

CRIMINAL APPLICATION (APPLN.) NO.82 OF 2021

Indrajeet s/o Pralhad Motwani,

Versus

State of Maharashtra, through P.S.O., Police Station Hinganghat, District Wardha.

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

Court's or Judge's Order

Shri Firdos Mirza, Advocate for applicant.

Shri M.J. Khan, A.P.P. for non-application no.1/State

Shri S.R. Dube, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR, J.

DATED : 02 MARCH 2022

This is an application filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to the non-applicant No.2 vide order dated 30/09/2021 passed by the Additional Sessions Judge, Hinganghat, on the ground that it was granted ignoring material evidence of record.

2. The brief facts of the present case are as under:

Crime No.780 of 2021 was registered with police station Hinganghat, District Wardha against the three accused persons including the

non-applicant No.2 for the offences punishable under Sections 307 and 294 read with Section 34 of the Indian Penal Code, on a complaint lodged by the applicant.

3. It is the case of the prosecution that on 04/09/2021, police recorded statement of the applicant at Government Hospital, Hinganghat in which he stated that on 04/09/2021, his cousin Navin Pralhad Motwani informed him on mobile that Vikky Thakur and one unknown person abused his father, therefore, he along with his friend Manohar Balwani had been to the shop of Santosh Thakur i.e. Tea shop named as 'Premacha Chaha'. It is stated that Santosh Thakur and Vikky Thakur were present at the said shop and on inquiry by the applicant about abuses given to his father, the accused persons assaulted him by kicks and fists blows and by iron rod over his chin and underarms. Due to assault, the applicant sustained grievous injuries.

4. Thereupon, the crime was registered as referred above. The non-applicant No.2 was arrested on 05/09/2021. Thereafter, on 09/09/2021, an

application was moved by the non-applicant No.2 under Section 439 of the Code of Criminal Procedure for grant of bail in the aforementioned crime. On 28/09/2021, the investigating officer has filed say at Exhibit-5 pointing out that in the Government Hospital Hinganghat, Dying Declaration of the applicant was recorded after carrying out the medical examination. In the said report, it was pointed out that the health condition of the applicant was serious.

5. On 27/09/2021, vide Exhibit-16, supplementary say was submitted by the Investigating Officer and therein he has categorically pointed out the nature of injuries.

6. The applicant vide Exhibit-9 raised objection to the application filed by the non-applicant No.2 for grant of regular bail, thereby the applicant strongly opposed the application.

7. On 30/09/2021, the learned Trial Court, after hearing the learned Counsel for the respective parties, allowed the bail application and thereby granted bail to the non-applicant No.2 in the aforementioned crime.

8. The present application is arising out of the said order, seeking cancellation of bail granted to the non-applicant No.2.

9. I have heard the learned Counsel for the respective parties.

10. Shri Mirza, learned Counsel for the applicant submits that while granting bail vide impugned order dated 30/09/2021, the learned Trial Court has discarded and ignored the complete medical record, which was available on record. It is submitted that the learned Trial Court recorded erroneous findings which are contrary to record, while granting bail to the non-applicant No.2.

11. It is submitted that the bail was granted to the non-applicant No.2 on the non-existing ground and as the reasons recorded by the Trial Court are contrary to the record, the order is perverse. For this purpose, Shri Mirza, learned Counsel for the applicant has taken this Court through the relevant medical record of the Government Hospital, Hinganghat, the say and supplementary say filed by the prosecution and the reply filed by the State in this proceedings.

12. The learned Counsel for the applicant thereupon, submits that the applicant has raised challenge to the impugned order on merit and not on the ground that he has misused the liberty. He submits that even if, the non-applicant No.2 has not misused the liberty, the applicant has every right to challenge the order granting bail to non-applicant No.2 on merit by pointing out that the order passed by the learned Trial Court is perverse and was passed ignoring the material and evidence on record. To buttress his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Puran Vs. Rambilas and another* reported in **(2001) 6 SCC 338**. It is further submitted that the law laid down in the said judgment holds the field and it has been followed in subsequent judgments. Accordingly, he prays for cancellation of bail granted to the non-applicant No.2.

13. On the other hand, Shri Dube, learned Counsel appearing for the non-applicant No.2 submits that on 04/09/2021, a complaint was lodged to the police against the applicant and other accused persons namely Sumit Ahuja, Jitu Motwani and Manohar Balwani, alleging therein that the accused

persons, including the applicant, had assaulted the non-applicant No.2, however, the police have not taken cognizance of the said complaint.

14. It is pointed out that the complaint of non-applicant No.2 is prior in time and the complaint lodged by the applicant is the counterblast and the same was made out of rivalry as a dispute is going on between the parties relating to a shop owned by the non-applicant no.2 and is in possession of the father of the applicant. In support of his submission, Shri Dube, learned Counsel for the non-applicant No.2 has placed reliance on the Supreme Court's judgment in the case of *Devender Kumar Vs. State of Haryana*, reported in **2010 ALL MR (Cri.) 1965 (S.C.)**.

15. It is submitted that the learned Trial Court, while granting bail to the non-applicant No.2, has rightly observed that both the parties are influential and bail application was hotly contested. It is submitted that the learned Trial Court has further observed that both the parties want that the opposite party should suffer the maximum.

16. He has argued that there are complaints after the non-applicant No.2 was released on bail, pointing out the threats given by the applicant to him to cancel the bail. He, therefore, submits that to harass the non-applicant No.2, the present application has been moved.

17. He further submits that the learned Trial Court has rightly observed that there is no mention of sharp weapon in the First Information Report, however, subsequently, it was mentioned and as such there are contrary statements of the applicant which creates doubts about the incident. He therefore, submits that learned Trial Court has rightly considered the material on record and granted bail.

18. He lastly submits that in this matter, the charge-sheet has already been filed and as there is no complaint of misuse of liberty by the non-applicant No.2, this Court may not cancel the bail granted to the applicant .

19. Shri Khan, learned APP supports the case of the applicant and reiterated the submissions of the learned Counsel for the applicant. He submits that this Court is well aware of the parameters of

cancellation of bail and applying those parameters, this Court should cancel the bail application as it is apparent on the face of the record that on the basis of erroneous consideration, the perverse findings are given by the learned Trial Court.

20. To consider the rival contentions of the parties, I have perused the record and also gone through the judgments cited by the learned Counsel for the respective parties.

21. In the case of *Puran vs. Ramvilas* (supra) the Hon'ble Supreme Court of India has observed that at the stage of granting bail, the detail examination of evidence and elaborate documentation of the merits of the case has not to be undertaken.

22. The Hon'ble Supreme Court of India has further observed that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It is held that generally speaking the grounds for cancellation of bail 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 clarified by the Hon'ble Apex Court that the above referred instances are merely illustrative and not exhaustive.

23. In the aforesaid judgment, it is further observed that one of grounds for cancellation of bail would be where on ignoring material evidence on record a perverse order granting bail is passed in heinous crime. It is held that such an order would be against the principle of law. Interest of justice would also require that such a perverse order would be set aside and bail be cancelled.

24. Thus, it is clear that one of the grounds for cancellation of bail would be where ignoring material and evidence on record, a perverse order of granting bail is passed.

25. In this case, the crime was registered under Section 307 with the other sections namely 294 and 34 of the Indian Penal Code. The punishment for the offence punishable under Section 307 of the Indian Penal Code i.e. attempt to murder, is imprisonment for life or imprisonment for

10 years and fine, if such act caused hurt to any person.

26. In the said backdrop and in the teeth of above referred well settled principle of law, it revert back to the facts of the present case.

27. On perusal of the record it is clear that immediately after the incident, the applicant was hospitalized in Sub District Hospital, Hinganghat i.e. Government Hospital. After the medical examination, the injury report which was prepared on the same date i.e. 04/09/2021 at 8.00 p.m. is as follows:

Sr. No.	Type of Injury	Size Depth. Colour of the injury	Size of Injury	Nature of Injury	Age of Injury	Caused by	Healing Time	Remarks
1	2	3	4	5	6	7	8	9
1	Stab injury on left lateral side of trunk about 15-20 cms below arm pit	2.5 cm x 2 cm x 2 cm approxi incised border, clear margin horizontally places muscle deep	2.5cm x 2.5cm x 2cm	Grievous	Fresh	Sharp pointed object	More than 14 days (Signatory)	-Suturing -Dressings -Inj.T.T. [0.5 ml] Inj - Stat Inj. Pouze stat -Inj. Oiclo Stat
2	Stab injury on left lateral side of trunk about 5-8 cm below arm pit	2 cm x 2cm x 2cm (Approximately) Incised bor-	2 cm x 2 cm x 2cm	Grievous	Fresh	Sharp pointed object.	More than 14 days (Signature)	-Refer to higher centre for CJI MRI.

		der clear margin, horizon- tally placed. Muscle deep.						
3.	Stab injury be- low chin 3 cm x 2 cm x 2 cm	3 cm x 2 cm x 2 cm Horizon- tal; clear margin In- cised border	3 cm x 2 cm x 2 cm	Grievous	Fresh	Sharp pointed object	-	-

28. The injury report corroborates the case of the applicant and it further shows that all the injuries were found to be grievous. There is also mention that those injuries were caused by sharp pointed object.

29. It has further come on record that this material was very well available on record of the learned Trial Court and in the say of the investigating officer, a reference was also made to it. The say of the investigating officer sufficiently shows that, it was pointed out to the learned Trial Court that the injuries are grievous and the condition of the applicant was serious.

30. The nature of injuries were also pointed out by way of supplementary say filed by the investigating officer. In spite of the fact that the

above referred material was on the record of the Trial Court, the learned Trial Court has recorded contrary findings in paragraph no.5 onward. The relevant findings read thus:

“5. Heard both sides and perused police papers, medical treatment papers of informant and the photographs filed on record. As per FIR the alleged weapon used in the given crime is an iron rod. The subsequent statement of informant shows that some sharp pointed weapon was used in the commission of crime. This creates doubt regarding use of weapon in the given crime.

6. In FIR there is no reference about any injury on nose, neck and head of informant. In the medical treatment papers those injuries are reflected. All the medical treatment papers of informant are of private hospital. Hence, those documents are not very safe to rely upon at this stage. The discharge summary of informant issued by Dr.Lalit Mahajan (Neurologist) is dt. 13.9.2021. It does not show any complication to the informant. For the alleged complication regarding injury to the lungs of informant, the opinion is not given by a Pulmonologist. As regards the injury to victim, it is a fracture injury to his hand finger. The victim is discharged from the hospital.

7. There is dispute between both the parties pertaining to vacating a shop owned by applicant and occupied by the informant. Pertaining to the incident in question offences have been registered against both the parties. Both the parties appear to be financially sound and influential. Even the bail application are being hotly contested. This shows that both the parties want that the opposite party should suffer the maximum.

8. The offence under Sec. 307 of IPC is not punishable with death. The medical condition of informant as of now does not appear to be critical. He is taking medical treatment in the private medical hospital at Nagpur and it is his choice as to when he wants to take discharge from the hospital. Just because he is admitted in the hospital, it cannot be a ground to reject present application.”

31. The learned Trial Court expressed its doubt regarding use of weapon on the ground that in the First Information Report, there is mention of use of iron rod whereas, in subsequent statement, it was mentioned that some sharp pointed weapon was used.

32. The learned Trial Court further observed that all the medical treatment papers of the applicant

are of private hospital and therefore those documents are not very safe to rely upon.

33. The Court has further observed that the discharge summary of the applicant does not show any complication regarding the injury to the lungs of the applicant.

34. The above referred findings are certainly contrary to the medical record which was available.

35. Surprisingly, there is no mention of injury report of the Sub-District Hospital, Hinganghat dated 04/09/2021, in the impugned order. Thus, I have no hesitation to hold that on erroneous consideration and ignoring the material and evidence on record, a perverse order came to be passed granting bail to the non-applicant No.2.

36. Where the Magistrate has committed a serious lapse of his judicial discretion by landing himself in an apparent error of fact and law, this Court should interfere to cancel the bail which has been illegally and improperly granted giving rise to miscarriage of justice. The impugned order would be therefore against the principle of law. Thus, I am of the opinion that in the interest of justice, it requires

that such perverse orders be set aside and bail be cancelled.

37. The above referred findings and observations made by this Court are based on merit. Bail granted illegally or improperly by wrong and arbitrary exercise of judicial discretion can be cancelled even if there be no additional circumstances against an accused appearing in the record after grant of bail. Hence, filing of charge-sheet or the fact that the non-applicant No.2 has not misused the liberty when he was on bail, would not have relevance and it would not change the fate of the present application. As such judgment cited by the learned Counsel for the non-applicant No.2 in the case of *Devender Kumar* (supra) is of no help to the non-applicant No.2.

38. In the above referred facts and circumstances, I passed following order:

- i) The Criminal application is **allowed**.
- ii) The bail granted by Additional Sessions Judge, Hinganghat to the non-applicant No.2 in Criminal Bail Application No.104 of 2021 is hereby cancelled and it is directed to the non-applicant No.1

to arrest the non-application No.2 and commit him to custody.

[ANIL S. KILOR, J.]

R.S.Sahare