

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

CRIMINAL APPLICATION (APPLN) NO.10 OF 2021

SAU. POURNIMA AMARDEO YADAV

VS

THE STATE OF MAH. THR. PSO WASHIM TAH. AND DIST. WASHIM AND
ANOTHER

AND

CRIMINAL APPLICATION (APPLN) NO.34 OF 2021

THE STATE OF MAHARASHTRA, THR. POLICE STATION
OFFICER, POLICE STATION WASHIM CITY, DIST. WASHIM

VS

BUNTY @ RITESH AMARNATH YADAV

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

Court's or Judge's Order

Shri P.M. Pande, Advocate for the applicant in Application No.10/2021

Shri M.R. Ali, Advocate for the non-applicant/accused

Shri S.A. Ashirgade, APP for the State

CORAM : ANIL S. KILOR, J.

DATED : 29th March, 2022.

In both these applications, the State and the complainant are seeking cancellation of bail granted vide order of bail on Exh.18 on 09.07.2020 to the non-applicant/accused Banti @ Ritesh Amarnath Yadav by the learned Additional Sessions Judge, Washim in Sessions Trial No.23 of 2018.

2. I have heard the learned counsel for the respective parties.

3. Shri Ashirgade, learned APP for the State submits that on 09.12.2017 on receiving information, the police reached to the spot of the incident, thereupon, they came to know from the crowd that

the victim Santosh @ Ashish Amardev Yadav, Pournimabai Amardev Yadav and Mukesh @ Baba Amardev Yadav were beaten by means of wooden block and stones by the accused Ritesh @ Banty Amarnath Yadav, Naresh @ Monu Amarnath Yadav, Rupesh @ Sonu Amarnath Yadav and Umabai Amarnath Yadav, on account of their old enmity. Since the victims were severally injured, they were taken to District Hospital, Washim, where the medical officer declared Mukesh @ Baba Amardev Yadav dead and referred to Santosh @ Ashish Amardev Yadav and Pournimabai Amardev Yadav to the main hospital Akola. Thereafter, Crime No.542 of 2017 was registered under Sections 302, 307 read with Section 34 of the Indian Penal Code.

4. The learned APP further submits that while granting bail by the Additional Sessions Judge, the incorrect findings were recorded, which are contrary to record and without looking into the statements of the witnesses, injury reports and other material available, the bail was granted. He, therefore, submits that the ignorance of material and evidence on record is sufficient ground for cancellation of bail, even in absence of supervening circumstances.

5. The learned APP further points out that this Court, while considering the bail of co-accused Umadevi, has observed that the Pournima's injury report, disclosed that she has sustained few contusions. It is submitted that on the relevant time, the injury report was not brought to the notice of this Court and therefore, the fact of having some contusions had not been recorded in the

order of this Court. He submits that, whereas, the injury report shows that there are grievous injuries caused to Pournima. He further submits that the order of this Court, granting bail to the co-accused Umabai, was the basis for grant of bail to the non-applicant-Ritesh. He therefore, submits that the order passed by the learned Sessions Judge is perverse and while granting the same, the learned Sessions Court has ignored the material and evidence available on record.

6. Shri Pande, learned counsel appearing for the applicant in Criminal Application No.10/2021 reiterated the submissions of the learned APP and submits that in the application for cancellation of bail filed against the non-applicant-Ritesh before the Sessions Judge-I at Washim, it was pointed out that the houses of the victim and the accused are adjoining and there is an enmity between them.

7. It is submitted that it was also mentioned in the application that after released on bail, the accused Umbai has threatened the victims and thereupon, the Non-Cognizable (NC) Report was registered. He further submits that it cannot be said that in the present case, there are no supervening circumstances, in addition to the perversity in the order granting bail.

8. On the other hand, Shri Ali, learned counsel for the non-applicant-accused, submits that there are no supervening circumstances in the present matter, as the applicants have not pointed out any incident about breach of any condition by the non-applicant-accused or misuse of concession.

9. He further submits that in the case of *Dolat Ram and others Vs. State of Haryana*¹, the Hon'ble Supreme Court of India has held that unless overwhelming circumstances are available, the Court should not cancel the bail.

10. He would submit that before granting bail, the non-applicant-accused was in jail for about 2 years and after releasing on bail on 09.07.2020, till date, there is not a single complaint against the applicant. It is submitted that against the non-applicant-accused the offence is under Section 307 and for such offence, the reasons recorded by the learned trial Court while granting bail, are reasonable and proper. If the conclusion drawn by the learned trial Court while considering the bail is sustainable in the eyes of law, the Court should be slow in cancellation of bail,

11. For this purpose, he has placed a reliance on the order passed by this Court in the case of *Gulshan d/o Latif Khan alias Gulshan w/o Mansur Siddique Vs. State of Maharashtra, thr. P.S.O. and ors.* (Criminal Application No.32 of 2021) dated 16.11.2021 and also on the judgment of the Hon'ble Supreme Court of India in the case of *Savitri Agrawal and others Vs. State of Maharashtra and another*².

12. He further submits that there is a well settled principle of law that the bail once granted, should not be cancelled, unless a cogent case based on supervening evidence has been made out. For this

1 (1995) 1 SCC 349

2 (2009) 8 SCC 325

purpose, he has placed a reliance upon the judgment of *Ms. X Vs. The State of Telangana & Anr.*³

13. To consider the rival contentions of the parties, I have gone through the record and also the judgments cited by the learned counsel for the non-applicant/accused.

14. Before considering the rival contentions of the parties on merit, it would be appropriate to refer to the conclusions recorded by the learned Additional Sessions Judge, in paragraph No.6, while granting bail to the non-applicant/Ritesh, which reads thus:

“6] On perusal of charge-sheet it is found that the injured Pournima is discharged from the hospital on 24.01.2018. Another injured Santosh is discharged on 12.12.2017. The role of the present applicant Ritesh is of beating to Pournima and the grandfather of Ashish Yadav. The present applicant then pelted the stone on the head of Pournimabai. The Hon’ble High Court while granting the bail to Umabai has observed that Pournima has sustained some contusions in the said incident. Therefore, the present applicant is also entitled for the bail on the ground of parity. The investigation is completed and charge-sheet is filed. His further detention in the jail, in the outbreak of Corona virus does not appears to be necessary.”

15. From the above referred paragraph, it can be seen that the factors which weighed with the Sessions Judge are as follows:

- a) The injured Pournima was discharged from the Hospital on 24.01.2018.
- b) Another injured Santosh was discharged on 12.12.2017.

3 2018 ALL SCR (Cri) 871

- c) The role of the respondent/Ritesh was of beating to Pournima and grandfather of Ashish Yadav.
- d) The High Court, while granting bail to Umabai has observed that Pournima has sustained some contusions in the said incident. Therefore, the present applicant/Ritesh is also entitled to bail on the ground of parity.
- e) The investigation is completed and charge-sheet is filed.
- f) Further detention of respondent/Ritesh in jail, in the outbreak of Corona virus, does not appear to be necessary.

16. The above referred consideration referred by the learned Sessions Judge shows that grant of bail by the High Court to co-accused Umabai, was not the only consideration, but other factors were also considered, including outbreak of Corona virus.

17. The Hon'ble Supreme Court of India in the case of *Puran Vs. Rambilas and another*⁴ has observed 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 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

4 (2001) 6 SCC 338

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.”

18. In the above referred judgment, the Hon’ble Supreme Court of India, while considering the grounds for cancellation of bail, has observed that the 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 are the permissible grounds for cancellation of bail. The Hon’ble Supreme Court of India has further clarified that the above referred instances are merely illustrative and not exhaustive. It is further observed that one such ground for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail has been passed in a heinous crime. The Hon’ble Supreme Court of India further observed that such order would be against the principle of

law and interest of justice would also requires that such a perverse order be set aside and bail be cancelled.

19. The Hon'ble Supreme Court of India in the case of *Savitri Agrawal and another Vs. State of Maharashtra and another*⁵, has observed thus:

“29. It may be true that some of the circumstances, noticed by the High Court in the impugned order, viz., no reference to lantern in the spot panchnama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house etc., could have persuaded the Sessions Judge to take a different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears to us that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

20. It is thus clear that the factors which weighed with the Sessions Judge in granting bail should not be interfered with, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge and such ground cannot be a valid ground to label the order passed by the Sessions Judge as perverse.

21. The Hon'ble Supreme Court of India in the case of the *Ms. X Vs. The State of Telangana & Anr.*⁶ has categorically observed thus:

5 (2009) 8 SCC 325

6 2018 ALLSCR (Cri) 871

“14. The accused had the benefit of an order granting him anticipatory bail. The grant of anticipatory bail was cancelled principally on the ground that he had not disclosed the pendency of a prosecution against him in the 2G Spectrum case. The Court has been informed during the course of the hearing that the said prosecution has ended in an acquittal. Regular bail was granted by the High Court on 17 November 2017 in the present case. The second FIR which was lodged on 22 November 2017 is not, in our view, a supervening circumstance of such a nature as would warrant the cancellation of the bail which was granted by the High Court. The learned counsel appearing on behalf of the accused has submitted that the lodging of the second FIR, four days after the order of bail is merely an attempt to bolster a case based on a supervening event and that it suffers from vagueness and a complete absence of details. We are not inclined to make any further observations and leave the matter there. Above all, the Court must bear in mind that it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out. We find that to be absent in the present case.”

22. In the above referred case, it is held that the supervening circumstance would warrant the cancellation of bail and it is further observed that the Court must bear in mind that it is a settled principle of law that bail once granted, should not be cancelled, unless a cogent case, based on a supervening event has been made out.

23. Similarly, this Court in the case of *Gulshan Latif Khan* (*Supra*) has observed that while granting the bail, the reasoning may be incorrect. However, it is seen whether the conclusion drawn by the trial Court is sustainable in the eye of law.

24. In the teeth of the above referred well settled principles of law, I revert back to the facts of the present case.

25. In this case, the non-applicant/accused was granted bail on 09.07.2020 and as pointed out herein above that the trial Court has considered various aspects, including one of the aspects that the High Court has granted bail to co-accused Umabai.

26. In the present case, the role attributes to the non-applicant/accused would attract offence under Section 307 of the Indian Penal Code. Before granting bail to him, he was in jail for about two years and after releasing him on bail in the month of July 2020, till date, the period of about 20 months has been expired and during these 20 months, there is no complaint against the non-applicant/accused about breach of condition or abuse the concession.

27. Thus, there are no supervening circumstances and even it is not the case of the applicants for seeking cancellation of bail. The instance of Umabai, mentioned in the application for cancellation of bail, cannot be taken into consideration for considering the case of the non-applicant/Ritesh.

28. As far as perversity is concerned, the learned Sessions Judge while observing that Pournima has sustained some contusions and while observing so, the learned trial Court has relied upon the order granting bail to co-accused Umabai. As such, the reasoning may be incorrect, however, on the basis of such incorrect reasoning, it cannot be said that the conclusion drawn by the learned Sessions Judge is not sustainable in the eye of law and therefore, it cannot be termed as perverse order.

29. In the circumstances, in absence of any supervening instances or perversity in the order of the learned trial Court, I am not inclined to interfere with the order granting bail to the non-applicant/Ritesh Amarnath Yadav.

30. Accordingly, both the applications are **rejected**.

Looking to the nature of offence and as it has come on record that the accused and the victims are residing in adjoining houses, it would be appropriate if the learned Sessions Judge expedites the trial and passes the final judgment within next eight months.

[JUDGE]

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