

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

Criminal Appeal No. 770 of 2019

Miru @ Mira Shankar Baraskar

Versus

State of Maharashtra, through Police Station Officer, Police Station
Paratwada, Tah. Achalpur, Dist. Amravati and another

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

Court's or Judge's Order

Shri P.R.Agrawal, Advocate for the appellant.

Shri M.J.Khan, APP for the respondent No.1 / State.

Shri H.R.Gadhia, Adv. for the respondent Nos. 2 to 6.

CORAM : ANIL S. KILOR, J.

DATED : 3rd MARCH, 2022.

In this appeal a challenge is raised to the order below Exh.1 dated 7th November, 2019 passed by the learned Additional Sessions Judge, Court Achalpur in Criminal Bail Application No. 556 of 2019 allowing the application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. 401 of 2019 registered with Police Station Paratwada for the offence punishable under Sections 143, 354, 352, 294, 504, 506, 427 of Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(w) and 3(1)(j) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard the learned counsel for the respective parties.

3. Shri Agrawal, learned counsel for the applicant who is the complainant has submitted that the applicant and the respondent accused persons are the residence of the same village and there is every likelihood that the applicant nos. 2 to 6 will misuse the liberty. It is submitted that the offence is serious and only on the ground that the custodial interrogation is not necessary cannot be a ground for grant of bail in such matters.

4. It is submitted that the applicant is having a reasonable apprehension that the respondent nos. 2 to 6 may pressurise the prosecution witnesses and will create hindrance in the process of law. Accordingly, it is prayed for cancellation of bail for this purpose, learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Prathvi Raj Chauhan Vs. Union of India and others*¹

5. On the other hand Shri Gadhia, learned counsel for the respondent nos. 2 to 6 submits that the respondent nos. 2 to 6 were granted bail vide order dated 7th November, 2019 and in this two years period there is not a single complaint about the misuse of liberty by the respondent nos. 2 to 6. It is submitted that the scope of application for cancellation of bail is limited and unless the grounds permissible for cancellation of bail are available, the Court cannot interfere with the order granting bail. It is

1 (2020) 4 SCC 727

further submitted that only on the basis of apprehension and without pointing out any instance in support of any such apprehension, cancellation of bail would amount to taking away the liberty of the respondent nos. 2 to 6. The learned counsel for the respondent nos. 2 to 6 has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Dolat Ram and others Vs. State of Haryana*²

6. Shri Khan, learned Additional Public Prosecutor fairly states that the chargesheet is filed in this matter and there is no overwhelming material available to support the apprehension expressed by the applicant.

7. To consider the rival contentions of the parties, I have gone through the record and also perused the relevant judgments pointed out by the respective parties.

8. The Hon'ble Supreme Court of India in the case of *Prathvi Raj Chauhan Vs. Union of India and others (supra)* has considered the applicability of provision of Section 438 of the Code of Criminal Procedure in relation to the cases under the Act of 1989 and has observed thus:

“11. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Sections 18 and 18A(i) shall

² (1995) 1 SCC 349

not apply. We have clarified this aspect while deciding the review petitions.”

9. In the above referred the Hon’ble Supreme Court of India has categorically observed that if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply.

10. In this matter the cancellation of bail is not sought on the ground of applicability of 438 of Code of Criminal Procedure but the cancellation is sought on the ground that the applicant is having apprehension of misutilization of liberty by the respondent nos. 2 to 6.

11. The Hon’ble Supreme Court of India in the case of *Dolat Ram and others Vs. State of Haryana* has observed 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.”

12. It is clear from the above referred judgment that the grounds for cancellation of bail includes 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.

13. In this case, though the period of more than two years is lapsed after the impugned order was passed granting bail to the respondent nos. 2 to 6, neither the applicant nor the State can be able to point out a single instance regarding misuse of liberty granted to respondent nos 2 to 6, whereby this Court can arrive at a conclusion that there is a ground for cancellation of bail as held by the Hon’ble Supreme Court of India in the case of *Dolat Ram and others Vs. State of Haryana (supra)* and in catena of judgments delivered on the point of cancellation of bail.

14. In that view of the matter, I do not find any merit in the present appeal. The appeal is dismissed.