

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**APPLICATION FOR CANCELLATION OF BAIL NO.5 OF 2023**

1. Swapnil s/o. Devraj Belle,  
Age 22 years, Occu. Education,  
R/o. Dhangar Galli, At Post Bhurikavthe,  
Taluka Akkalkot, District Solapur .. (Original informant)
2. Devraj s/o. Nagnath Belle,  
Age 49 years, Occu. Agril.,  
R/o. As above .. Applicants

**Versus**

1. The State of Maharashtra  
Through Police Station,  
Murum, Taluka Omerga,  
District Osmanabad
2. Rajendra s/o. Maruti Lale,  
Age 28 years, Occu. Agril.,  
R/o. Koral, Taluka Omerga,  
District Osmanabad
3. Shardabai w/o. Maruti Lale,  
Age 50 years, Occu. Agril.,  
R/o. Koral, Taluka Omerga,  
District Osmanabad .. Respondents

...  
Mr. Sanjaykumar B. Bhosale, Advocate for Applicants;  
Ms. V. N. Patil Jadhav, A.P.P. for Respondent No.1/State;  
Mr. Estling S. Murge, Advocate for Respondents Nos.2 and 3  
...

**CORAM : S. G. MEHARE, J.**

**DATE : 21-06-2023**

**ORAL ORDER :-**

1. Applicant No.1/first informant is the brother, and applicant No.2 is the father of the victim who committed suicide on

31.07.2022, have impugned the order granting bail to respondents No.2 and 3/original accused, passed by the learned Additional Sessions Judge, Omerga, in Criminal Bail Application No.96 of 2022, dated 18.08.2022.

2. Heard the learned counsel for the respective parties.

3. The prosecution case, in brief, was that the deceased married respondent No.2/accused on 02.06.2017. Immediately after the marriage, the in-laws and husband asked her to bring money from her parents to expand the tailoring shop. She was physically and mentally illtreated. Her parents explained and told her to stay with the parents, but the ill-treatment did not stop. Two years before the incident, they had sold the land. At that time, her in-laws and husband beat her and sent her to bring money. The complainant paid Rs.1,50,000/- and sent her to her matrimonial home. The report was lodged on 01.08.2022, and the applicant was arrested on the same day and accused No.2 was arrested on the second day of lodging the report.

4. The respondents/accused applied for bail under Section 439 of the Code of Criminal Procedure (for short, "Cr.P.C."). The learned Additional Sessions Judge, Omerga, granted them bail. However, the applicants were not satisfied with the order granting bail and approached the Court to cancel the bail order.

5. The vehement argument of the learned counsel for the applicant is that the order granting bail is without reason. The bail was granted mechanically and without application of mind. The consideration for bail, i.e. nature and gravity of the offence, the character of evidence and circumstances which are peculiar to the accused, the likelihood of the accused fleeing from justice, tampering with the prosecution witnesses and the impact that the release of the accused may have on the trial and the society at large have not been considered. Further, he would argue that the learned Additional Sessions Judge did not consider the material placed before it. There were several statements of the witnesses, including neighbours stating that the deceased was consistently illtreated for the demand of dowry. But those were ignored. The order granting bail is apparently illegal.

6. To bolster his argument, he relied on the cases of (i) ***Sonu Versus Sonu Yadav and another, Criminal Appeal No.377 of 2021 (Arising out of SLP (Cri) No.924 of 2021)***, (ii) ***Manoj Kumar Khokhar Versus State of Rajasthan and another, Criminal Appeal No.36 of 2022 (Arising out of SLP (Cri) No.4062 of 2020) Supreme Court dated 11.01.2022*** and (iii) ***Jagjeet Singh and others Versus Ashish Mishra Alias Monu and another, (2022) 9 Supreme Court Cases 321.***

7. Per contra, the learned counsel for the accused/respondents

would argue that the order granting bail is well reasoned. It reflects the application of the mind. The Court recorded the correct observations, and the investigation was practically completed. Besides the reason, various conditions were imposed, helping the investigating agency to complete the investigation without any hindrance. He would submit that once the bail is granted to the accused, that should not be cancelled unless there are overwhelming circumstances or the bail conditions are breached. The case has been committed to the Sessions Court, and the charges have been framed.

8. To bolster his arguments, he relied on the case of ***Bhagirathsinh S/o. Mahipat Singh Judeja Versus State of Gujarat, 1984 (1) SCR 839***. He also relied on the case of ***Kamuben Somaji Bhavaji Thakore Versus State of Gujarat, 2022 DGLS (Guj.) 299 (Gujarat High Court)***. In addition, he also argued that the entire material placed before the Court granting bail was considered. The opportunity was granted to the prosecution to oppose the application. They had opposed the bail application, and then the impugned order was passed. The liberty of the applicants cannot be curtailed unless there were complaints against them that they have tried to tamper with the prosecution witnesses or breach the bail conditions. Hence, the application deserves to be dismissed.

9. A small point that arises for consideration is whether the impugned order is without reason and application of mind and hence, liable to be cancelled.

10. To have a glance at the impugned order, it would be appropriate to reproduce the same, which read thus;

“Heard both the sides. Their arguments are in line with their respective pleading.

6. Perusal of the impugned material shows that, investigation is practically completed. Accused persons are in custody from 02/8/2022. They are permanent resident of village Koral, Omera, Osmanabad. Their presence is not required for filing of the charge sheet or further progress of investigation. The filing of the chargesheet and the subsequent trial will take considerable time. There are no grounds to deny the bail application. Hence, point no.1 is answered in the affirmative.”

11. The ratio laid down in the case of **Bhagirathsinh** (supra) relied upon by the accused pertains to the grounds for cancellation of bail. It has been observed therein that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. It is now well settled that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour

by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

12. In the case of ***Kamuben Somaji Bhavaji*** (*surpa*), the factors to be borne in mind while considering the bail application from the case of ***Prasanta Kumar Sarkar v. Ashish Chatterjee and another, (2010) 14 SCC 496*** have been considered.

13. In the case of ***Sonu*** (*supra*), the Hon'ble Supreme Court, in the middle of paragraph No.11, observed that "an order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a *judicious* application of mind by the Judge who is deciding an application under Section 439 of the Cr.P.C. must emerge from the quality of the reasoning which is embodied in the order granting bail. While the reasons may be brief, it is the quality of the reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained judicial mind." In the same

paragraph on top, it has also been observed that "the sentence which we have extracted earlier contains an omnibus amalgam of (i) "the entire facts and circumstances of the case"; (ii) "submissions of learned Counsel for the parties"; (iii) "the nature of offence"; (iv) "evidence"; and (v) "complicity of accused". This is followed by an observation that the "applicant has made out a case for bail", "without expressing any opinion on the merits of the case". This does not constitute the kind of reasoning which is expected of a judicial order".

14. As far as the cancellation of bail is concerned, in the case of **Manoj Kumar Khokhar** (supra), the Hon'ble Supreme Court has reiterated the ratio laid down in the case of **Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118**, from paragraph No.16 that, reads thus;

*"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."*

15. In the above judgment, a clear ratio was laid down that where the order granting bail is perverse or illegal or unjustified, bail may be cancelled. Similar was the view in the case of ***Gurucharan Singh Vs. State (Delhi Admn.), 1978 CriLJ 129.***

16. In the case of ***Jagjeet Singh*** (supra), the prime issue was about the right of the victim to participate in bail proceedings and granting bail in proceedings relating to an offence of murder without hearing the victim. In *Jagjeet Singh*, the case of ***Puran v. Rambilas, (2001) 6 SCC 338***, paragraph No.10 was referred to and observed that if it is found that the order granting bail is illegal or perverse or is founded upon irrelevant materials adding vulnerability to the order granting bail, an appellate court will be well within its ambit in setting aside the same and cancelling the bail. Further, the ratio laid down in the case of ***Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180***, has also been reiterated. In the said case, the ratio was that the High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

17. The learned counsel for the applicant placed on record the statements of witnesses available before the Court while deciding the bail application. The statements are consistently supporting the allegations of ill-treatment to the deceased for the demand of dowry. But it is doubtful whether such statements of witness were considered or not. The investigation was in progress when the bail was granted.

18. Bearing in mind the ratio laid down in the case of **Sonu** (supra) on the reasoning of the order, this Court is of the view that the reasoning of the learned Court granting bail is not the kind of reasoning expected of a judicial order. The seriousness of the alleged offence would have been evaluated in the backdrop of the allegation that the victim was being harassed for dowry. There were direct allegations that she was harassed for dowry from time to time and even after the fulfilment of demand. The victim was consistently complaining to her parents about ill-treatment, and they were explaining to her and sending her back with the hope that a day would come when the atrocities against their daughter would end.

19. The reasoning given by the learned Judge granting bail does not indicate consideration of the material before the Court. Completing the material investigation and the presence of the accused is not a necessity for filing the charge sheet are general

reasons. Such reasoning is generally given when the offence is not grave, and the custody of the accused would not affect the investigation. When the investigation of grave and serious offences is at the primary stage, the Court should be slow in granting bail, provided the facts and circumstances shall be borne in mind. Each case has its own facts and circumstances. Therefore, such would not be a strait jacket formula to decide the bail application in serious offences.

20. Considering the material placed on record, which was available before the Court granting bail, this Court is of the view that the ratio laid down by the Hon'ble Supreme Court in the cases of **Sonu** (supra) and **Mahipal** (supra) are squarely applicable to the case in hand. The reasoning given by the Court granting bail was not as per the settled principles granting bail. It is a perverse and illegal order. Therefore, impugned judgment and order is liable to be quashed and set aside. Hence, the order:-

### **ORDER**

- i) The revision application is allowed.
- ii) The order granting bail to respondents No.2 and 3/accused, passed by the learned Additional Sessions Judge, Omerga, in Criminal Bail Application No.96 of 2022, dated 18.08.2022, stands quashed and set aside.

- iii) Respondents No.2 and 3/accused shall surrender before the learned Additional Sessions Judge, Omerga, on or before 27.06.2023.
- iv) It is clarified that the observations recorded by this Court in the present order are confined to the issue of bail, and the learned Sessions Judge should not get influenced by the above observations.
- v) Respondents No.2 and 3/accused are at liberty to file fresh bail applications on merit if they desire.

**( S. G. MEHARE )  
JUDGE**

rrd