

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.18 OF 2021

Dnyaneshwar alias Pintu s/o. Nivrutti Talekar,
 Age 39 years, Occu. Service with Krushi Seva
 Kendra at Madalmohi, Taluka Georai,
 District Beed

.. Applicant
 (Original Informant)

Versus

1. Ganesh s/o. Pratap Mote,
 Age 37 years, Occu. Business,
 R/o. Kolher Road, Georai,
 Taluka Georai, District Beed

2. The State of Maharashtra
 Through the Officer Incharge,
 Georai Police Station, Georai,
 Taluka Georai, District Beed

.. Respondents
 (No.1 original accused)

Mr. Govind Kulkarni, Advocate holding for Mr.Devang R. Deshmukh,
 Advocate for Applicant/original informant;
 Mr. S. S. Thombre, Advocate for Respondent No.1/accused;
 Ms. V. N. Patil-Jadhav, A.P.P. for Respondent No.2/State

...

AND

APPLICATION FOR CANCELLATION OF BAIL NO.17 OF 2021

Dnyaneshwar alias Pintu s/o. Nivrutti Talekar,
 Age 39 years, Occu. Service with Krushi Seva
 Kendra at Madalmohi, Taluka Georai,
 District Beed

.. Applicant
 (Original Informant)

Versus

1. Jagdish s/o. Bhimrao Mote,
 Age 39 years, Occu. Agri.,
 R/o. Village Madalmohi,
 Taluka Georai, District Beed

2. Anil s/o. Bhimrao Mote,
 Age 49 years, Occu. & R/o. As above

3. Sham s/o. Anil Mote,
Age 20 years, Occu. & R/o. As above
4. The State of Maharashtra
Through the Officer Incharge,
Georai Police Station, Georai,
Taluka Georai, District Beed .. Respondents
(Nos.1 to 3 original
accused)

Mr. Govind Kulkarni, Advocate holding for Mr.Devang R. Deshmukh,
Advocate for Applicant/original informant;
Mr. S. S. Thombre, Advocate for Respondents Nos.1 to 3/accused;
Ms. V. N. Patil-Jadhav, A.P.P. for Respondent No.4/State

...

AND
APPLICATION FOR CANCELLATION OF BAIL NO.11 OF 2021

The State of Maharashtra,
Through Police Inspector,
Georai Police Station,
Taluka Georai, District Beed .. Applicant

Versus

1. Jagdish s/o. Bhimrao Mote,
Age 37 years, Occu. Agri.,
R/o. Madalmohi, Taluka Georai,
District Beed
2. Anil s/o. Bhimrao Mote,
Age 47 years, Occu. Agri.,
R/o. As above
3. Sham s/o. Anil Mote,
Age 18 years, Occu. Agri.,
R/o. As above .. Respondents
(Original accused)

Ms. V. N. Patil-Jadhav, A.P.P. for Applicant/State
Mr. S. S. Thombre, Advocate for Respondents Nos.1 to 3/accused;

...

AND
APPLICATION FOR CANCELLATION OF BAIL NO.10 OF 2021

The State of Maharashtra,
Through Police Inspector,
Georai Police Station,
Taluka Georai, District Beed

.. Applicant

Versus

Ganesh s/o. Pratap Mote, 35 years, Occu. Business,
R/o. Kolher Road, Georai,
Taluka Georai, District Beed

.. Respondent
(Original accused)

Ms. V. N. Patil-Jadhav, A.P.P. for Applicant/State
Mr. S. S. Thombre, Advocate for Respondent/accused;

...

CORAM : S. G. MEHARE, J.

DATE : 13-07-2023

PER COURT:-

1. Heard the learned counsel for the applicant/first informant, the learned A.P.P. for the State and the learned counsel for the respondents/accused.

2. The State and the first informant shall be referred to as 'the prosecution', and the respondent shall be referred to as 'the accused' for convenience.

3. The prosecution has filed Application Nos.18, 17, 11 and 10 of 2021 for cancellation of the bail granted to the accused by the learned Additional Sessions Judge, Fast Track Court, Beed, vide common order dated 04.11.2020 below application Exhibit-30 in

Sessions Case No.234 of 2019 and Criminal Bail Application No.653 of 2020 in respect of accused No.7, in connection with CR No.192 of 2019 registered with Police Station Georai, for the offences punishable under Sections 302, 352, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

4. The accused had filed the bail application vide Miscellaneous Criminal Application No.533 of 2019. The learned Sessions Judge was pleased to reject their bail application. They approached this Court to seek bail vide B.A.No.1405 of 2019. On hearing the respective counsels, this Court had expressed disinclination to grant bail. Hence, they withdrew the bail application and the application was dismissed as withdrawn as per the order dated 07.02.2020. Thereafter, the accused again moved an application for interim bail in view of the decision of the High Power Committee amid Covid-19, for releasing them during the Covid-19 pandemic. It was also rejected. Thereafter again, the aforesaid applications were filed before the learned Sessions Court, and the Court was pleased to release them on bail.

5. As far as accused No.7 Ganesh is concerned, he was absconding for about 17 months. His Bail Application No.653 of 2020 was also allowed.

6. The cancellation of the order granting bail has been sought mainly on the ground that the learned Additional Sessions Judge

did not consider the earlier order rejecting the bail by the learned Sessions Court as well as the High Court. Without assigning any reason for the change in circumstances, bail has been granted by incorrectly observing that filing an application for obtaining permission to take voice samples of two accused is one kind of prolonging the trial as well as keeping the accused behind bars for an uncertain period. The learned Sessions Judge also incorrectly observed that there was no material on record suggestive of the fact that in the event of accused persons being enlarged on bail, they may flee from Justice or may cause harm or dissuade the prosecution witnesses from deposing against them. Freedom of an individual cannot be curtailed for indefinite period, especially when the guilt of the accused persons is yet to be proved. He has incorrectly applied the ratio laid down in the case of ***Sanjay Chandra versus Central Bureau of Investigation (2012) 1 Supreme Court Cases 49***. He also discussed that it had been repeatedly held by the Hon'ble Supreme Court that the object of bail is to secure the appearance of the accused person at his trial by a reasonable amount of bail. The object of bail is neither punitive nor preventative. The Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment, which conviction will entail, the character of the accused, and the circumstances which are peculiar to the accused involved in the crime. However, the above-

settled principles deciding the bail application have not been applied in this case.

7. The learned A.P.P. and counsel for the prosecution have vehemently argued that once the bail application has been rejected by the Sessions Court or the High Court, unless there are substantial changes in circumstances, no further bail application could be entertained by the same Court. They also vehemently argued that producing the evidence subsequently found to the investigating Officer and making the further investigation is not barred, and it is not presumed that collection of the additional evidence is with a view to protract the trial as well as keeping the accused behind bars for uncertain period.

8. The learned A.P.P. referred to Section 173(8) of the Code of Criminal Procedure (for short, "Cr.P.C.") and added that the Investigating Officer has powers to place the material if any found after the charge sheet has been filed, pertaining to the crime, before the Court. Therefore, producing additional evidence is no change in circumstance. The settled principles of granting bail have been totally ignored. Since the trial was stalled due to the Covid-19 pandemic does not mean the trial was deliberately protracted. It has also been vehemently argued that the Court has examined the material in detail as if the Court was deciding the case on merit, which is not permissible while deciding the bail

application. The expression of reasons for granting bail should be kept distinct from giving reasons for a decision on merit. The Court need not evaluate the evidence for the decision of the bail. The Court has to examine *prima facie* material. However, the bail is decided on evaluating the evidence; therefore, the common order granting bail to accused No. 1 to 3 is perverse and arbitrary.

9. The prosecution has also argued that the accused no.7 was absconding for 17 months. However, the learned Additional Sessions Judge erroneously observed that it seems from the record that instead of making efforts to secure the presence of the accused No.7 Ganesh Mote by issuing a non-bailable warrant as well as proclamation under Sections 82 and 83 of the Cr.P.C., the trial Court committed the case against all the accused including accused No.7. The circumstances observed in paragraph No.32 of the order granting bail, were not the grounds for considering bail. There was ample evidence against the accused No.7. Lastly, they have argued that settled principles of granting bail and the gravity of the offence have not been considered. Hence, they prayed to allow the applications.

10. Per contra, the learned counsel for the accused has vehemently argued that there was no material progress in the trial. Hence, the learned Additional Sessions Judge has correctly considered the factum that the complainant intended to protract

the trial. There shall not be a pre-trial conviction, and the accused cannot be incarcerated in prison for an indefinite period. Filing an application for voice record was a deliberate attempt to protract the trial. Therefore, the learned Additional Sessions has correctly observed that if the opportunity is given to the prosecution to take the voice samples of the accused, in that case, it will take indefinite time for verification of the voice and receipt of the report from the expert. Filing of such applications by the prosecution itself was a change in circumstances. Though there were no specific findings as regards the change in circumstances, inference can be drawn from the above observations that those were the change in circumstances. The learned Additional Sessions Judge has also correctly observed that there was nothing on record justifying that on enlarging the accused on bail, they may flee from Justice or may cause harm or dissuade the prosecution witnesses from deposing against them. The right to freedom has been correctly considered, and the rule that 'jail is an exception and bail is rule' has also been correctly considered. The order granting bail supports the principles laid down by the Hon'ble Supreme Court in the cases of (i) ***Gurucharan Singh & Ors vs State (Delhi Administration), 1978 AIR 179***, (ii) ***State of Rajasthan, Jaipur vs Balchand @ Baliay, 1977 AIR 2447***, (iii) ***State Through C.B.I. vs Amaramani Tripathi, (2005) 8 SCC 21***, and latest judgment in the case of ***Sanjay Chandra*** (*supra*).

11. *It has been further argued that* considering the ratio laid down by the Hon'ble Supreme Court in the above cited cases, there is no room to argue that the order granting bail is perverse and arbitrary. It is also not the fact that the Court did not consider the material available on record or given weightage to the material which was not relevant to the case. There are no complaints against the accused for violating the bail conditions. Hence, this Court has no scope to interfere with the common order granting bail. The applications being devoid of merit are liable to be dismissed.

12. Before advertng to the controversy, it may be appropriate to discuss the law settled by the Higher Courts on the principles and considerations for granting and cancelling bail.

13. In ***Deepak Yadav vs The State Of Uttar Pradesh, AIR 2022 SC 2514***, the ratio laid down in the case of ***Prahlad Singh Bhati Vs. NCT of Delhi And Another 6, on the jurisdiction of bail, have been referred to. The relevant*** paragraph No.8 of the said judgment read thus;

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means

and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

14. Similarly, in ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another*** 15, in paragraph no.15 it has been observed thus;

"11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the

Court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) prima facie satisfaction of the Court in support of the charge."

15. In the case of '**Y**' **Vs. State of Rajasthan & Anr. 13** it has also been discussed in paragraphs Nos.22, 23 and 25, which reads thus;

"22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal (Supra), this Court observed as follows:-

25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a

fundamental premise of open Justice, to which our judicial system is committed, that factors which have 8 (2012) 9 SCC 446 9 (2013) 16 SCC 797 10 (2014) 16 SCC 508 11 (2017) 5 SCC 406 12 (2018) 10 SCC 516 13 Criminal Appeal No. 649 of 2022 decided on 19.04.2022 weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed.

Open Justice is premised on the notion that Justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct Justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion."
(emphasis supplied)

16. On cancellation of bail, the Hon'ble Supreme Court recorded the observations in paragraph No.30 of **Deepak Yadav's** case (*supra*), which reads thus;

"30. This Court has reiterated in several instances that 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 trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail

(which was already granted). A two-Judge Bench of this Court in Dolat Ram And Others Vs. State of Haryana 17 laid down the grounds for cancellation of bail which are :-

- (i) interference or attempt to interfere with the due course of administration of Justice*
- (ii) evasion or attempt to evade the due course of Justice*
- (iii) abuse of the concession granted to the accused in any manner*
- (iv) Possibility of accused absconding*
- (v) Likelihood of/actual misuse of bail*
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.*

17. In paragraph No.31 of **Deepak Yadav's** case (*supra*), following some illustrative circumstances were discussed,

"31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

- a) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*
- b) Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when*

there is prima facie misuse of position and power over the victim.

- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.*
- d) Where bail has been granted on untenable grounds.*
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to Justice.*
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.*

18. In the case of **Neeru Yadav Vs. State of Uttar Pradesh And Another 18**, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide cancellation of bail and observed in paragraph No.12 as under:-

“12...It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior Court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate

realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court”

19. The law is well settled that bail, once granted, should not be cancelled mechanically 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.

20. Let's now deal with the controversy about granting bail. A serious objection has been raised that the learned Additional Sessions Judge did not utter a single word on the rejection of earlier bail application and also avoided to give the reasons on the change in circumstance.

21. The burden was on the accused to plead and satisfy the Court that there were substantial changes in circumstance that entitled him to file successive bail applications. There shall be pleading in clear words. It shall not be vague. No inference can be drawn from the facts on which the bail is claimed by successive bail applications.

22. The successive bail application is not barred. However, the accused has to plead the substantial change in circumstance. The law seeks a change in circumstances for the reason that the

criminal Courts have no powers to review its previous order. In the case ***Hari Sing Mann V Harbhajan Sing Bajwa (2001) 1 SCC 169***, it has been held that the successive bail applications under Section 439 Cr.P.C. in the same FIR is not maintainable unless some changed circumstances are shown; otherwise, the exercise of jurisdiction to entertain successive bail application amounts to review of the previous order of the same Court which is not permissible.

23. The learned counsel for the accused has tried to convince the Court that the finding in paragraph No.34 indirectly is considering changes in the circumstances. The observations reveal that the Investigating Officer had moved another application to take the voice samples of two accused for verification as the complainant had found one mobile handset having recorded the conversation of accused Ganesh and Anil.

24. Section 173(8) of the Cr.P.C. empowers the Investigating Officer to continue with the investigation, and if he obtains further evidence, he shall forward to Magistrate further report or reports regarding such evidence.

25. Filing an application for recording the voice sample of the accused who were in Magisterial custody on getting further evidence cannot be a substantial change in circumstances. It was the duty of the Investigating Officer to produce the evidence

obtained after filing the charge sheet, which may help both the complainant and the accused.

26. A strange observation has been recorded by the learned Additional Sessions Judge that it was an attempt to protract the trial. He erroneously anticipated that it would take a long time to obtain the voice sample report. Giving go bye to the earlier orders of rejecting the bail on the material produced before the Sessions Court and the High Courts, the Court is of the opinion that the order granting bail recording the reasons mentioned above is perverse and arbitrary.

27. The substantial change in circumstances was not specifically pleaded. Hence, the arguments of the learned counsels for the accused that inference can be drawn from the findings of the Court on change in circumstance has no force.

28. Same way, granting bail to accused No.7, recording the reasons that police did not comply with Section 83 of the Cr.P.C. also appears against the settled principles of law granting bail. He was arraigned as an accused from the day of lodging the report. His conduct of remaining abscond for 17 months itself was the ground to refuse him bail. The allegations levelled against him were on par with accused Nos.1 to 3. Accused No.7 appears to be one of the accused who had played an active role in the crime. The police had collected conversations between him and accused No.2 Anil Bhimrao Mote. That evidence had a link with the alleged

crime. The settled principles of granting bail, as discussed above by the Hon'ble Supreme Court in the cases cited supra, appear to have been totally ignored, and bail has been granted as a matter of routine course. The object of bail is to secure the presence of the accused at the trial by a reasonable amount of bail would not be applied in the cases like this for the reason the gravity of the offence has not been considered.

29. The learned Additional Sessions Judge has observed that the Court has to keep in mind the nature of the accusation, the nature of evidence in support thereof, the severity of the punishment, which conviction will entail, the character of the accused, and the circumstances which are peculiar to the accused involved in that crime. Though these settled principles were discussed, the impugned order does not reveal that they have been followed in the present case.

30. This Court earlier considered the same material placed on record while refusing the bail. Therefore, on the same material, the successive bail application could not be entertained unless a substantial change in circumstance has been pleaded and brought to the notice of the Court. However, it was missing in this case. The learned Additional Sessions Judge has brushed aside this crucial legal requirement. The involvement of accused No.7 in the crime and his conduct of absconding for a long period of 17 months itself were the grounds to deny him bail, but those were

not considered, and bail has been erroneously granted.

31. The discussions made above lead this Court to arrive at the conclusion that the order granting bail, impugned before this Court, is perverse and arbitrary and without considering the principles of granting bail. Hence, the applications deserve to be allowed. Thus, the order:-

ORDER

- i) Applications for cancellation of bail Nos.18, 17, 11 and 10 of 2021 are allowed.
- ii) The bail granted to respondents/accused Nos. (1) Jagdish s/o. Bhimrao Mote, (2) Anil s/o. Bhimrao Mote (3) Sham s/o. Anil Mote and accused No.(7) Ganesh s/o. Pratap Mote, by the learned Additional Sessions Judge, Fast Track Court, Beed, by the impugned common order dated 04.11.2020, stands cancelled.
- iii) Their bail bonds and surety bonds stand cancelled.
- iv) The accused shall surrender before the learned Additional Sessions Judge, fast Track Court or the Court currently dealing with the trial on or before 18.08.2023.
- v) After their surrender, they have the liberty to file a fresh bail application before the learned Sessions Court, Beed.

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