

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

APPLICATION FOR CANCELLATION OF BAIL NO.57 OF 2023

MADHAV ARJUN JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S. C. Arora
APP for Respondent No.1: Mr. S. P. Deshmukh
Advocate for respondent No.2 : S. S. Chapalgaonkar

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CORAM : S. G. MEHARE, J.
DATE : 12.07.2023

PER COURT :

1. Heard the learned counsel for the applicant, learned counsel for the respondent No.2/accused and learned A.P.P. for the respondent State.
2. The applicant is seeking cancellation of the bail granted to respondent No.2 by the learned Additional Sessions Judge, Kopergaon, by its order in Criminal Bail Application No.56 of 2023 dated 13.02.2023.
3. The accusations against respondent No.2 were that lastly, he was seen in the company of the deceased; therefore, the presumption is against him that he has committed the crime. The prosecution has evidence of the CCTV footage in which the

applicant and the deceased were captured together, and another C.C.T.V. footage was also collected in which the deceased and the accused were seen going behind one Ashram, and the applicant was seen coming back alone.

4. The learned counsel for the applicant has vehemently argued that the learned Judge while granting the bail, passed the order in three sentences. The conduct of respondent No.2 that he denied that he was with the deceased, was serious material to deny the bail. The impugned order does not speak about the probability but only speaks that the charges levelled against respondent No.2 were serious. Injuries cannot be material at this juncture, and the injuries seen on the person of the deceased in *post mortem* report cannot be considered. The learned counsel for the applicant relied on the case of ***Deepak Yadav Versus State of Uttar Pradesh AIR 2022 Supreme Court 2514.***

5. In a nutshell, he has argued that the material aspects have not been considered while granting the bail. It was a mechanical order ignoring the material; hence, deserves to be cancelled.

6. Per contra, the learned counsel for the respondent No.2 accused would submit that the police have recovered the C.C.T.V footage from two places; one was in front of the village panchayat near the pan shop, which was subsequent in time of the CCTV footage captured showing the respondent No.2 and the deceased going towards Ashram. The deceased was found dead in the well behind the said Ashram; therefore, it was the correct observation of the Judge granting bail that the evidence of sole CCTV footage cannot be held to be *prima facie* material to infer the murder. He would also argue that nothing has been recovered from respondent No.2. Hence, also the learned Additional Sessions Judge has correctly granted him bail. There are no overwhelming circumstances to cancel the bail. He prayed to dismiss the application.

7. The learned A.P.P. referred to the statement of Chandrakant Laxman Jadhav, a relative of the deceased, and tried to point out that respondent No.2 was the only person who was lastly in the company of the deceased. The offence is serious; hence, the bail may be cancelled.

8. Before advertng to the ground raised for cancellation of bail, it would be appropriate to discuss the law

laid down by the Supreme Court in the case of ***Deepak Yadav Vs. State of Uttar Pradesh AIR 2022 Supreme Court 2514*** relied on the learned counsel for the application on cancellation of bail. Law laid down in the said case was 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 the trial. In case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Cancellation of bail cannot be limited to the occurrence of supervening circumstances. 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.

9. In the above case, the case of **Prahlad Singh Bhati Versus NCT of Delhi And Another 6**, has also been referred to, and paragraph No. 8 of the said case has been reproduced;

“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 interest of the public or State and similar other considerations. It has also to be kept in mind that for the purpose 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.”

10. In the said case, it has been observed that

“ 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 witnessed being tampered with the larger interests of the Public or State and similar considerations.”

11. In this case, the learned counsel has advanced a vehement argument for the applicant that reliable evidence of CCTV footage capturing respondent No.2 and the deceased together before the incident has been taken very lightly. The gravity of the offence and its punishment has also not been considered. The presence of respondent No.2 accused has also been totally neglected. The peculiar circumstances of

togetherness before the incident have also not been properly appreciated. The crime was serious & the said aspect was also not considered.

12. The factum of the case based upon the evidence has been heavily relied upon by the applicant reveals that the deceased and accused were captured in C.C.T.V. footage going behind one Ashram where the dead body of the deceased was found in a well, was first in time and then subsequently the deceased was seen in front of the pan shop and then the applicant accused came there, and thereafter the alleged incident happened. Considering the timing of two CCTV footage, there appears substance in the argument of the learned counsel for the applicant that it is improbable at this juncture to believe that respondent No.2/accused was last seen together with the deceased.

13. Reading the ratio laid down in the case of the Prahlad Singh Bhati Versus NCT of Delhi and Another 6, cited (supra) the Supreme Court has settled the principles that the circumstances of each case shall be considered separately. The order rejecting bail shall not be perverse and arbitrary. Nothing is against the applicant that he was an influential person with bad

character and antecedents to his discredit. There appears to be no possibility of tampering with the prosecution witnesses, and sole evidence of C.C.T.V footage has already been collected.

14. The facts and circumstances, as discussed above, permit the Court to exercise the discretion in favour of the accused, bearing in mind the principle that every accused is innocent till held guilty. The impugned order does not reveal that the bail was granted on untenable grounds and the irrelevant material has been considered or relevant material has been brushed aside. The sole evidence of C.C.T.V footage has been considered while granting the bail.

15. After having regard to the law laid down in the case of Deepak Yadav Versus State of Uttar Pradesh cited (supra) and the facts and circumstances of the case, the Court is of the view that the order granting bail is neither arbitrary nor perverse. There were no overwhelming circumstances to curtail the liberty granted to the accused by the Court granting bail. Considering the facts, circumstances, and legal positions, the Court is not convinced that the order granting bail warrants interference at the hands of this Court.

16. Hence for the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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