

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.66 OF 2022
IN BA/1735/2021

Rukmangad s/o. Subhash Birajdar,
Age 33 years, Occu. Agri.,
R/o. Dongargaon, Taluka Nilanga,
District Latur

.. Applicant

Versus

1. The State of Maharashtra
its Investigation Officer,
S/or Police Sub-Inspector,
Police Station Kasar-Shirshi,
Taluka Nilanga, District Latur

2. Waman s/o. Dhondiba Birajdar,
Age 60 years, Occu. Agri.,
R/o. Dongargaon, Taluka Nilanga,
District Latur

.. Respondents

Mr. Ganesh V. Mohekar, Advocate for Applicant;
Mr. S. B. Narwade, APP for Respondent No.1/State;
Mr. Shrikant G. Kawade, Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 09-03-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/accused.

2. The applicant is seeking cancellation of bail granted to respondent No.2 by order passed in B.A.No.1735 of 2021 dated 21.01.2022, on two grounds, namely, (i) suppression of the registration of the crime and (ii) breach of condition that respondent No.2 shall not tamper with the prosecution evidence.

3. The learned counsel for the applicant would submit that a day before the incident, the crime was registered against present respondent No.2 and on the next day, another crime happened in which he was arrested and released. At the time of securing bail, respondent No.2 had suppressed the fact of crime registered against him.

4. To buttress the arguments, the learned counsel for the applicant relied on a case of ***Kishore Samrite Versus State of U.P. & Ors. Criminal Appeal No.1406 of 2012 decided on 18.10.2012.*** In the said case, ratio has been laid down that securing the orders from the Court, suppressing the material facts, is void ab-initio and such order may be recalled.

5. Secondly, the learned counsel for the applicant has an argument that after release, respondent No.2 threatened one of the witnesses, namely, Manohar Birajdar. He lodged report of the said incident. One NC was also lodged against present respondent No.2.

6. He relied on the case of ***Ms. P Versus State of Madhya Pradesh, AIR 2022 Supreme Court 2183*** and vehemently argued that there are various grounds enunciated in paragraph No.24 of the said judgment sufficient for cancellation of bail. Reading the said paragraph as a whole, it appears that the applicant has misused the liberty. He attempted to tamper with the evidence. He threatened the witnesses. Therefore, his bail is liable to be cancelled.

7. The prosecution has also supported the arguments and the case of the applicant. The copies of the alleged NCs have been placed on record. The application for cancellation of bail deserves to be allowed.

8. Per contra, the learned counsel for respondent No.2/accused would argue that he never suppressed the fact of any crime registered against him. The first information report registered on 06.07.2021, was registered after his report, to counter the same. They were never called upon for the said offence registered on 06.07.2021. The present incident is dated 07.07.2021 and on the very same day, the applicant was arrested. They had no knowledge about the registration of the crime dated 06.07.2021. That apart, the prosecution had brought this fact to the notice of the Court while considering the bail application. As far as NC is concerned, the witness is a relative of the first informant. The

another NC allegedly lodged on 17.03.2022 is also false. The allegations in the said NC have no direct or indirect connection with the alleged tampering with the witnesses in the present case. The applicant and the respondent are the relatives. They are fighting over a long period. The applicant and his family were not living a single stone unturned. The application is not *bona fide*. It was filed with an ulterior motive to see the applicant behind bar. Respondent No.2 has neither suppressed the fact nor tampered with the prosecution witnesses. Hence, the application is liable to be dismissed.

9. The law as regards the cancellation of bail is well settled by the catena of judgments of the Honourable Supreme Court. The bail is ordinarily not cancelled unless there are overwhelming circumstances, the order granting bail is arbitrary and perverse. The list given by the Honourable Supreme Court in the case of Ms. P. (*supra*) is illustrative and not exhaustive.

10. As far as the allegations of suppression of facts are concerned, this Court while granting bail has specifically observed that the learned A.P.P. had brought to its notice about the pendency of the counter case. The report dated 06.07.2021 was lodged to counter a report lodged by the applicant. Neither the prosecution nor the applicant has material to show that the applicants were either called or arrested in the said FIR No.184 of 2021. It appears that respondent No.2 was not knowing about the

registration of the crime on 06.07.2021, but the learned A.P.P. has discharged his duty honestly and brought this fact to the notice of the Court while hearing the bail application. Considering the circumstances cumulatively, it cannot be believed that respondent No.2 had suppressed the fact of registering a crime from the Court while seeking bail.

11. As far as threats to the witnesses and tampering with the evidence is concerned, the NC which has been placed on record bearing No.122 of 2022 dated 17.03.2022 shows that on 16.03.2022, the first informant in this case quarreled with respondent No.2 and others over running the tractor through the field. It was apparently a separate cause of action. Registering of N.C. lodged on the report of one of the witnesses Manohar Birajdar is concerned, it has been alleged therein that the said witness has been threatened on mobile handset by *WhatsApp* message. The said witness appears to be in relation i.e. relative of present applicant. He did not produce the evidence to corroborate the statement of threats on *WhatsApp* messages and call. In the circumstances, the possibility of lodging incorrect report for securing cancellation of bail cannot be denied. Whatsoever the material produced on record by the applicant to prove the allegations of tampering with the prosecution witnesses, this Court is of the view that it is insufficient to believe the case of the applicant.

12. It cannot be said that bail order was obtained by suppressing fact and respondent No.2 threatened the witnesses as alleged. The applicant could not point out the perversity and arbitrariness in the bail order. There are no overwhelming circumstances to cancel the bail. Hence, for the above reasons, the application for cancellation of bail stands dismissed.

(S. G. MEHARE)
JUDGE

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