

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

APPLICATION FOR CANCELLATION OF BAIL NO. 74 OF 2023

Balasaheb Navnath Palve

.. Applicant.

Versus

The State of Maharashtra and another

.. Respondent

Mr. N.B. Narwade, Advocate for the applicant

Mr. Rajendra Deshmukh, Senior Advocate holding for

Mr. G.A. Kulkarni and Mr. D.R. Deshmukh, Advocate
for respondent No.2.

Mr. S.B Narwade, APP for the State.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 26th October, 2023

PRONOUNCED ON : 31st October, 2023.

ORDER :-

1. The applicant/original complainant impugns the order dated 9th March, 2023 passed by the Additional Sessions Judge, Ahmednagar in Criminal Bail Application No. 1969 of 2022 below Exh.1, by which the respondent No.2 Sunil Eknath Palve, has been granted bail in Crime No. 559 of 2022 registered with Police Station, Pathardi, Dist. Ahmednagar for the offence punishable under Sections 302, 307, 326, 120-B, 212, 143, 147, 148, 149, 504, 506 r/w. 34 of IPC, Sections 4 and 25 of the Arms Act and Section 7 of the Maharashtra Prevention of Defacement of Property Act, 1995.

2. On the information given by one Balasaheb Navnath Palve, the investigation in the aforesaid crime was progressed. In nut-shell, it is alleged that on 18.6.2022, the elections of the Vividh Karyakari Sahakari Society, Deorai, were held. The panel, namely, Shree Balaji Shetkari Mandal was elected. The victory procession of the elected panel was going on. The informant's family members had participated in such procession. When it reached in front of the house of the defeated candidate, namely, Anil Eknath Palve and Sunil Eknath Palve, suddenly, the accused persons raised attack on the participants of the procession. They were armed with deadly weapons like sword, knives, daggers, axe, wooden logs, sticks etc. Due to such attack, Ajay Goraksh Palve suffered fatal injuries, whereas, Manohar Navnath Palve, complainant Balasaheb, Vaibhav Kailas Palve, Vishnu Kailas Palve and Sanket Anil Palve, suffered injuries.

3. On the basis of aforesaid information, the crime was registered with police Station, Pathardi, Dist. Ahmednagar. The respondent No.2 Sunil Eknath Palve and other accused were arrested in pursuance of the registration of crime. The investigation progressed. Charge sheet came to be filed against in all 16 accused persons, including the respondent No.2. The respondent No.2 thereafter, moved the bail application No. 1969 of 2022 before the Sessions Court at Ahmednagar for grant of regular bail, which came to be favourably considered and the respondent No.2 has been released on bail.

4. Mr. N.B. Narwade, learned counsel appearing for the applicant assails the order granting bail in favour of the respondent No.2. He would urge that the offence is serious. The respondent No.2 was

member of an unlawful assembly, who raised attack on the victims. The injured Ajay lost his life. Many others are injured. The respondent No.2 was holding deadly weapon like sword in his hand and inflicted blows on both the hands of injured Manohar. It is also a matter of record that the respondent no.2 was holding fire arm in his hand, as stated by the some of the witnesses. The injuries suffered by Manohar are grievous in nature. Mr. Narwade would further urge that learned Sessions Judge wrongly applied the principle of parity in the facts of the case. He would point out that although accused Anil Eknath Palwe was enlarged on bail by order of the Sessions Court in Criminal Misc. Bail Application No. 1790 of 2022, this Court cancelled his bail vide order dated 28.3.2023 passed in ACB No. 243 of 2022. He would further submit that so far as grant of bail to accused Suresh is concerned, this court observed that he is alleged to have caused simple injury. The role attributed against the respondent No.2 cannot be equated with the role of accused Suresh. He would, therefore, urge to cancel the bail granted in favour of the respondent No.2 – Sunil Palve.

5. Mr. R.S. Deshkukh learned Senior Advocate for respondent No.2 would submit that the parameters for cancellation of bail are different than for grand of bail. He would submit that in absence of overwhelming circumstances there can be no interference in the order granting bail. He would further submit that the learned Sessions Judge has recorded elaborate reasons in support of the order granting bail. As such, he supports the impugned order.

6. It is trite that once bail is granted, only for exceptional circumstances such order can be interfered if while granting bail the

principles governing such proceedings are not adhered to and the important material pressed into service has not been considered. The discretionary relief in favour of the accused need not be interfered in absence of substantive defect in the order. Cancellation of bail can be mechanical unless the court is satisfied about the supervening and overwhelming circumstances warranting for cancellation of bail. However if the order granting bail sans reasons or is passed in ignorance of the substantive material, the interference by the higher court is permissible.

7. Now turning back to the facts of the present case, the allegations incorporated against respondent No. 2 in the FIR would show that he is alleged to have inflicted blows on both the hands of injured Manohar. The injury certificate of Manohar shows that he has suffered grievous injury on both the hands. Pertinently, there is no allegation in the FIR that the respondent No.2 has played any role in causing injury to deceased - Ajay. Although the allegations against respondent No. 2 regarding assault against Manohar are supported by medical evidence, the injuries suffered by Manohar are not on vital part. Further, the statement of injured Manohar recorded under Section 364 of Cr.PC. differs from the version in the FIR. Manohar, in his statement under section 164 states that respondent No.2 Sunil inflicted blow on his right hand and attributes another blow by different person that is Ganesh. Perusal of the impugned order would show that the aforesaid aspects are duly considered by the Session Court.

8. The next contention raised on behalf of the applicant is that, the Sessions Court wrongly applied principles of parity while granting bail in favour of respondent No.2. Perusal of the record reveals that the

Sessions Court granted bail to accused Anil and accused Suresh, prior to dealing with bail plea of respondent No.2. However, bail granted to accused Anil is lateron cancelled by order of this court observing that accused Anil had played vital role in causing injury to deceased Ajay. This court has further observed that the accused Anil had applied full force to stab the deceased using deadly weapon like sword. Prima facie intention on the part of accused Anil in causing death of deceased Ajay was noted by this court. So far as bail granted to accused Suresh is concerned, this court observed that he was found responsible in causing simple injury. The order grinding bail to accused Suresh has attained finality.

9. The aforesaid aspects of the matter would show that the bail granted to accused Anil is cancelled because he played a vital role in causing death of deceased Ajay. No role is attributed against the respondent No.2 so far as injury suffered by deceased Ajay is concerned. Perusal of the Charge Sheet would show that the statements of many eye witnesses are recorded during the course of investigation. Witness Rajendra Palve alleges that respondent No.2 Sunil was holding revolver in his hand. Admittedly such attribution is absent in the FIR. Perusal of the statement of witness Vishnu, Rajendra Rishikesh Ankush Avinash and Vaibhav depict that there is no allegation against respondent No.2 regarding use of sword by respondent No.2. Prima facie consideration of the material depicts inconsistency regarding role attributed against respondent No.2. Therefore, even ignoring the ground of parity the discretion exercised by the learned Sessions Judge does not call for any interference.

10. As indicated above, the supreme court of India in the case of ***Ramachandran versus state of Madhya Pradesh (2004) 13 SCC 617 and***

Daulatram Vs. State of Haryana (1995)1 SCC 349, broadly laid down the principles governing the cancellation of bail. Once it is found that the order is supported by clear reasoning and discretion is exercised in fair and proper manner, the order granting bail cannot be interfered.

11. The reasoning adopted by the Sessions Court depicts that the material available in charge sheet in support of the prosecution and in favour of the accused is duly considered. It cannot be said that the bail is granted only on the ground of parity. In the present case it can be observed that because of the dispute in Society Election when the procession came in front of the house of the accused persons belonging to defeated panel the scuffle arose between two groups. There is counter complaint regarding the same incident. In that view of the matter, no case is made out for interference in the impugned order.

ORDER

12. The application for cancellation of bail stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-