

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

**APPLICATION FOR CANCELLATION OF BAIL NO.98 OF
2023**

VINOD S/O DHANNULAL JAISWAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. D. M. Shinde, Advocate for the Applicant.
Mr. S. B. Narwade, APP for Respondents-State.
Mr. S. G. Bobade, Advocate for Respondent No.2.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th OCTOBER, 2023.**

PER COURT:-

1. The present application takes exception to the order passed by the Sessions Court granting bail in favour of respondent/accused in Bail Petition No.392/2023 dated 10.03.2023.

2. Mr. Shinde, learned Advocate appearing for the applicant submits that the respondent is accused in heinous offence punishable under Section 302 r/w 201 of the Indian Penal Code. He would submit that the material in the charge-sheet is sufficient to establish strong motive of respondent for commission of the murder. He would submit that there is recovery of the weapon. The circumstantial evidence surfaced on record is indicative of involvement of the applicant in commission of the offence. He would point out that there is discovery of gold ornament at the instance of the respondent/accused under memorandum of panchanama conducted as per Section 27 of the Evidence Act. The disclosure statement of the applicant has lead

to the discovery of the clinching material. He would, therefore, urge that the learned Sessions Judge has erroneously exercised his discretion while releasing the respondent/accused on bail.

3. Mr. Bobade, learned Advocate appearing for the respondent/accused submits that the learned Sessions Court has exercised discretion in judicious manner after considering the entire material in the charge-sheet. He would submit that the evidence on record is not sufficient to bring home guilt against the applicant. As such, on *prima facie* consideration of the aforesaid facts, the order of enlargement of the bail has been passed, which do not require interference at the hands of this Court.

4. Having considered submissions advanced and reasoning adopted under impugned order, apparently the FIR had been registered against the unknown persons. The supplementary statement of the informant was recorded after two days stating that the suspects named had strong motive in commission of the murder. The applicant was arrested in pursuance of the aforesaid crime on 03.12.2022. He was remanded to police custody till 07.12.2022. During his police custody, his memorandum statement alleged to have been recorded leading to the discovery of the gold ornament i.e. ear tops. The motorcycle is also seized on the basis of the closure statement of the applicant.

5. The learned Sessions Judge has considered aforesaid evidence while dealing with the plea for grant of bail. It is observed that the weapon of offence is recovered at the instance of the co-accused. The gold ring is recovered at the instance of the co-accused Dinesh. However, there is nothing on record to show that the applicant was in the company of the co-accused persons

from whom incriminating articles are recovered. The learned Sessions Judge has further observed that although motorcycle is recovered on the basis of the disclosure statement of the applicant, no evidence brought on record to show that the said motorcycle was found near the dead body of the deceased. The learned Sessions Judge has further observed that the better evidence in the form of mobile tower location i.e. CDR, SDR could have been procured to show the presence of the applicant nearby the spot of the incident or the communication with the co-accused persons at the relevant time. However, such evidence is not made part of the charge-sheet.

6. It is, therefore, apparent that learned Sessions Judge has given due consideration to the material placed into service by prosecution and recorded observation that evidence in charge-sheet is bereft of completing chain of circumstances that required in the cases based on circumstantial evidence, accordingly exercised discretion to grant bail. It is not the case of the applicant that any important piece of evidence has been ignored or missed from consideration of the learned Sessions Court, which could have affected the decision making process. The learned Sessions Judge appears to have observed principles of law governing to grant of bail and exercised discretion accordingly. It is trite that the bail granted to accused cannot be canceled only because second view is possible. Once Court granting bail has exercised jurisdiction in judicious manner, no interference is required. Hence, no case is made out to interfere in the impugned order. Hence, the application is rejected.

7. The learned APP at this stage pointed out that the accused has breached the condition of granting bail. In such case, it would be open for the prosecution/complainant to move

appropriate application before the Sessions Court seeking cancellation of bail in terms of Section 439 (2) of the Criminal Procedure Code.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2023