



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

APPLICATION FOR CANCELLATION OF BAIL NO.132 OF 2023

1. Somnath s/o Chudaman Here,
age 45 years, Occ. Business,
R/o Ravindranath Tagore Colony,
Basmat, Tq. Basmat,
Dist. Hingoli. Applicant.

VERSUS

1. The State of Maharashtra,
Through Basmat City Police station,
District Hingoli.
2. Yash s/o Chandrakant Chahad,
age 20 yrs, Occ. Education,
R/o New Irrigation Colony, Basmat
Tq. Basmat, Dist.Hingoli.
3. Omkar s/o Narayan Mohite,
age 20 yrs, Occ. Education,
R/o New Irrigation Colony, Basmat
Tq. Basmat, Dist. Hingoli.
4. Yuvraj s/o Gangadhar Kadam,
age 20 yrs, Occ. Education,
R/o Shrinagar Colony, Basmat,
Tq. Basmat, Dist. Hingoli. Respondents

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Advocate for Applicant : Mr. D.M. Shinde
APP for Respondent : Ms. P.J. Bharad
Advocate for Respondents no.2 to 4 : Mr. G.K. Naik Thigle

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: December 14, 2023

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ORDER :-

1. The order dated 16.6.2023 passed by the learned Additional Sessions Judge, Basmathnagar, District Hingoli in Criminal Bail Application No.150 of 2023 thereby granting regular bail to respondent nos.2 to 4 is subjected to challenge in this application.

2. On the information given by Somnath Here stating that his son Omkar pursuing his education in the 12th standard. On 16.5.2023 at about 7.15 pm Omkar was walking towards home. Accused Yash Chandrakant Chahad and Yuvraj Kadam intercepted him and asked to accompany them on their motorcycle. They proceeded towards Takalgaon. Accused Omkar Mohite and another accused Jagtap followed them on another motorcycle. Witnesses namely Gangadhar and Nagesh noted that 8 to 10 persons were assaulting Omkar in field, however, they did not interfere. It is further alleged that since Omkar did not return home, even his cell phone gone off, his friend Vicky Kadam was contacted on mobile phone. He informed that accused persons took him on motorcycle towards Basmath road. The informant searched him near by Cambridge college, where he was found injured. On inquiry about injuries, he told that initially accused Yash Chahad and Yuvraj Kadam assaulted him by fist and kick blows, whereas accused Omkar and Jagtap assaulted him by stick and iron rod. Thereafter, accused Yash Chahad and Yuvraj Kadam also beat him by iron rod and sticks and then left him in the field. Assault was made under the pretext that Omkar had messaged

to the sister of Chandrakant. It is further alleged that Omkar was immediately shifted to Dasare Hospital at Basmathnagar for Treatment of injuries, then, he was shifted to Yashosai Hospital at Nanded where he took his last breathe. On the basis of the aforesaid information, crime no.253 of 2023 has been registered for the offence punishable under section 302, 364, 201, 34 of the Indian Penal Code.

3. On arrest of respondents/accused in pursuance of the aforesaid crime, they applied for grant of regular bail before the learned Sessions Judge, at Basmathnagar vide criminal bail application no.150 of 2023. The learned Sessions Judge allowed the application and released them on regular bail vide order dated 16.6.2023. Aggrieved respondent/informant approached this Court challenging the order granting bail on merits.

4. Mr. Shinde, learned counsel appearing for the applicant would submit that in an incident dated 16.5.2023 Omkar i.e. son of the informant was mercilessly beaten by the accused persons using iron rod and sticks. Postmortem report shows as many as 68 injuries on the person of the deceased Omkar. He would submit that cause of death is apparently multiple injuries. He would submit that CCTV footage clearly show that victim Omkar was carried by accused persons on their motorcycle before occurrence of the incident. Statement of witnesses show that victim was lastly seen in the company of the accused persons. Blood stained clothes of accused persons

were seized during the course of the investigation. Even, weapon of offence was recovered from accused no.1. In spite of such a glaring evidence on record, the learned Sessions Judge allowed prayer for grant of bail within the period of one month from the date of incident when investigation was still at nascent stage observing that there is no possibility of absconding of the accused and there are no criminal antecedents. He would submit that, in a case of brutal murder, when there was sufficient material to indicate complicity of the applicants in commission of offence, a hasty decision is taken by the Sessions Court granting bail to accused persons. During the course of the arguments, Mr Shinde has placed on record charge-sheet indicating incriminating material against accused persons, which is sufficient to bring home guilt against them. Therefore, he seeks cancellation of bail by quashing and setting aside the impugned order dated 16.6.2023.

5. Per contra, Mr. Thigle, learned counsel appearing for respondents no.2 to 4 vehemently submits that FIR was lodged on the basis of hearsay information by father of the victim. Except the theory of last seen together, no material evidence was available. He would further point out that 8 to 10 persons alleged to have beaten the deceased, however, only four persons were named in the FIR, out of which only three are charge-sheeted. He would submit that, in fact, accused Yash is family friend of the victim and he has admitted him to the hospital. He would submit that the incident is dated 16.5.2023 at about 6.30 to 7 pm, then victim was shifted to the

critical care center at Nanded and declared dead on 17.5.2023 at about 1.50 am. However, FIR is belatedly lodged. The learned Sessions Judge after taking into account material parameters for grant of bail, exercised his discretion in favour of the respondents. Mr. Thigle, learned counsel relying upon the judgment in the case of **Dolat Ram and others Vs. State of Haryana reported in (1995) 1 SCC 349** submitted that once bail is granted, the cancellation shall be for exceptional reasons. He would further place his reliance on judgment of the Supreme Court of India in the case of **X Vs. State of Telangana and others reported in AIR 2018 SC 2466** to contend that in absence of supervening circumstances warranting cancellation of bail, the order granting bail has to be maintained. He would then place his reliance on the judgment in the case of **Dattaram Singh Vs. State of Uttar Pradesh and another reported in (2018) 3 Supreme Court Cases 22** to contend that human approach needs to be kept in mind. Once discretion is exercised in judicious manner and there is no supervening circumstances requiring cancellation of bail, no interference was required by higher Court.

6. Having considered the submissions advanced, what can be noticed in the present case is that, FIR clearly stipulates allegations against respondent nos.2 to 4 being the assailants of the deceased, who was a young boy pursuing his education for the 12th standard. FIR is lodged on the basis of narration of Vicky Kadam, who was friend of the victim. Statement of Vicky @ Vikrant Kadam clearly stipulates that

accused persons took deceased on their motorcycle. Investigation papers further reveals that CCTV footage was available indicating that deceased was carried on motorcycle by the accused persons. After registration of FIR, accused persons were arrested. Their blood stained clothes were recovered. Postmortem report indicates that deceased had suffered as many as 68 injuries. There is recovery of iron rod at the instance of the accused no.1. Prima facie, there was sufficient material to show complicity of respondent nos.2 to 4 in commission of the offence. Accordingly, they were arrested.

7. In this background, respondent nos.2 to 4 had moved an application for grant of bail. The learned Sessions Judge released them on bail vide impugned order dated 16.6.2023. Perusal of the reasoning adopted by the learned Sessions Judge shows that only three factors are taken into account. Firstly, there is no possibility of tampering of the evidence, there are no criminal antecedents and accused are in the age group of 20 years and not the hardened criminals. Evidently, merits of the case are not at all considered. Pertinently, respondent nos.2 to 4/accused persons are released within one month of registration of the offence although sufficient evidence indicating their complicity was brought to the notice of the learned Sessions Judge. When application for bail moved by the accused persons in serious offence of murder punishable with imprisonment for life or death particularly when investigation was at the preliminary stage, it is surprising that accused persons are enlarged on bail without touching to

the merits of case. The reasoning adopted by the Sessions Court while granting bail cannot be continuanced. Apparently, exercise of discretion by the learned Sessions Judge is dehorse the basic parameters required to be considered while granting bail.

8. The Supreme Court of India in the matter of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee and others reported in AIR 2011 SC 274** laid down the principles for grant of bail. Paragraph no.11 which states as under :-

“11. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.”

9. Similarly, the Supreme Court of India in the matter of **Imran Vs. Mohammed Bhava and others reported in 2022 (2) Crimes 209 (SC)** while considering cancellation of bail already granted by the lower court made certain observations in paragraph no.26, which reads as under :-

“26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles.”

10. If the aforesaid principles of law are applied to the facts of the present case, it can be observed that while considering the application for grant of bail, the learned Sessions Judge has completely lost sight of the basic principles. In the present case, 68 injuries are seen on the body of a young boy aged about 18 years. He was brutally and mercilessly beaten only under the pretext that he has messaged to the sister of one of the accused. Material on record which was before the Sessions Court in support of contents of the FIR was more than sufficient to believe that the respondents/accused were assailants. Investigation in the matter was at primary stage. The offence is punishable with death penalty. In this background, release of the respondents within the period of one month only recording the reasons that there is no possibility of tampering or there are no criminal antecedents cannot be justified. Although, Mr. Thigle, learned counsel appearing for the respondents strenuously contended that bail granted is not misused by the respondents/accused or there are no supervening events requiring cancellation of bail, for the

reasons as stated above, order granting bail cannot be sustained. Hence, following order.

ORDER

- i. The application for cancellation of bail is allowed.
- ii. The impugned order dated 16.6.2023 passed by the learned Additional Sessions Judge, Basmathnagar, District Hingoli below Exhibit-1 in Cri. Bail Application No.150 of 2023 granting bail to the respondents/accused nos.2 to 4 in crime no.253 of 2023 dated 17.5.2023 registered with Basmath City Police Station for the offence punishable under sections 302, 364, 201, 34 of the Indian Penal Code is hereby quashed and set aside.
- iii. Respondents/accused nos.2 to 4 shall surrender before the Sessions Court within a period of (4) four weeks from the date of this order. After surrender, the respondents/accused nos.2 to 4 shall be at liberty to move afresh before the Sessions Court for grant of regular bail. In case of filing of such an application, the learned Sessions Judge shall pass appropriate orders in accordance with law on merits after considering the material against each of the accused in the charge-sheet.

- iv. Application for cancellation of bail is accordingly disposed off.
- v. At this stage, learned advocate for the respondents, after passing of the order, prays that, operation of this order be suspended for a period of six weeks from today. However, for the reasons stated in the order, the prayer stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

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