

JPChavan

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

909 CRIMINAL APPLICATION NO.2698 OF 2022
IN

CRIMINAL APPEAL NO. 429/2021

BHAVESH DHANSINGH SONAWANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Chavan Rajendra N.
APP for Respondents State: Mr. R. V. Dasalkar
Advocate for Respondent no.2 : Mr.Jaju Hemant H. & Somani Yogesh G

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 8th March, 2023

ORDER:

1. Present application has been filed under section 439(2) of the Criminal Procedure Code for cancellation of bail.
2. This Court had granted pre-arrest bail to respondent no.2 in Criminal Appeal No. 429 of 2021 on 20.10.2021. The present respondent no.2 sought pre-arrest bail in Crime No.180/2021 registered with Bhadgaon Police Station, District Jalgaon for the offences punishable under sections 394, 294, 279, 352, 323, 504, 506 read with section 34 of the Indian Penal Code and Sections 3(1)(r),3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989. While allowing the appeal granting pre-arrest bail, the Court had imposed following conditions:

“a) The appellant shall not tamper the prosecution witnesses in any manner.

(b) The appellant shall not enter within the local limits of village Kajgaon, Taluka Bhadgaon, District Jalgaon till the investigation in connection with crime no. 0180 of 20121 is completed.

(c) The appellant shall attend the concerned Police Station once in a week on every Sunday between 8.00 a.m. to 11.00 a.m. and he shall also make himself available as and when called by the Investigating Officer for making further investigation till filing of the charge-sheet.”

3. The applicant has now come with a case that respondent no.2 is posting threatening messages on mobile- WhatsApp status, Facebook story etc. with an intention to threaten the applicant and thereby there is breach of term (a) i.e. the appellant/respondent No.2 shall not tamper the prosecution witnesses in any manner. It is also contended that respondent No.2, who is original accused No.2 in the crime, is related to a political party and on that ground also pressurizing tactics are being adopted. The applicant states that he has a threat to his life because of those WhatsApp/Facebook posts and thereby, liberty granted to respondent no.2 is being misused by him.

4. Heard Mr. Rajendra Chavan, learned Advocate (appointed) for the applicant . Perused all the documents.

5. It will not be out of place to mention here that affidavit was filed by Mr. M. Rajkumar, Superintendent of Police in response to the present application and he submitted that the complaint application which was filed by the present applicant on 24.02.2022 was handed over to the Investigating Officer i.e. Deputy Superintendent of Police, Mr. Bharat Kakade of Pachora Sub Division who is also in-charge of Chalisgaon Sub Division, to enquire into it. Further, by order dated 28th February, 2023, we directed the Deputy Superintendent of Police, Pachora Mr. Bharat Kakade to file affidavit about the steps he has taken after the District Superintendent of Police had sent the complaint application for enquiry. Now Mr. Bharat Kakade has also filed his affidavit. Surprisingly, he has stated that he had forwarded the said complaint filed by the complainant to Bhadgaon Police Station for enquiry on 28.02.2022 and now after enquiry he has found that enquiry has not been conducted by the Police Department in the complaint. According to him, the reason is that frivolous complaints were filed by both sides i.e. applicant as well as respondent no.2 in the past. He states that there was perception in the police department that both the parties were using the police machinery as well as Human Rights Commission to settle their personal scores by levelling

allegations against each other. Mr. Bharat Kakade has tendered unconditional apology.

6. At the outset we would like to say that the applicant wants to rely on the photographs at page No. 28 to 33 to support his contention that on the social media, respondent no.2 is posting threats which are in fact directed against the applicant. Unfortunately, all these photographs do not bear date, they are not supported by affidavit of a person from whose Facebook account they were taken. During the course of submission, one more document has been tendered which is copy of page no.29 but now another page has been added stating that it is a screenshot and it has been taken on 20th November, 2021 at 23.47 Hrs. However, it does not show that it is from Facebook account of one Durgesh Mahajan. Now, when we again made enquiry, the learned Advocate for the applicant is submitting that it is taken from the WhatsApp account of a common friend. We are in fact not convinced with these things. When certain posts or screenshots or anything are coming from the electronic device/instruments, then even for prima facie support, there has to be a complete story and it should be supported by necessary affidavit of those persons from whose WhatsApp account or Facebook account or any other social media account, it is taken.

7. At this stage, we further say that there is no certificate under section 65-B of the Evidence Act. Therefore, all these documents cannot be considered. However, the fact remains that the applicant had made a proper complaint with the police authorities. It appears that the police authorities, stating flimsy grounds, have not considered the seriousness of the complaint. There cannot be a premeditated approach to deal with the complaint especially when this luxury is not available to the police department. It is their job to make enquiry in respect of each and every complaint that would be filed with them and then only they can come to conclusion that this is frivolous or not. Branding such complaint as frivolous in advance, shows negligence in duty. Further, the District Superintendent of Police had handed over the said complaint for enquiry to the Dy. S.P. who was in fact, the investigating officer, then the Dy.S.P. Mr. Bharat Kahade ought to have handed it over to the police station for enquiry. If there is breach of term of bail condition, then, it is for the investigating officer to take up immediate steps. He cannot ask such enquiry to be conducted by a different person. Even if he takes up that path, then he should keep a track. It appears that after this Court had passed the order, he woke up and then made enquiry with the police station about the said complaint application. We are of the prima facie opinion that this amounts to negligence in duty. Unfortunately, if an untoward incident took place,

then who would be responsible for the inaction would be a question. He has also filed copy of the report of Bhadgaon Police Station dated 23.03.2022. If we consider its reference, it appears that it is on the basis of the complaint dated 24.02.2022 given by the present applicant against respondent no.2, but still he makes a statement in para no. 6 of the Affidavit that the enquiry was not carried out in respect of the complaint application. If we consider that report, it shows that since respondent no.2 is giving threat to the applicant through social media, it was suggested to have application for cancellation of bail and that report was addressed to Dy. S.P, Chalisgaon, that means Mr. Bharat Kakade who is holding the charge of Chalisgaon. He himself has produced that report but has not made a statement as to what action he had taken on the said report dated 23.03.2022. Therefore, there appears to be a second negligence. If he was not satisfied with the enquiry, he could have send it back for further enquiry to the same police station or could have made enquiry himself. If he wanted to rely upon the said report, then he could have taken the application for cancellation of bail. It is now stated that after receiving correspondence from the Police Prosecutor's Office on 15.09.2022, the statement of the present applicant has been recorded on 27.09.2022 in respect of his complaint dated 24.02.2022. We treat that the complaint application is still pending and we direct that enquiry be taken to its logical end.

8. Coming back to the application as aforesaid, the documents which are produced on record, in its entirety or in isolation, are not sufficient to support the contention of the applicant that they are posted after the order was passed by this court granting bail i.e. dated 20.10.2021 and since they are not coming on record by proper procedure, we also do not take this to be the circumstance which can be considered as breach of terms (a) and (b). Hence, we direct the Dy. S.P. Mr. Bharat Kakade who is holding charge of Chalisgaon Sub Division, Dist. Jalgaon to get the enquiry conducted or to do it himself and take it to its logical end.

9. Criminal application is rejected.

10. Copy of this order be sent to the District Superintendent of Police, Jalgaon for suitable action.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)