

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

**APPLICATION FOR CANCELLATION OF BAIL NO.145 OF 2023**

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The State of Maharashtra,  
through Dharangaon Police Station,  
Dist. Jalgaon Cr.No.31 of 2022 Applicant.

Versus

Ajay s/o Vinod Nannaware,  
age 24 yrs, Occ. Labour,  
R/o Babhori Pra. Cha.,  
Tq. Dharangaon,  
Dist. Jalgaon Respondent

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Mr. S.B. Narwade, APP for the applicant State.  
Mr S.V. Dixit Advocate for respondent.

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**CORAM : S.G. CHAPALGAONKAR, J.**

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**RESERVED ON : 20<sup>th</sup> October, 2023.  
PRONOUNCED ON : 31<sup>st</sup> October, 2023.**

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**ORDER :-**

1. The applicant-State of Maharashtra impugns the order dated 30.5.2023 passed by the Additional Sessions Judge, Jalgaon below Exhibit 52 in S.C. No.108 of 2022 thereby granting regular bail to respondent-accused.

2. Mr. Narwade, learned APP appearing for the applicant-State submit that the respondent is an accused facing trial in Sessions Case No.108 of 2022 for the offence punishable under sections 302, 304, 323, r/w 34 of the Indian Penal Code. He had moved an application for grant of regular

bail below exhibit 34. The learned Sessions Judge vide order dated 18.8.2022 was pleased to reject the prayer of the respondent for grant of bail. Thereafter, the respondent had moved bail application no.1612 of 2022 before this court. The application was posted for hearing on 24.1.2023. After hearing the parties, this Court had shown disinclination to grant relief. The learned advocate for the applicant sought time for obtaining written instructions for withdrawal of the application. Accordingly, the matter was posted on 31.1.2023. On posted date, this Court passed following order :-

“1. After hearing the learned respective counsels, the Court expressed disinclination to grant bail. Learned counsel for the applicant, on instructions, seeks leave to withdraw the application.

2. Leave granted.

3. The application stands dismissed as withdrawn.

4. The Secretary, High Court Legal Services Sub-Committee, Aurangabad is requested to pay the requisite fee to the lawyer appointed to represent the victim as per rule.

5. Criminal application No.3797 of 2022 stands disposed of”.

3. Mr. Narwade learned APP would further submit that, when this court had shown disinclination to grant bail, the respondent again approached the Sessions Court and filed successive application seeking bail. The learned Sessions Judge entertained such prayer and enlarged the applicant on bail vide impugned order dated 30.5.2023. Mr. Narwade would submit that the learned Sessions Judge has not taken a note of the fact

that bail application submitted by the respondent has been dismissed as withdrawn on disinclination shown by this Court.

4. Mr. Dixit, learned advocate appearing for the respondent/accused would support the order granting bail. He would submit that out of four accused persons named in this Crime, except the applicant, all other accused have been enlarged on bail observing that deceased died due to septicemia shock in an operative case of intestinal perforation, Gastro intestinal perforation i.e. ruptured bowel. It is observed that death is caused after 7 days of the incident. He would therefore submit that merits of the case have been elaborately considered. Mr. Dixit would further submit that the applicant was behind the bar from 28.1.2022 till May, 2023 before his release on bail. The respondent has not misused the liberty. Mr. Dixit would further point out that the order dated 31.1.2023 was placed on record of the learned Sessions Judge at Exhibit 58. As such, there is no suppression of the facts by the respondent. He would therefore submit that no interference is required in the impugned order.

5. Having considered the submissions advanced and upon perusal of the material placed before this Court, it is evident that the applicant is facing trial for heinous offence u/s 302 of the IPC. The allegations against the applicant narrates that he inflicted several blows of knife to the deceased on his belly, thigh and hands. The Dying Declaration of the deceased supports the aforesaid allegations. Although the deceased was strenuously treated for 7 days before his death, because of

injuries attributed to assault by the respondent he lost life. As many as ten sutured wounds were noted on abdomen of the deceased with other injuries on arms and thigh.

6. The learned Sessions Judge vide his order dated 18.8.2022 passed below Exhibit-34 was pleased to reject the prayer of the respondent after recording elaborate reasons. Thereafter, the respondent had approached this Court vide BA No.1612 of 2022. When this Court after hearing showed disinclination to grant bail on 24.1.2023, matter was adjourned for seeking written instructions for withdrawal of the application. Accordingly, on 31.1.2023 Bail Application no.1612 of 2022 was dismissed as withdrawn. Pertinently, on 27.1.2023 the respondent tendered successive application for grant of bail before the Sessions Court below Exhibit-52. There is no reference of the order dated 24.1.2023 passed by this Court in BA No.1612 of 2022 or even filing of such application before this Court. One does not know why successive application was kept pending before the Sessions Court till May, 2023, and finally it has been decided on 30.5.2023. It is pertinent to note here that in impugned order passed by the learned Sessions Judge, there is no reference of dismissal of Bail application No.1612 of 2022 by this Court vide order dated 31.1.2023.

7. The aforesaid facts would clearly indicate that the learned Sessions Judge was either not appraised of rejection of bail application by this Court or it was missed from his consideration. When this Court had already refused to entertain

the plea for grant of bail moved by the respondent on 31.1.2023, in absence of the specific reason like change in circumstance, the learned Sessions Judge had no propriety to entertain successive bail application filed by the respondent/accused. It is pertinent to note here that while dismissing bail application no.1612 of 2022, no liberty was sought to move successive application before the Sessions Court.

8. Even looking to the order impugned from the angle of merits, only reason recorded is that the deceased died due to septicemia shock but C.A. report is not produced, which may prolong the trial. Unfortunately, there is no discussion as regards to vital role attributed against the respondent/accused, who is the author of multiple injuries causing death of victim. The charge-sheet contains voluminous evidence depicting complicity of the respondent in commission of the offence. Release of co-accused having cursory role in commission of offence cannot be equated with the role attributed against the respondent. Further, the learned Sessions Judge has completely ignored propriety in entertaining the application when this Court had dismissed the same. In that view of the matter, the impugned order cannot be sustained. Hence, following order.

### **ORDER**

- i. Application for cancellation of bail is allowed.
- ii. The order dated 30.5.2023 passed by the learned Additional Sessions Judge, Jalgaon in

Sessions Case No.108 of 2022 below Exhibit-52 is hereby quashed and set aside.

- iii. Bail granted to the Respondent - Ajay Vinod Nannaware in Crime No.31 of 2022 registered with police Station Dharangaon for the offences punishable under sections 302, 307, 323 read with section 34 of the Indian Penal Code is hereby cancelled.
- iv. The respondent/accused is directed to surrender before the learned Sessions Judge, Jalgaon.
- v. The respondent/accused shall be at liberty to move afresh before the learned Sessions Judge, Jalgaon seeking grant of bail, in case of changed circumstances, if any.
- vi. Application for cancellation of bail is accordingly disposed off.
- vii. At this stage, the learned advocate appearing for the respondent/accused seeks stay to the effect, execution and implementation of the order passed by this Court for a period of six weeks' from today. For elaborate reasons indicated in this order, the prayer for grant of stay stands rejected. However, in the interests of justice, the respondent/accused is granted time of four weeks to surrender before the Sessions Court, Jalgaon.

[ S.G. CHAPALGAONKAR ]  
JUDGE

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