

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

APPLICATION FOR CANCELLATION OF BAIL NO.197 OF 2021

Rakesh S/o Chango Zope,
Age : 35 Years, Occ. Service,
R/o Zopewada, Varangaon,
Tq. Bhusawal, Dist. Jalgaon

.. Applicant
(Orig. Complainant)

VERSUS

1. Shaikh Javed Shaikh Khalil,
Age : 32 Years, Occ. Labourer,
R/o. Khidki Mohalla, varangaon,
Taluka Bhusawal, Dist. Jalgaon

2. The State of Maharashtra. .. Respondents

...

Advocate for Applicant : Mr. V.P. Raje

APP for Respondent No.1: Mr. Y. G. Gujarathi

Advocate for respondent No.2 : Mr. N.S. Ghanekar

....

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 198 OF 2021

Rakesh S/o Chango Zope,
Age : 35 Years, Occ. Service,
R/o. Zopewada, Varangaon
Taluka Bhusawal,
District Jalgaon

.. Applicant
(Orig. Complainant)

VERSUS

1. Shaikh Sameer Shaikh Kadir,
Age : 32 Years, Occ. Labourer,
R/o. Aksa Nagar, Varangaon,
Taluka Bhusawal, Dist. Jalgaon

.. Respondent

...
Advocate for Applicant : Mr. V. P. Raje
APP for Respondent No.1: Mr. Y. G. Gujarathi
Advocate for respondent No.2 : Mr. Joydeep Chatterji
....

CORAM : S. G. MEHARE, J.

DATE : 27.07.2023

PER COURT :

Heard the learned counsel for the applicant, learned counsel for respondent No.1 and 2 and the learned A.P.P. for the respondent State.

2. The applicant/original complainant-father of the deceased filed these applications for cancellation of bail granted to the respondent No.1 vide orders below Exh. 12 and Exh.15 in Sessions Case No. 60 of 2021 dated 6th October 2021 by the learned Additional Sessions Judge, Bhusawal in crime No. 11 of 2021, registered with Police Station Raver District Jalgaon for the offences punishable under Sections 302, 394, 201 read with Section 34 of the Indian Penal Code.

3. The orders granting bail have been assailed mainly on two grounds; firstly, there were no change in circumstances and secondly, the orders granting bail were cryptic and without assigning any reason.

4. The learned counsel for the applicant would argue that the earlier bail applications filed by the respondents dated 6.4.2021 were rejected on 7.5.2021 by the learned Additional Sessions Judge, Bhusawal. After filing their first bail applications, the charge sheet was filed. The charge sheet was considered, and hence, after having regard to the material and papers in the charge sheet, the earlier bail applications were rejected on merits.

5. In the second bail applications, similar grounds were raised. However, the misleading words that 'now the charge sheet is filed' has been deliberately pleaded with an intention to impress upon the Court that it was the first bail application after filing the charge sheet. However, the learned Judge did not discuss a single word on the change in circumstances in the impugned orders. The various orders of the said Judge, were cancelled being copy paste and cryptic. He would point out that both orders are word to word same and simply a copy paste. The parameters for considering the bail application have not been considered. The offences are serious. The orders without reasons are like a man without heart.

6. The orders without reasons are non-est. The gravity of the offences and material against the accused/respondents have not been considered. The learned Judge has passed the mechanical orders

without applying his mind which caused serious prejudice to the victim. Therefore, both orders deserve to be cancelled.

7. Per contra, the learned counsel Mr. N.S. Ghanekar for the accused/respondent Shaikh Javed Shaikh Khalil and the learned counsel Mr. Joydeep Chatterji respondent/accused Shaikh Sameer Shaikh Kadir have vehemently argued that the applicants had claimed bail, stating that there may be delay in conclusion of the trial and they had a fundamental right to speedy trial. The accused did not suppress the fact from the Court that their earlier bail applications were rejected. Since delay in trial and right to speedy trial were pleaded, those were change in the circumstances. Since the allegations against both accused were similar, so naturally the Court has passed the similar orders. Therefore, it cannot be said that there were a copy paste and cryptic order. The observations in the impugned orders, indicate the application of mind. That apart, it cannot be said that the Court has not applied the mind because it has been observed that the Court has perused the case papers. The orders are correct, legal and proper and do not require interference at the hands of this Court.

8. The learned counsel for the applicant placed on record the orders of this Court passed in Application for Cancellation of Bail No.

110 of 2022 dated 21.12.2022, and in Application for Cancellation of Bail No. 217 of 2021 and 222 of 2021 dated 6th June 2022. The same Presiding Officer had passed orders in those crimes. However, after having gone through the way of his passing orders this Court has observed that he had passed the cryptic orders and those were the copy paste. Since incorrect practice was adopted by the said judicial officer, and the orders were without reasons, those orders were cancelled.

9. Here-in the case, the learned A.P.P. has pointed out that written say was filed and in written say it was specifically mentioned that the earlier bail application of the present respondents were decided on merits and there were no change in circumstances. The orders impugned before this Court do not indicate that objections as raised by the learned A.P.P. were considered nor there were reasons declining the objection of no change in circumstances.

10. The law is clear that unless the change in circumstance is established successive bail application can not be entertained. The reason is obvious that the Criminal Court has no power to review its own order but unfortunately this vital legal aspect appears to have not been taken into consideration, while passing the impugned orders.

11. In the pleadings of the applicant in the subsequent bail applications it has been mentioned that, ‘recently the charge sheet has been filed’. Such a pleading was actually sufficient for misleading the Court and it was pretended that it was the first bail application after filing charge sheet. Be that as it may, the learned Judge did not whisper on the objections in reply of the prosecution and appears to have completely ignored the objections, the gravity of the offence has also not been considered.

12. Perusal of the orders granting bail clearly appear that they are a cryptic and casual. The Hon’ble Supreme Court in the recent case of ***Rohit Bishnoi Vs. State of Rajasthan 2023 LiveLaw (SC) 560*** has observed that

“While considering the application for grant of bail, a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis a vis the offence is alleged against an accused.”

13. The impugned orders do not reflect that the conclusions were supported by the reasons. No vital facts of the case were considered. There is no discussion on the nature of the crime and gravity of the offence. Both orders are apparently without application of mind and against the settled principles of law granting bail. Therefore, the applications deserve to be allowed. Hence, the following order :-

ORDER

- (i) The orders passed below Exh. 12 and 15 in Sessions case No. 60 of 2021 granting bail to the respondents/accused dated 6th October 2021 by the learned Additional Sessions Judge, Bhusawal, stand canceled.
- (ii) The surety and bail bonds of the accused stand canceled.
- (iii) Both accused to surrender before the learned Additional Sessions Judge, Bhusawal on or before 4th August, 2023.
- (iv) Cancellation of bail by this order does not curtail the rights of the accused/respondents to claim the bail afresh.

(S. G. MEHARE)
JUDGE

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