

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

APPLICATION FOR CANCELLATION OF BAIL NO.211 OF 2022

JAGRUTI AMIT RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Rahul S. Pawar, Advocate for Applicant

Mr. A.A. Jagatkar, APP for Respondent No.1-State

Mr. Ruchir Wani, Advocate h/f Mr. P.P. Patni, Advocate for
Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 01st MARCH, 2023

PER COURT :

1. By this application, filed under Section 439(2) of Cr.P.C., applicant seeks cancellation of anticipatory bail granted in favour of respondent No.2, by the learned Additional Sessions Judge, Nandurbar, vide order dated 09/06/2022, in Crime No.88/2022, registered with Railway Police Station, District Nandurbar, under Sections 307, 509, 323, 506 read with 34 of the Indian Penal Code.

2. Heard learned advocate for applicant, learned Additional Public Prosecutor for State and learned advocate for respondent No.2. Perused the documents placed on record and the citation relied upon by the learned advocate for applicant.

3. Learned advocate for applicant assailed the impugned order by contending that though serious allegation of attempt to

commit murder is levelled against respondent No.2 in the FIR, anticipatory bail is granted to him. The Sessions Court has made incorrect observation contrary to the record i.e. *"However, contents of complaint and statement of only eye witness Shri Mali, prima facie are not disclosing that, the incident took place in running railway"*. By pointing out statement of Prakash Gavale (Mali), learned advocate submits that in his statement he has categorically stated that offence is committed in moving train. He, therefore, submits that the impugned order is erroneous and the same is liable to be quashed and set aside. In support of his submission, he relied on ***Deepak Yadav Vs. State of Uttar Pradesh and Another, (2022) 8 SCC 559.***

4. Learned Additional Public Prosecutor supports the application by contending that prosecution had also opposed the anticipatory bail application filed by respondent No.2.

5. Learned advocate for respondent No.2 has supported the impugned order. He submits that Sessions Court has considered all the circumstances and the investigation papers, and has arrived at conclusion that custodial detention of applicant is not necessary. According to him, there is no merit in the application filed by the applicant and therefore, the same may be rejected.

7. On going through the impugned order, it appears that

Sessions Court has in detail dealt with all the facts and has observed that *prima facie* custodial interrogation of accused No.1 is not necessary.

8. It is pertinent to note that charge-sheet is filed in the present crime on 17/10/2022 and the case is numbered as R.C.C. No.234/2022. On 09/03/2023, the matter is fixed for framing of charge. Considering this aspect, this Court is of the opinion that, at this stage, it is not desirable to cancel the anticipatory bail granted in favour of respondent No.2.

9. Learned advocate for applicant has placed reliance on ***Deepak Yadav*** (supra), wherein in paragraph Nos.31 and 32 it is observed that:-

"31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

33.1 Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring

relevant material on record.

33.2 Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3 Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4 Where bail has been granted on untenable grounds.

33.5 Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6 Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7 When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

10. Principles enumerated in the citation relied upon by the learned advocate for applicant are well settled. However, they are not applicable to the facts of the present case and this Court is not inclined to exercise discretion to cancel the anticipatory bail granted in favour of respondent No.2 in the month of June, 2022, in view of filing of charge-sheet and as the matter is posted for framing of charge and the trial is likely to commence. There is no merit in the application. Application is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)