

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

APPLICATION FOR CANCELLATION OF BAIL NO.219 OF 2022

WITH
ACB/214/2022

VYANKAT MADHAVRAO KENDRE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Thombre S. S.
APP for Respondent-State : Mr. S. B. Narwade.
Advocate for Respondent No.2 : Ms. A. N. Ansari.

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CORAM : S. G. MEHARE, J.
DATE : 16.02.2023

PER COURT :-

1. Heard the respective learned counsels for the parties and learned APP for the respondent-State.

2. Respondent No.1 has been granted bail by the learned Additional Sessions Judge, Aurangabad. It has been observed that the scuffle took place between the applicant and respondent/accused because of previous enmity. Though the injured has sustained the grievous injuries, but it was impossible to draw an inference that the accused has intention to commit the murder. While granting bail, the learned Additional Sessions Judge considered the age of the accused. The trial may take its time to commence. Considering the facts

of the case, learned Additional Sessions Judge also observed that he did not find justifiable reason to keep the accused in jail for indefinite period.

3. The vehement argument has been advanced by the learned counsel for the applicant and learned APP that the gravity of the offence has not been considered properly. The injured was the Police Inspector assaulted on uniform. The applicant was carrying knife with him. That shows his intention. Subsequent to this incident, he again committed the crime. The offence was serious. The grounds of objection to grant bail were not considered.

4. The learned counsel for the applicant Mr. Thombre relied on the case of *Jagjeet Singh and others Vs. Ashish Mishra @ Monu and another, (2022) 9 SCC 321*. In the said case, liberty has been granted to the victim to appear and oppose the bail application and the factors to be borne-in-mind while considering the bail application in the case of *Prasanta Kumar Sarkar Vs. Ashis Chatterjee, (2010) 14 SCC 496* have been discussed. Learned counsel also relied on the case of *Nitu Kumar Vs. Gulveer and others, Criminal Appeal No.1547 of 2022, Supreme Court of India, decided on 16.09.2022*. Again, it has been reiterated that the High Court has to appreciate the

role attributed to the accused. The gravity and seriousness of the offence is relevant consideration for the purpose of grant of bail. While granting bail, the High Court did not consider the facts and circumstances of the case. It was also observed in the said case that nothing was discussed by the High Court on the role attributed to the accused and his overt act in the commission of the offence.

5. It has also been observed in the said cases that if the High Court does not advert to the relevant considerations and mechanically grants bail, the said order would suffer from the voice of the non-application of mind rendering it to be illegal.

6. Learned counsel for the respondent No.2/accused vehemently opposed the application. She would argue that the order granting bail is well reasoned. There are no overwhelming circumstances to interfere with the order granting bail. The impugned order is neither arbitrary nor perverse. There was a previous enmity. Therefore, the correct reasons have been given while granting the bail.

7. Learned counsel for the respondent No.2/accused has also argued that the relevant factors considering the bail have been considered by the learned Additional Sessions Judge

while exercising the discretion. Unless there are overwhelming circumstances, the bail cannot be granted.

8. The law as regards to the cancellation of bail is well settled in case of *Dolat Ram and others Vs. State of Haryana (1995) 1 SCC 349*. It has been a consistent view that unless there are overwhelming circumstances, the bail should not be cancelled. If the Court granting bail, did not consider the material before it and appreciate the inadmissible evidence or ignore the admissible evidence. In that circumstances, the High Court may interfere with the order granting bail. In other words, it may be stated that the order without assigning reasons can be cancelled.

9. The Court is of the view that the Court granting bail has considered the facts of the case and effect of the injuries sustained to the applicant. The Court has examined the record and also considered the arguments advanced by the prosecution. The applicant is the Police Inspector, so he was represented through the learned APP. It also appears that the first bail application of the applicant was rejected as the investigation was in progress. The order granting bail was apparently well reasoned and within the four corners of the factors to be considered while granting bail. Therefore, the

ratio laid down in the case of *Dolat Ram (supra)* is squarely applicable to this case.

10. The Court is not convinced by the case laws relied upon by the applicant are applicable to the case in hand. The order granting bail is neither arbitrary nor perverse. There are no overwhelming circumstances to cancel the bail. As far as the allegation that the applicant is committing the crimes repeatedly, the law is there to take care of. At the time of granting bail, the apprehension of repeating the crime was not expressed. The police machinery has been created to take the necessary action against the persons committing crime.

11. For the above reasons, both applications for cancellation of bail stand dismissed.

(S. G. MEHARE, J.)

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