

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.243 OF 2022

Balasaheb s/o. Navnath Palve,
Age 40 years, Occu. Business,
R/o. Deorai, Tq. Pathardi,
At present – Near Express-in,
Pathardi Patha, Nasik,
Tq. & Dist. Nasik

.. Applicant
(Original complainant)

Versus

1. The State of Maharashtra
Through Investigation Officer,
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar

2. Anil S/o. Eknath Palve,
Age 50 years, Occu. Agril.,
R/o. Deorai, Tq. Pathardi,
Dist. Ahmednagar

.. Respondents

Mr. N. B. Narwade, Advocate for Applicant;
Mr. K. S. Patil, A.P.P. for Respondent No.1/State;
Mr. A. K. Bhosale, Advocate for Respondent No.2/accused No.1

CORAM : S. G. MEHARE, J.

DATE : 28-03-2023

PER COURT :-

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

2. The first informant, a relative of deceased, has filed an application under Section 439(2) of the Code of Criminal Procedure for cancellation of bail order dated 23.11.2022, of the learned Additional Sessions Judge, Ahmednagar, in Criminal Miscellaneous Bail Application No.1790 of 2022.

3. The learned Additional Sessions Judge granted bail recording the following reasons in paragraph No.17 of the order:-

“On the perusal of the documents on record, it appears that applicant was arrested on 19/06/2022 and since then he is in jail. The statement and the supplementary statement of the material witnesses are already recorded. On the perusal of the statements on record, it appears that applicant assaulted the deceased by means of sword. The weapon is already seized by the police. Other articles are also seized. Nothing is left for recovery or discovery. The charge sheet is already filed.”

4. The learned counsel for the applicant has vehemently argued that the *prima facie* the principles of granting bail, i.e. the gravity of the offence, the role attributed to the accused and the aggressiveness of the assailants, have been totally ignored while granting bail. He would submit that the allegations against respondent No.2/accused are supported by the postmortem report, which shows a brutal murder of the deceased. The learned

Additional Sessions Judge did not consider such an important piece of evidence. The respondent No.2/accused had assaulted the deceased with a sword that passed through the body of the deceased. He has also argued that respondent No.2 was the most aggressive. He brutally murdered the deceased. Barely the co-accused were released may not be a ground to grant bail unless the parity is shown. He has vehemently argued that there were many eyewitnesses to the incident stating the role attributed to respondent No.2. The offence was serious, but the learned Additional Sessions Judge granted bail to respondent No.2 mechanically and without application of mind.

5. To bolster his arguments, he relied on a case ***Puran vs. Rambilas and another, AIR 2001 SC 2023***, assailing the order granting bail to cancel the bail granted to respondent No.2.

6. Per contra, the learned counsel for respondent No.2 has vehemently argued that the bail was not granted hastily. The bail application was filed on 01.11.2022 and finally decided on 23.11.2022. The Court gave a patient hearing to the learned counsel for the applicant, and his arguments were considered. It was a free fight. There are no complaints against respondent No.2/accused that he has misused the bail order.

7. He further argued that the Court, dealing with an application

for cancellation of bail, cannot re-appreciate the evidence. The purpose of securing the presence of the accused by granting bail has also not been violated. In support of his contention, he relied on the case of **Ramcharan vs State of M.P., (2004) 13 SCC 617** and **Dolat Ram and Others vs State of Haryana (1995) 1 SCC 349**.

8. Referring to the ratio laid down in the above cases, he has vehemently argued that the grounds for cancellation of bail are not available. The learned Sessions Judge has given the judicious reason and correctly exercised the discretion. Hence, the Court cannot disturb the order granting bail. Referring to the case law on the point of cancellation of bail and the observations recorded by the learned Additional Sessions Judge, he humbly prayed to dismiss the application.

9. The Hon'ble Supreme Court, in the case of **Brijmani Devi vs. Pappu Kumar, Criminal Appeal No.11683 of 2021**, has reiterated that while considering an application for grant of bail, a *prima facie* conclusion may be supported by the reasons and must be arrived at after having regard to the vital parts of the case brought on record. Due consideration must be given to the facts suggestive of the nature of the crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction *vis a vis* the offence/s alleged against an

accused. It is also well settled that the gravity of the offence is one of the grounds to deny bail. It is equally true that interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the course of justice or abuse of the concession granted to the accused in any manner.

10. In **Dolat Ram's** case (*supra*), it has been observed that generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are; interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner.

11. The Court, while considering the bail application, has to give due attention to the material available on record, the role attributed to the person seeking bail, the fact situation and the way in which he committed the crime and then think of the parity.

12. The law of parity is a desirable rule where the case of the accused is identical to the co-accused, who is already granted bail, and the role attributed to each accused should be similar. The Court has to examine the similarity. The Court granting bail has to assign appropriate reasons supported by the material available on record.

13. In the case of **Dr. Nrendra K. Amin Vs State of Gujrat**

(Criminal appeal No. 740 of 2008 (arising out of SLP (Crl) NO.788 of 2008 decided on 24/08/2008), the Hon'ble Supreme Court held in paragraph no.11, thus;

“Even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided. The Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.” Further, in paragraph no.13, it has been held that irrelevant materials should be of substantial nature and not a trivial nature.

14. In the case of **Ramcharan** supra, it has been held in paragraph No.5, that the order of bail can be cancelled on the existence of cogent and overwhelming circumstances but not on re-appreciation of the evidence. Hence, in the absence of any supervening circumstances which might warrant recalling the order which granted bail, *suo motu*, cancellation of bail by the High Court merely on the ground that the bail order was passed and some misapprehension of factual position was not sustainable. In the same case, in paragraph No.4, it has also been observed that it is well settled that different considerations have to be weighed while considering the application for the grant of bail and while considering the application for cancelling the bail already granted.

15. In the above case, the principles laid down in the case of **Dolat Ram** (*supra*) have been considered. Bail, once the bail is granted, it should not be cancelled in a mechanical manner and 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 the trial.

16. In the case of **Puran** (*supra*), the case of **Dolat Ram** (*supra*) was referred to.

17. In brief, the Court dealing with an application for cancellation of bail has to apply the mind and consider the supervening circumstances that render it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying his bail during the trial. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. It is a rule that normally, once the bail is granted, it should not be cancelled mechanically unless the prosecution or the person complaining satisfies the Court that there were supervening and overwhelming circumstances necessary for the cancellation of bail.

18. *Prima facie*, the conclusion of the learned Additional Sessions Judge appears not supported by the reasons and without

considering the vital evidence brought on record. The eyewitnesses appear to have been ignored, and the postmortem report showing the brutal murder of the deceased has also not been considered. The role attributed to respondent No.2/accused has also been taken very lightly. Though the Court has observed that respondent No.2/accused assaulted the deceased with a sword, no appropriate reasons have been assigned for considering it not material for granting bail.

19. Granting bail, for the reason that respondent no.2/accused is languishing in jail for a short period of about five months also not a good and proper reason in this case. Reading the reasons assigned by the learned Additional Sessions Judge, the Court is of the view that the learned Additional Sessions Judge has not properly considered the settled principles of law considering the bail application. *Prima facie*, the role attributed to respondent No.2/accused was serious. He had applied full force to stab the deceased, that can be seen from the postmortem report. A deadly weapon, like a sword, has been used to commit the crime, which indicates the intention. The incident happened out of the society election. At the cost of repetition, it may be stated that the learned Additional Sessions Judge did not consider the vital material on the record while granting bail. The overwhelming circumstances are available to cancel the bail order.

20. For the above reasons, the application deserves to be allowed. Hence, the following order:-

ORDER

- i) The application is allowed.
- ii) The order granting bail to respondent No.2/accused by the learned Additional Sessions Judge, Ahmednagar, in Criminal Miscellaneous Bail Application No.1790 of 2022, dated 23.11.2022, stands cancelled.
- iii) Respondent No.2/accused is directed to surrender before the learned Additional Sessions Judge, Ahmednagar, on or before 02.05.2023; till then, he should not be arrested.
- iv) Cancellation of bail by this order does not curtail the rights of the accused to claim bail afresh.

**(S. G. MEHARE)
JUDGE**

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