

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
APPLICATION FOR CANCELLATION OF BAIL NO.259 OF
2022**

**THE STATE OF MAHARASHTRA
VERSUS
DILIP ASHOK MUNDHE**

...
Mr. S. B. Narwade, APP for the Applicant.
Mr. K. P. Rodge, Advocate for the Respondent.

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

**RESERVED ON : 26th SEPTEMBER, 2023.
PRONOUNCED ON : 07th OCTOBER, 2023.**

ORDER:-

1. The applicant, State of Maharashtra approached this Court challenging the order dated 06.09.2022 passed below Exhibit-150, granting bail to respondent accused, in Sessions Case No.84/2020 (arising out of Crime No.I-713/2019) registered with M.I.D.C. Police Station, Dist. Ahmednagar, for the offences punishable under Sections 396, 120(B), 341, 412, 201 of the Indian Penal Code.

2. Mr. Narwade, learned APP appearing for the applicant submits that the respondent is a prime accused in Crime No.I-713/2019. He would submit that after due investigation of the crime, charge-sheet for aforesaid offenses has been filed against accused persons . There is ample material to bring home complicity of the respondent/accused in commission of the offence. He would submit that the respondent/accused conspired with the other accused persons to commit dacoity of the truck containing milk powder. While giving effect to such crime, they have brutally killed the driver of the truck namely Navnath.

The learned APP would submit that during the course of investigation, the truck containing milk powder bags has been discovered at the instance of the respondent/accused. The CCTV transcripts shows that the respondent/accused followed the truck in his Scorpio Jeep and robbed the truck alongwith goods. The learned APP would point out that earlier three applications seeking bail filed on behalf of the respondent/accused were rejected by the Court of Sessions prior to filing of the charge-sheet. After filing of the charge-sheet, the respondent/accused twice applied for bail. Both the applications were rejected after considering complicity of the applicant in the commission of the offence. He would point out that the applicant filed Bail Application No.1028/2021 before this Court. After considering the merits of the contentions raised on behalf of the applicant, this Court expressed disinclination to grant bail. Thereupon, the application was withdrawn with liberty to revive the request for bail before the Sessions Court, if trial does not get concluded within six months. The learned APP points out that the aforesaid order is passed on 02.02.2022.

3. The learned APP submits that just after two months of disposal of application by this Court, on 13.04.2022, the respondent/accused moved fresh application seeking bail before the Sessions Court although this Court had granted qualified liberty to revive the request only on expiry of six months. He would submit that the application was silent about the filing and disposal of the Bail Application No.1028/2021 before this Court as well as order dated 02.02.2022 passed thereon. He would further submit that conveniently aforesaid facts were suppressed. The learned APP would invite attention of this Court to clause no.20

in the application submitted before the Sessions Court, wherein statement is made that no other offence is registered or pending against the respondent/accused. The learned APP submits that such statement is completely false and misleading. As many as five criminal cases have been registered against the respondent/accused and present one is the 6th in row. The learned APP would, therefore, submit that the Sessions Court had no reason to entertain the bail application, being premature in light of the order passed by this Court dated 02.02.2022, and it suffers from suppression of the material facts, so also misleading the Court. The learned Sessions Judge was not oblivious of the order passed by this Court, still entertained the application and directed the release of the applicant on bail vide order dated 06.09.2022. He would, therefore, submit that the impugned order is liable to be quashed and set aside.

4. Mr. Rodge, learned Advocate appearing for the respondent/accused would submit that the learned Sessions Judge considered relevant aspects before granting bail. He would submit that although the Bail Application was moved by the respondent/accused before sessions court just after two months of the withdrawal of Bail Application filed before this Court, it has been finally decided on 06.09.2022 i.e. on expiry of six months locking period prescribed under order passed by this Court in Bail Application No.1028/2021. As such, there is no violation of the condition imposed by this Court. He would submit that the Sessions Court has *prima facie* scrutinized the evidence in charge-sheet and observed that the accused, who are actual attributed role of assault on victim are released on bail. Therefore, favorably considered prayer of applicant. The applicant was behind the bar

from 07.01.2022 to 06.09.2022 before his release on bail. He would, therefore, submit that there is no propriety in causing interference in the order of the learned Sessions Court. To buttress his submissions, he relies upon the judgments of the Supreme Court of India in the matters of ***State (Delhi Administration) Vs. Sanjay Gandhi***¹, ***Dolat Ram and Others Vs. State of Haryana***² and ***Bhuri Pal Vs. State of Madhya Pradesh***³.

5. Having considered the submissions advanced, apparently the learned Sessions Court had rejected earlier two bail applications of the respondent moved after filing of charge-sheet on consideration of merits. Thereafter, the respondent had approached this Court vide Bail Application No.1028/2021, which was withdrawn after disinclination of this Court to grant bail. However, liberty was granted to the applicant to revive his request before the learned Sessions Court, if trial does not get concluded within six months. The applicant without waiting for a period of six months, filed fresh application for grant of bail before the learned Sessions Court on 13.04.2022. Pertinently, pleadings in the application nowhere disclose the fact of filing of the application before this Court, its withdrawal on disinclination and liberty to move after six months, if trial does not get concluded. Perusal of the application would show that a categorical statement is made in clause no.20 of the application that no other crime is registered or pending against the respondent. The learned Sessions Court entertained and allowed the application under the impugned order dated 06.09.2022. In

1 (1978) 2 SCC 411.

2 (1995) 1 SCC 349.

3 2022 SCC OnLine SC 1779.

this background, the State of Maharashtra impugns the order of the Sessions Court mainly on two grounds:

- (i) The application itself was premature in view of the locking period put under order dated 02.02.2022 passed by this Court in Bail Application No.1028/2021
- (ii) The application suffers from non-disclosure of the material fact, so also contains false representation regarding criminal antecedents.

6. The order dated 02.02.2022 passed by this court in Bail Application No.1028/2021 clearly stipulates that the Court expressed its disinclination to grant bail to the respondent. The withdrawal of the application was sought with liberty to revive the request for bail before the Sessions Court, if trial does not get concluded within six months. Apparently, it was expected of applicant to wait for a period of six months and co-operate for disposal of the trial. However, before expiry of locking period he preferred the fresh application below Exhibit-150 within two months and 11 days in Sessions Case No.84/2020.

7. Perusal of the application depicts clear intention of suppression of facts. Pertinently there is no reference of the order of this Court dated 02.02.2022 passed in Bail Application No.1028/2021. The application was filed without disclosure of deemed rejection of the prayer for grant of bail by this Court. Similarly, the record shows that as many as six offenses are registered against the respondent including the present one, however blatantly false statement is made in the application that no previous offense is registered or pending against him. The

aforesaid facts clearly depicts malice on the part of the applicant and his intention to mislead the Court.

8. Perusal of the impugned order shows that the learned APP had specifically pointed out during the course of argument that third Bail Application of the respondent was rejected by the Sessions Court on 03.08.2021, the application filed before the High Court has been withdrawn on 02.02.2022 and present application is premature as locking period of six month was yet to be expired. It was also urged that ground of parity would not be available to the respondent. Unfortunately, such submissions appears to have totally ignored by learned Sessions judge. There is no whisper regarding such contentions in the reasoning part of impugned order. No consideration is given to the fact that the application itself was premature. Even, the contentions raised by the learned APP regarding criminal antecedents of respondent are ignored.

9. Pertinently, the reasoning part of impugned order nowhere deals with the substantive material in the charge-sheet depicting complicity of respondent while adjudicating his entitlement for bail. The judicial propriety demands that when this Court had disposed of the Bail Application after showing disinclination to grant bail on merits with rider of locking period of six months, for revival of prayer there was no reason for Learned sessions judge to entertain fresh application filed before expiry period as stipulated in the order of this court dated 02.02.2022.

10. Although the fresh application for bail was moved on 13.04.2022, the impugned order is passed on 06.09.2022, so as to

overcome with rider of locking period imposed by this Court. However, the fact remains that the filing of application itself was premature, odored with suppression of material facts. It is difficult to reconcile how such application was kept pending from 13.04.2022 to 06.09.2022.

11. In view of the aforesaid discussion, the impugned order is erroneous and liable to be quashed and set aside. Hence, the following order:

ORDER

(i) The Application for Cancellation of Bail No.259/2022 is allowed.

(ii) The impugned order dated 06.09.2022 passed by the Additional Sessions Judge, Dist. Ahmednagar below Exhibit-150 in Sessions Case No.84/2020 is hereby quashed and set aside.

(iii) The respondent/accused, Dilip Ashok Mundhe shall surrender before the learned Judicial Magistrate First Class at Ahmednagar (M.I.D.C. Police Station, Dist. Ahmednagar) within a period of four weeks from the date of this order.

(iv) On surrender, the respondent/accused shall be at liberty to move afresh before the learned Sessions Court at Ahmednagar for grant of bail. In case, such application is filed, it shall be considered and decided on its own merits, without influenced by the observations made in this order.

(v) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE