

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 153 of 2018

Uttam Rambhau Chitalkar

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Aniket Ujjwal Nikam a/w. Piyush Toshnival a/w. Aashish Satpute a/w. Amit Icham for Applicant.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

Mr. Sanjay Prabhakar Shinde for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 15 FEBRUARY 2023

PC :

1. This is an application for cancellation of bail granted to the Respondent No.2 in connection with C.R.No. I 169 of 2017 registered at Chandwad police station, Nashik, under sections 302, 307 and 427 of the I.P.C.

2. The F.I.R. is lodged by one Uttam Chitalkar. He has stated in his F.I.R. that, there was an ancestral property and there was dispute about that property with the Respondent No.2's branch of the family. The F.I.R. mentions history of their strained relationship. On 04/12/2017, the Respondent No.2 dashed into

the motorcycle driven by the informant's younger brother Santosh. There were five people travelling on that motorcycle. Santosh, his wife Ashabai, the informant's wife Savita, their son Bhushan and Santosh's son Roshan were on that motorcycle. The respondent No.2 was driving a tanker. He dashed into this motorcycle with the result; except Roshan the other four died. Santosh, Ashabai and Bhushan died on the spot and Savita died in the hospital. On this basis the F.I.R. is lodged.

3. The respondent No.2 was arrested on 05/12/2017. He preferred an application for bail before learned Additional Sessions Judge, Niphad vide Criminal M.A. (Bail) Application No.22 of 2018. That application was allowed and the respondent No.2 Tukaram was directed to be released on bail. This order is under challenge in this particular application.

4. Learned counsel for the applicant i.e. the first informant Uttam Chitalkar submitted that the order is not passed on the factual aspects which are contained in the charge-sheet. The observations in paragraph 6 are the reasons based on which bail is

granted to the respondent No.2. It is observed in that paragraph that, there was hardly any eye witness except Roshan. It was further observed that, since both sides were hostile to each other, the charge levelled against the respondent No.2 was required to be considered; but it was not possible to classify the nature of offence whether it was simply an accident or a case of murder. Learned counsel for the applicant submitted that this observation is wrong and does cause serious prejudice in the case. The offence is quite serious and four people have died.

5. Learned counsel for the Respondent No.2 submitted that the first informant's version is not supported and, in fact, is contradicted by his son Tushar who was on the same motorcycle driven by the first informant and yet he had not witnessed the actual incident. He submitted that the previous dispute which had reached various courts has resulted in acquittal of both sides and no dispute is pending as of today. He submitted that the respondent No.2 is granted bail vide order dated 16/02/2018. More than five years have passed and, therefore, it would not be proper to cancel the bail granted to the respondent No.2. He

further submitted that the respondent No.2 was directed to stay outside the village and, therefore, that condition was sufficient in the circumstances.

6. Learned counsel for the respondent No.2 relied on the Judgments of the Hon'ble Supreme Court regarding principles for cancellation of bail. They are as follows:

- i) (2020) 2 Supreme Court Cases 743; Myakala Dharmarajam and others Versus State of Telangana and another.
- ii) (2020) 11 Supreme Court Cases 648; Prabhakar Tewari Versus State of Uttar Pradesh and another.
- iii) 2022 SCC Online SC 1779; Bhuri Bai Versus State of Madhya Pradesh.

7. The principles laid down in these judgments are that, if the bail orders are challenged on vague allegations and if the orders granting bail are not perverse, the bail should not be cancelled. The two key factors for interfering with such orders are non application of mind on the part of the court granting bail or the opinion of the court in granting bail is not borne out from a

prima facie view of the evidence on record. Normally, very cogent and overwhelming circumstance or grounds are required to cancel bail already granted.

8. Learned APP supported the contentions of learned counsel for the applicant – first informant. He submitted that, the proposal is already pending before the State Government for cancellation of this bail order, however, no further steps are taken as of today.

9. I have considered these submissions. In the present case, the facts and circumstances clearly fall within the parameters for cancellation of bail. The impugned order granting bail is absolutely perverse showing non application of mind. The material on record is not considered by the Trial Court and, therefore, based on these principles this order is liable to be set aside.

10. The F.I.R. is lodged by the first informant i.e. the present applicant. He has given the history of litigation and criminal cases pending against each other. It is significant to note that those litigations were still pending on the date of the offence. He has

further stated that, all the five persons were travelling on the same motorcycle. They were going towards Manmad. They started from their house at 11.30a.m. Immediately after that, the respondent No.2 followed them with his tanker. It is the specific case of the first informant that, he also went on his motorcycle in the same direction. His son Tushar was travelling on his motorcycle. He has further specifically mentioned that Santosh was riding his motorcycle on the left side of the side of the road. There was no traffic on the road, therefore, Tukaram i.e. Respondent No.2 could have easily overtaken Santosh's motorcycle, but he deliberately drove his tanker on the extreme left side of the road and dashed into the motorcycle of Santosh. After that he parked his tanker in front of a petrol pump and then ran away. The applicant has specifically stated that, he had seen the incident, therefore, he immediately rushed there. He had seen that Santosh, Ashabai and Bhushan had died on the spot and Savita and Roshan were seriously injured. The first informant then sent Roshan to the Government Hospital. After that the first informant, with the help of others, took the three deceased and injured Savita to Manmad.

But his wife Savita died in Malegaon hospital. On this basis the F.I.R. was lodged.

11. Roshan was a child witness. He had also described the incident exactly in the same manner. He has added that, his mother had told his father Santosh that the respondent No.2 was driving dangerously and he was cutting the lane to dash into their vehicle and the Respondent No.2 exactly did that. Even after dashing into the motorcycle, the tanker dragged the motorcycle for some distance. These two statements are of the eye witnesses and learned Judge has not dealt with those statements at all. There is only a cursory reference that Roshan was an eye witness. There is no reason expressed for ignoring his statement except mentioning that Roshan was only eight years old. The finding of the Trial Court is absolutely perverse. There is absolutely no discussion about the implication of the statement of the first informant i.e. the applicant. In my opinion, there are very cogent and overwhelming circumstances for cancellation of this bail order. Therefore, on the face of it, the order granting bail in such a serious offence causing death of four persons is absolutely perverse

and, therefore, is required to be set aside.

12. It is necessary that the trial court should consider this material for question of grant of bail. Therefore, I am inclined to set aside this order and remand this application back to the trial court for a fresh consideration with due application of mind in respect of entire material available.

13. The impugned order was passed on 16/02/2018. The order was challenged by the applicant by filing this application on 07/03/2018, therefore, there is no delay on his part. However, considering that the Respondent No.2 was on bail for about five years, the same protection can be extended for some more period, by which time the trial Court will have to consider all these aspects afresh in accordance with law.

14. Hence, the following order:

ORDER

- i) The order dated 16/02/2018 passed by learned
Additional Sessions Judge, Niphad, in Criminal

M.A. (Bail) Application No.22 of 2018 is set aside.

- ii) The said bail application is restored to its file. It shall be decided afresh after hearing both the sides including the present applicant.
- iii) The order dated 16/02/2018 granting bail to the Respondent No.2 shall be in force for a period of one month from today.
- iv) Learned Trial Judge shall decide this application in accordance with law.
- v) It is expected that both sides will co-operate in earlier disposal of the bail application.
- vi) The Application is disposed of.

(SARANG V. KOTWAL, J.)