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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.33 OF 2024

Farukpasha Bashumiya Shaikh

APPLICANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. Prasad B. Vaidya, Advocate for the applicant
Mr. S. B. Jadhav, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2024

ORDER :

1. Applicant, who is advocate by profession, filed private complaint and sought directions under section 156 (3) of the Criminal Procedure Code. On the basis of directions issued by the learned Magistrate, Crime No. 536 of 2023 is registered with Gandhi Chowki Police Station, Latur, against respondents No.2 and 3. It is alleged that there was dispute between applicant and accused in respect of construction of wall and on account of the said dispute, informant was assaulted by accused with iron rod and Rs.6000/- were snatched from his pocket. Cellphone, on

which his wife was recording the alleged incident, was snatched away by the accused persons. Accused persons filed Criminal M. A. Bail No. 790 of 2023 for anticipatory bail, which is allowed by the Sessions Court. Hence, this application for cancellation of bail under section 439 (2) of the Criminal Procedure Code.

2. Heard learned advocate for applicant and learned APP for the State. Perused the documents placed on record.

3. Learned advocate for applicant strenuously submits that applicant has suffered injuries and cellphone so also an amount of Rs.6000/- is forcibly taken away by the accused. For recovery of the weapon used in the crime and amount of Rs.6000/- custodial interrogation of accused is necessary. He submits that these material aspects are ignored by the Sessions Court while granting anticipatory bail to the accused. He further submits that after release on anticipatory bail by the Sessions Court, threats were given by accused persons to the witnesses, on phone.

4. Learned APP submits that on the basis of record, appropriate orders may be passed.

5. As per the allegation in the FIR, the incident has taken place on 28th September, 2023 and pursuant to the directions

issued by learned Magistrate, FIR is registered on 5th November, 2023. Admittedly, there is dispute between informant and accused in respect of construction of wall.

6. Perusal of documents placed on record and the impugned order shows that Sessions Court has noted that there is dispute in respect of construction of wall, adjacent to the informant's dwelling house. Applicant and accused persons are neighbours. Applicant and accused No.1 are practicing advocates and accused No.2 is a businessman. Medico legal certificate shows that injuries allegedly sustained by informant are, abrasion and blunt trauma, and they are simple in nature. It is, therefore, held that physical custody of accused is not necessary for the purpose of investigation. Accused persons have fixed and permanent place of residence and, therefore, Sessions Court has granted anticipatory bail to them.

7. Reasons assigned by learned Sessions Judge are cogent and proper. It *prima facie* appears that due to dispute about construction of wall, present FIR is lodged. *Prima facie*, false implication of accused in the present crime cannot be ruled out at this stage. Allegations of snatching of Rs.6000/- from the pocket of applicant by the accused persons are *prima facie* unbelievable and they appear to have been made to increase the

gravity of offence. Respondents No.2 and 3 are not habitual offenders, they do not have criminal antecedents. They appear to be reputed persons in the society. They are not likely to abscond if released on bail. In this view of the matter, no case is made out by applicant to cancel anticipatory bail granted to accused persons.

8. There is no merit in the application. Application is, therefore, dismissed.

[NITIN B. SURYAWANSHI]
JUDGE