



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

APPLICATION FOR CANCELLATION OF BAIL NO.36 OF 2024

Khan Awez Ahmed,
S/o. Kaleem Ahmed Khan,
Age-20 years, Occu:Student,
R/o-Mali Bes, Parbhani.

**...APPLICANT
(Orig Informant)**

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Nanalpeth,
District-Parbhani,
- 2) Mohammed Nazimoddin,
S/o. Mohammed Jalaloddin,
Age-29 years, Occu:Business,
R/o-Mali Galli, Parbhani.

**...RESPONDENTS
(Resp. No.2 – Orig. Accused)**

...
Mr. Saeed S. Shaikh Advocate for Applicant.
Mr. S.R. Wakale, A.P.P. for Respondent No.1.
Mr. S.S. Jangada Advocate for Respondent No.2.
...

CORAM: S.G. MEHARE, J.

DATE : 2nd JULY, 2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties, finally, by consent.

2. The applicant/injured approached this Court for cancellation of bail granted to respondent No.2 by the learned Additional Sessions Judge, Parbhani, in bail application No.14 of 2024, dated 16th January 2024.

3. The allegations against the accused were that the accused assaulted the injured with a deadly weapon. He suffered serious injuries. He was hospitalized. The serious offence of attempt to commit murder was registered against the accused. Accused/Respondent No.2 was arrested.

4. Respondent No.2 had applied for bail before filing the charge sheet. His bail application was rejected on 2nd January 2024. However, the learned Additional Sessions Judge granted him bail within two weeks.

5. It is the vehement argument of the learned counsel for the applicant that both applications were decided prior to filing the charge sheet. The learned Judge did not consider the rule of 'change in circumstances' to grant or consider the successive bail application. He would submit that the earlier bail application was rejected, holding that injuries caused to the complainant were grievous. The photographs were also examined. The Court opined that the act was committed in a brutal manner. The reason behind the incident appears to be a trifle. The Court held

that the offence was serious. The investigation is in progress. For such reasons, the application was rejected.

6. Learned counsel for the applicant has a serious objection that respondent No.2 has access to the investigation papers. Hence, respondent No.2 has referred to the documents of medical treatment papers in his successive bail application. It was also a ground for successive bail application that the investigation is completed, and the charge sheet is likely to be filed, and the medico legal certificate is also ready. He has raised suspicion that unless the Investigating Officer supported the accused had no reason to know the actual progress of the investigation. He also objected that the accused knew that the injuries were simple. He also argued that there were no changes in circumstances. Completion of investigation is no change in circumstance. He also pointed out that the Court reviewed its opinion about the nature of the injuries and mechanically granted the bail to respondent No.2 without application of mind. He referred to the Judgment of this Court in the case of *Dnyaneshwar alias Pintu s/o. Nivrutti Talekar vs. Ganesh s/o. Pratap Mote and another (Application for Cancellation of Bail No. 18 of 2021 with other Applications, dated 13th July 2023)*. Referring to the ratio laid down by the Hon'ble Supreme Court he has vehemently argued that the order granting bail without

change in circumstances is a serious discrepancy and the bail was granted on untenable grounds. He also argued about the applicant's family background. He prayed that since the order is perverse, illegal and without following principles of 'change in circumstance', it is liable to be set aside.

7. Learned counsel for respondent No.2 vehemently argued that the first bail application was rejected as the investigation was in progress. The Court probably did not have the medical papers. Hence, the Court has opined on the basis of the photographs, that the injuries were grievous. However, in a subsequent bail application, the medical certificate was available before the Court. The opinion of the doctor/medical officer was that the injuries were simple. The Court has also considered that the injured was out of danger. There was a material change in circumstances from the date of rejection of the earlier bail application until the successive bail application was considered. The impugned order is free from illegality; therefore, the application has no substance.

8. It is true that except for the Court and investigating officer, no other party has access to the investigation papers before filing the charge sheet. However, perusal of the successive bail application reveals that perhaps some information has been

supplied to respondent No.2 about the nature of injuries and completion of the investigation. Be that as it may, the Court while going through the papers produced before it before charge sheet, had examined the nature of injuries based upon the photographs and opined that it appears the grievous injuries. The possibility of not producing the medical certificate at the time of first bail application, can also not be ruled out.

9. In the case of *Deepak Yadav vs. the State of Uttar Pradesh, AIR 2022 SC 2514*, it has been observed that, where the bail has been granted on untenable grounds and where serious discrepancies are found in the order granting bail, thereby causing prejudice to justice, the bail may be cancelled. In the case, of *Hari Sing Mann vs. Harbhajan Sing Bajwa (2001) 1 SCC 169*, the Hon'ble Supreme Court held that the successive bail application under Section 439 Cr.P.C. in the same FIR is not maintainable unless some changed circumstances are shown; otherwise, the exercise of jurisdiction in entertaining successive bail application amounts to review of the previous order of the same Court which is not permissible. Law is settled that the burden on the accused is to satisfy the Court that there were substantial changes in the circumstances for entertaining successive bail application. It should be in clear words. There should be substantial change in the circumstances.

10. The learned Additional Sessions Judge has passed orders in two bail applications within two weeks. First was rejected, expressing an opinion that injuries were serious, and second was allowed, observing that the injuries were simple. Once the bail is rejected before filing the charge sheet, the second application is not entertained unless there are substantial changes in circumstances. The investigation is complete on submission of the charge sheet/report under Section 173 of the Code of Criminal Procedure. On reading two orders from the same Judge in the same crime, refusing and allowing bail application, the Court is of the view that it amounts to a review of the previous order of the same Court. Under the criminal law, the review is impermissible. After the first bail application was rejected, there were no substantial changes in circumstances to exercise the powers under Section 439 Cr.P.C.

11. For the above reasons, the Court finds substance in the submissions on behalf of the applicant. The application deserves to be allowed. Hence the order:-

ORDER

(I) The Application is allowed

(II) The order of the learned Additional Sessions Judge, Parbhani, granting bail to respondent No.2 in Criminal Bail Application No.14 of 2024, dated 16th January 2024, stands quashed and set aside.

(III) The bail granted to respondent No.2 stands cancelled. His surety stands discharged.

(IV) Respondent No.2 should surrender before the learned Judicial Magistrate First Class, Parbhani, within two weeks from today.

(V) It is made clear that cancelling of bail application does not mean that his right to file a fresh bail application is taken away. In other words, he is at liberty to file a fresh bail application before the Competent Court after filing a charge sheet.

(VI) The rule is made absolute in the above terms.

10. Learned counsel for respondent No.2 submits that respondent No.2 wanted to impugn this order before the Hon'ble Supreme Court. This order is stayed for two weeks from today as prayed.

[S.G. MEHARE, J.]