



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.43 OF 2024

Parvati Bhanudas Ukade

APPLICANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. Niranjan M. Deshpande, Advocate for the applicant
Mr. S. R. Yadav-Lonikar, APP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd APRIL, 2024

ORDER :

1. By this application, filed under section 439 of the Criminal Procedure Code, applicant / informant seeks cancellation of bail granted to respondents No.2 and 3 by learned Judicial Magistrate First Class, Kaij.

2. Crime No.0380 of 2023 is registered against respondents No.2 and 3 at the instance of applicant with Kaij Police Station for offence punishable under sections 323, 324, 504, 506 read with 34 of the Indian Penal Code. Applicant has alleged in the FIR that she has two sons, Santosh and Satish. Elder son Santosh stays at Australia and younger son Satish stays at Pune. Both the sons intermittently come to Kaij. She knows Balasaheb Gadhave resident of Ahilya Devi Nagar, near her house. His mother is a

councilor. Encroachment on Umri road, adjacent to the house of informant was recently removed and construction of Umri road is going on. On 29th June, 2023, at 2.30 pm when informant, her husband and son Satish were at home, at that time, labours employed by respondent No.2 came near her house and started taking away bricks removed from her house during removal of encroachment. When informant told them that those bricks belong to her and they should not carry away the bricks, respondent No.2 started assaulting her with slaps and fists. When informant's son Satish intervened, labours accompanying respondent No.2 assaulted him with a plank having nails fixed to it. Both the respondents abused and gave threats to kill.

3. Pursuant to the registration of crime, both the respondents – accused were arrested on 13th July, 2023 at 8.30 a.m. On the same day, they filed bail application before the Trial Court, which is allowed. Hence, this application for cancellation of bail.

4. Heard learned advocate for applicant and learned APP for the State. Perused the documents annexed with the application.

5. Learned advocate for applicant assailed the bail order by relying on the decision of the Apex Court in ***“Himanshu Sharma V/s State of M.P.” dated 20th February, 2024.*** He submits that bail order is obtained by the accused, by

misrepresentation of facts. Mother of respondent No.2 is councilor whereas it was represented to the Trial Court that respondent No.2 is member of Municipal Council, Kaij. He further submits that on the day of arrest itself, bail is granted to respondents – accused. Bail is, therefore, liable to be cancelled.

6. Learned APP submits that appropriate orders may be passed in the matter.

7. Charge sheet is filed in the present crime on 28th July, 2023 and the case is numbered as RCC No. 222 of 2023. The case is at the stage of appearance of accused persons. It is, therefore, clear that trial is not likely to commence and conclude in the near future.

8. Though Trial Court has observed that accused No.1 is councilor, that ground is not sufficient to cancel the bail granted in favour of respondents – accused. That may be an inadvertent error in the order passed by the Trial Court. Therefore, decision in **“Himanshu Sharma”** (supra) would not assist the applicant. It is settled position of law that very overwhelming circumstances are necessary for cancellation of bail. No such circumstances are brought on record by the applicant.

9. No case is made out by applicant to cancel the bail granted to respondents – accused. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

drp/acb43-24.doc