



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.569 OF 2023

Aanant S/o Bharatrao Ghodke ... Appellant

VERSUS

1. The State of Maharashtra
2. Anand S/o Bhairu Alankar
3. Vikrant @ Vicky S/o Vijaykumar Navale ... Respondents

WITH

CRIMINAL APPEAL NO.570 OF 2023

Aanant S/o Bharatrao Ghodke ... Appellant

VERSUS

1. The State of Maharashtra
2. Yashwant S/o Gopalrao Machale
3. Samadhan Devidas Kadam-Parmeshwar
4. Dinesh S/o Deepak @ Deepakrao
Kadam-Parmeshwar ... Respondents

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Mr. Amol T. Jagtap, Advocate for the Appellant

Mr. S.B. Jadhav, APP for Respondent – State

Ms. Tanvi Jadhav for Respondent Nos.2 and 3 in
CRI.APPEAL/569/2023 and for Respondent Nos.2 to 4 in
CRI.APPEAL/570/2023

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 01.02.2024

PRONOUNCED ON : 06.02.2024

ORDER :

1. These appeals challenge orders dated 24.04.2023 passed by learned Special Judge, Osmanabad in Criminal Bail Application No.193 of 2023 and Criminal Anticipatory Bail Application No.180 of 2023.

2. Informant lodged FIR from the Civil Hospital alleging that he resides in the joint family with his mother, wife, brother Amol and sister-in-law. In the country liquor shop at Gopalnagar, Latur Road, Tuljapur, Yashwant Gopalrao Machale, Vidyanagar, Beed and informant's mother Sharda Bharatrao Ghodke are 70% and 30% partners respectively. Informant is running the shop. On 02.04.2023, while informant and his family members were at home, at 8.30 p.m., Anant Bhairu Alankar, his father Bhairu Aalankar, their father-in-law Vijaykumar Navale came to their house. Anand Alankar told that he has purchased 70% share in the shop from Yashwant Machale, therefore, his mother's consent is necessary and her signature is required on consent letter and partnership deed. His mother refuses to sign on the consent letter and partnership deed. Therefore, they have left the house. On 05.04.2023, accused persons assaulted informant and his brother Amol as his mother refuses to sign the consent letter and partnership deed. Informant and his brother Amol were assaulted by Anand Alankar with hammer, Vikrant @ Vicky Vijaykumar Navale, Samadhan Devidasrao Kadam-Parmeshwar, Dinesh Dipak Kadam-Parmeshwar and others assaulted informant and his brother with fist and kick blows. Anand gave iron rod blow on the back and near the left knee

of informant. They also called the name of his caste. Samadhan Kadam pushed him in the channel near the shop.

3. Accused Anand Alankar and Vikrant @ Vicky Vijaykumar Navale were arrested and they preferred criminal bail application no. 193 of 2023 for regular bail. Their application is allowed by the Trial Court.

Accused Yashwant Machale, Samadhan Devidas Kadam-Parmeshwar, Dinesh Dipak @ Dipakrao Kadam-Parmeshwar preferred anticipatory bail application no.180 of 2023, which is allowed by the Trial Court. Both these appeals impugn the regular bail and anticipatory bail orders.

4. Heard learned advocate for appellant, learned advocate for respondents – accused and learned APP for State. Perused the investigation papers.

5. Learned advocate for appellant has assailed the order of anticipatory bail contending that in view of bar under section 18 of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the Trial Court erred in granting anticipatory bail. Accused are habitual offenders as they are accused in charge-sheet filed in R.C.C. No.35 of 2020. As investigation is in progress, in the present crime,

custody of the applicant is necessary. Accused have committed serious offence and there is eye witnesses of the incident, and there is also CCTV footage of the incident.

Challenging the regular bail order, he submits that accused are habitual offenders and they should not have been released on regular bail. Bail is granted by Sessions Court on assumptions and presumptions and though there is direct involvement of accused in the present offence. In support of his submissions, he relied on the decision of Apex Court in ***Hariram Bhambhi Vs. Satyanarayan & Anr.*** (Criminal Appeal No.1278 of 2021).

6. Learned advocate for accused, on the other hand, supported the bail orders.

7. Learned APP has produced investigation papers and has requested to pass appropriate orders.

8. While granting anticipatory bail to accused Yashwant Gopalrao Machale, Samadhan Devidas Kadam-Parmeshwar and Dinesh S/o Deepak @ Deepakrao Kadam-Parmeshwar, Trial Court has observed; *"prima facie, from the bare reading of complaint, it appears that applicants – accused abused in filthy language to mother of victim, but in the entire*

*complaint, the words used by applicants – accused humiliating the caste are absent. Prima facie, there does not appear any further atrocious words used” . Then by relying on **Shantabai Vs. State of Maharashtra reported in 1982 Cr.L.J. 872**, it is held that, “merely calling a person by his caste though may not amount to insult or abuse him, it cannot be said to be with intent to humiliate such person within public view”. The Trial Court has also noted the fact that allegations are that Anand Alankar and other accused threatened informant by using abusive language in the name of the caste, and they are already arrested and recovery of weapon is effected. The Trial Court therefore has rightly held that bar under Section 18 of of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act is not attracted to the accused persons who are seeking anticipatory bail.*

9. Admittedly, there is a dispute in respect of partnership in the country liquor shop between informant’s family and the accused, as 70% of share in the said shop is purchased by Anand Alankar. Assault by hammer is attributed to Anand Alankar. Perusal of injury certificate of informant shows that he has suffered blunt trauma on left knee, which is a simple injury. A hammer is already recovered, so also the

CCTV footage of the alleged incident. Charge-sheet in the present crime is filed on 06.08.2023.

10. It is settled law that, *"bail once granted can be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which rendered the order granting bail legally untenable. The gravity of the offence, conduct of accused and social impact of undue indulgence by Court when the investigation is at the threshold are also amongst a situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system"* as is observed by the Apex Court in Criminal Appeal No.1161 and 1162 of 2021.

11. In ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 Supreme Court Cases 559***, it is held :

"This Court has reiterated in several instances that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it not longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted)."

12. In *Daulat Ram and others Vs. State of Haryana, (1195) 1 SCC 349*, it is observed :

"..... Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

13. In the light of aforesaid settled legal principles, no case is made out by appellant to cancel the anticipatory bail and regular bail granted in favour of accused persons.

14. In *Hariram Bhambhi* (supra), the Apex Court set aside the bail order granted by the High Court on the ground that, relevant factors for grant of bail, which are " (I) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the

crime. In this backdrop, the order of the High Court in granting bail cannot pass muster."

15. In case in hand, the Trial Court has passed a well reasoned order while granting anticipatory bail and since charge-sheet is already filed and no supervening circumstances are brought on record, no case is made out by appellant to cancel the bail of respondents - accused. Therefore, this decision is of no help to the case of appellant.

16. For the aforestated reasons, there is no merit in the appeals and both the appeals are therefore dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane