



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 199 OF 2022

The State of Maharashtra
Through Police Station Sonkhed,
Taluka Loha, District Nanded.

... Applicant

Versus

Satyam s/o Nagnath Dhonde,
Age : 24 years, Occupation Education,
R/o. Shevdi (Bajirao), Taluka Loha,
District Nanded.

... Respondent

.....

Mr. S. B. Narwade, APP for the Applicant-State.
Mr. Rajendra K. Temkar, Advocate for the sole Respondent.

.....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 196 OF 2022

Basweshwar s/o Vaijnath Dhonde,
Age : 31 years, Occupation Agriculture
& service, R/o. Village Shevdi (Bajirao),
Taluka Loha, District Nanded.

... Applicant
[Orig. Informant]

Versus

1. Satyam s/o Nagnath Dhonde,
Age : 24 years, Occupation Education,
(incorrectly stated as taking education
before the learned Sessions Court. In fact,
is an agriculturist), R/o Village Shevdi,
(Bajirao), Taluka Loha, District Nanded.
2. The State of Maharashtra,
through the Incharge Police Station Officer
Sonkhed Police Station, Sonkhed,
Taluka Loha, District Nanded.

... Respondents

.....

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Devang R. Deshmukh, Advocate for the Applicant.

Mr. N. S. Ghanekar, Advocate for Respondent No.1.

Mr. S. B. Narwade, APP for Respondent No.2-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.04.2024

Pronounced on : 25.04.2024

ORDER :

1. Application for Cancellation of Bail [ACB] No. 199 of 2022 is at the instance of State, thereby questioning grant of anticipatory bail to respondent-original accused Satyam by virtue of order dated 21.09.2022.

Similarly, ACB No. 196 of 2022 is at the instance of original informant and he too is praying for cancellation of bail granted by learned Additional Sessions Judge Kandhar, i.e. same order as is put to challenge by the State.

Submissions on behalf of learned APP in ACB 199 of 2022 :

2. Learned APP pointed out that crime was registered at Sonkhed Police Station, Taluka Loha, District Nanded for commission of offence punishable under Sections 307, 326, 324, 143, 147, 148, 149,

504 and 506 of the Indian Penal Code [IPC]. Learned APP took this Court through the FIR dated 19.10.2021 at the behest of one Basweshwar Vaijnath Dhonde. At the outset, learned APP submitted that it is fairly settled position that FIR is not an encyclopedia. Therefore, according to him, when FIR is by an injured, all details are not expected to be narrated. He pointed out that, at present there is concern of grant of anticipatory bail to accused no. 6 Satyam (respondent herein) who is also named in FIR. He would submit that he is the informant and on receiving telephonic information from his uncle Mahadu, he had been to his rescue. He had seen accused persons armed and had encircled his uncle and he had also seen the assault. He too was targeted. It is pointed out that his statement was recorded in the hospital. He further pointed out that though anticipatory bail application was at the instance of all accused, except respondent herein, namely accused no.6 Satyam, learned trial court has rejected anticipatory bail of all other accused.

3. It is further pointed out that learned Additional Sessions Judge has failed to appreciate the accusations raised in FIR and further erred in observing that no role is attributed to present respondent Satyam. He pointed to the grounds of objection raised by Investigating Officer, which were also conveyed to the learned

Additional Sessions Judge at the time of hearing, and would submit that, still learned trial court granted anticipatory bail only to accused no.6 Satyam. He further tried to submit that as regards to accused no.6 is concerned, recovery is yet to be caused and therefore, it is his submission that, anticipatory bail so granted to accused no.6 Satyam is unjustified. Consequently, he prays to set aside the order of learned Additional Sessions Judge dated 21.09.2022.

Submissions in support of ACB 196 of 2022 :

4. Learned senior counsel also took this court through the contents of the FIR as well as papers in the charge sheet and would submit that present respondent Satyam is specifically named in the FIR. He too pointed out that still learned Additional Sessions Judge surprisingly held that no role is attributed to him and gave benefit of anticipatory bail in a serious offence of attempt to murder. He pointed out that injured were required to be hospitalized for days together. Then learned senior counsel took this Court through the observations of learned Additional Sessions Judge in order dated 21.09.2022, more particularly para 7 and 8, and would submit that such observations are patently perverse and contrary to the investigation papers. He pointed out that there are allegations of use of deadly weapon. That,

the nature of crime, gravity of offence and magnanimity of the incident has not been taken into account by learned trial Judge while granting anticipatory bail.

5. He further pointed out that except present respondent, all other accused were required to seek regular bail. That, none is the beneficiary of anticipatory bail except present respondent Satyam. He also pointed out that there is recovery and proper interrogation to be made from him. That, investigation has not been taken to the logical end yet. He further pointed out that for one or other reason, matter has been deliberately prolonged by the respondent with sole intention of continuing to remain at large. He further submitted that though law is fairly settled that bail once granted cannot be cancelled, however, according to him, case in hand is an exceptional case where there is non-application of mind to the seriousness of the accusations and the role, and benefit of anticipatory bail has been granted without assigning proper reason. For all above reasons, he prays to withdraw the relief granted by Additional Sessions Judge by cancelling the bail.

Submissions on behalf of the respondent-accused :

6. Justifying the relief granted to the respondent, learned counsel Mr. Ghanekar submitted that, no doubt crime has been registered and present respondent is also named therein. However, he pointed out that on due consideration of the nature of accusations, role attributed to the present respondent, and finding that no overt act was spelt out against him in the FIR, learned trial court has correctly extended the benefit. He pointed out that moreover, present incident is a fall out of previous enmity. There was desperate attempt to falsely implicate.

7. He further pointed out that since grant of anticipatory bail by the learned Additional Sessions Judge on 21.09.2022, respondent is fully cooperating the investigating machinery. No adverse remark has been placed on record by prosecution till today showing non co-operation so as to withdraw the benefit granted. He emphasized that it is fairly settled that liberty on bail once granted cannot be withdrawn unless there are compelling circumstances. According to him, there are none. Therefore, he prays to dismiss both the applications.

8. Heard both sides.

9. Record shows that crime was registered on 19.10.2021 at Sonkhed Police Station, District Nanded. Anticipatory bail application at the instance of present respondent Satyam, along with other accused, appears to have been moved on 18.05.2022. Learned Additional Sessions Judge, Kandhar seems to have decided said Criminal Bail Application No. 97 of 2022 on 21.09.2022 granting anticipatory bail to respondent Satyam alone.

Record further shows that against such order of grant of anticipatory bail to respondent- Satyam, State has preferred ACB No. 199 of 2022 on 07.10.2022. Likewise, informant also seems to have come with similar prayer for cancellation of anticipatory bail by filing ACB No. 196 of 2022 on 07.10.2022.

Finally, both the applications have been heard by this Court on 16.04.2024.

10. Therefore, what is emerging from above discussion is that grant of anticipatory bail dated 22.09.2022 is challenged on 07.10.2022 and applications are pressed into service almost after over one and half year. Be it so.

11. Both above proceedings are for cancellation of grant of anticipatory bail. Before advertng to the merits, it would apposite to give a brief account of judicial precedents regarding parameters and factors to be taken into account for cancellation of anticipatory bail already granted.

In ***Mahant Chand Nath Yogi v. State of Haryana*** (2003) 1 SCC 326, the Hon'ble Apex Court held that, "*normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted*".

In ***Savitri Agarwal v. State of Maharashtra*** (2009) 8 SCC 325, dealing with similar issue of propriety of cancellation of anticipatory bail, the Hon'ble Apex Court observed that, "*very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted.*"

In ***Hazari Lal Das v. State of W.B.*** (2009) 10 SCC 652, the Hon'ble Apex Court, while dealing with cancellation of anticipatory bail and its propriety, held, "*High Court by impugned order cancelling appellant's anticipatory bail – Nothing brought on record*

to show that there had been interference, or attempt to interfere with due course of administration of justice by appellant, or concession granted to him had been abused in any manner, or any supervening circumstance had surfaced justifying cancellation of anticipatory bail”.

In ***Padmakar Tukaram Bhavnagare v. State of Maharashtra*** (2012) 13 SCC 720, in para 13 it is held that ;

“13. Generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. These instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material.”

In ***Mahipal v. Rajesh Kumar alias Polia*** (2020) 2 SCC 118, in para 16, it is observed :

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the

anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.”

In ***Vipan Kumar Dhir v. State of Punjab*** (2021) 15 SCC 518, the principle governing Section 438 of IPC is summarized as under :

“The well settled legal principle is that the cancellation of bail is to be dealt with on a different footing in comparison to a proceeding for grant of bail. It is necessary that “cogent and overwhelming reasons” are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. In addition, the bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by court when the investigation is at the threshold, are also amongst a few 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. The Supreme Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.”

In ***Prashant Singh Rajput v. State of M.P.*** (2022) 14 SCC 645, it is held that,

“correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail and test is whether the order granting bail is perverse, illegal or unjustified.”

On the other hand, it is further held that,

“prayer for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.”

It is further observed that,

“whether a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record” and that, “correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the court granting bail did not consider material facts or crucial circumstances.”

Similar view is taken in the most recent judgment in ***Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak*** 2023 INSC 761/2023 SCC OnLine SC 1059, wherein it is held that :

“It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducting to allow fair trial.”

12. The principles that can be culled out from above series of judgments and the factors that are to be taken into consideration while dealing with cancellation of anticipatory bail are that **firstly**, power of appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail ; **secondly**, whether the order granting bail is perverse, illegal, unjustified; **thirdly**, very cogent, overwhelming grounds or circumstances are required to cancel bail already granted; **fourthly**, cancellation of bail is generally examined on the anvil of existence of supervening circumstances or violation of conditions of bail by the person to whom bail has been granted; **fifthly**, bail can be revoked where the court has considered irrelevant material available on record which renders the order granting bail legally untenable; **sixthly**, the gravity of the offence, conduct of the accused, societal impact of undue indulgence by court when investigation is at threshold; **seventhly**, possibility of accused influencing prosecution witnesses, threatening the family members of the victim coupled with possibility of fleeing from justice or creating impediments in the fair investigation.

The above are some of the considerations which are to be borne in mind by the higher court while dealing with prayers for cancellation of bail.

13. Here, it is reiterated that occurrence is of 19.10.2021. FIR is also on the same day by informant who is said to be injured. Apparently, incident has taken place around 10.00 a.m. in the broad day light. Informant has named in all 11 persons including present respondent at serial no.6. In the FIR, he has also described the overt act of each of the accused. Apparently, at least in the FIR, no overt act is attributed to present respondent Satyam. No doubt, prosecution has opposed by putting forth the say of Investigating Officer, but the aspect of no role being attributed to respondent seems to have prevailed over the learned Additional Sessions Judge for granting him concession and relief of anticipatory bail. Anticipatory bail is admittedly subject to conditions.

14. Learned senior counsel as well as learned APP both had invited the attention of this Court to paras 8 and 9 of the impugned order in support of their contention that there is non application of mind to the facts and circumstance of the case. In the light of such

submissions, it is desirable to reproduce the relevant observations of learned Additional Sessions Judge in said paras.

“8. As per the FIR, the present accused Umakant had assaulted on the head of Mahadu by means of iron rod and on the hand of informant. So also accused Vishwanath assaulted on the head of Mahadu by Katti. Accused Sainath assaulted on the left portion of head of the informant by the katti. Accused Nagnath assaulted on the shoulder of informant by iron rod. However, in the FIR though, the name of accused Satyam mentioned but his specific overt-act and role in the assault does not reveal. Other co-accused persons preventing those persons, who came for intervention of the dispute. It means ultimately, co-accused helping these accused persons to assault injured. It shows their direct involvement to the commission of crime.

9. Considering the overt-act and direct role of accused Umakant, Nagnath, Vishwanath and Sainath in assaulting to the informant and other injured by means of deadly weapon iron rod, I find their custodial interrogation for moving further investigation on their part. So also, the weapons which they used required to seize from them. They did not available for interrogation till date to the police machinery. I find custodial interrogation of these accused persons is necessary to prepare charge-sheet against them. However, I do not find any justifiable

reason to take accused Satyam into the custody as his direct role does not appear prima facie. ...”

15. In the considered opinion of this Court, learned Additional Sessions Judge extended relief only to present respondent Satyam, finding no role or overt act attributed to him in the FIR which is generally the first document which is put to scrutiny to ascertain entitlement for grant or refusal of relief.

16. It is pertinent to note that, as stated above incident in question has taken place in October 2021 and Criminal Bail Application No. 97 of 2022 seeking anticipatory bail is pressed into service on 18.05.2021 i.e. almost seven months after the occurrence. Applications before this Court for cancellation of bail by both, State as well as informant, are apparently of 07.10.2022 and they are heard finally by this court on 16.04.2024 i.e almost one and half year after grant of anticipatory bail to respondent Satyam. There is no adverse remark from investigating machinery about non co-operation or disobedience of conditions so imposed by learned Additional Sessions Judge by its order dated 21.09.2022. There is no allegation of misuse of liberty or threats being issued to prosecution witnesses. It is also pertinent to note that none of the eventualities or contingencies

which are enumerated in the above judicial precedents are shown to be in existence so as to withdraw the relief already granted.

On query raised by this Court as to what is the current stage of the matter, learned senior counsel placed on record copy of case history. Stage of the matter shown is for “appearance”. Therefore, such document shows that matter has already reached Sessions Court for commencement of trial.

Resultantly, taking the above aspects and circumstances into consideration and no overwhelming or cogent reason or any supervening circumstances post the grant of bail shown to have cropped up, and are brought before this Court for withdrawing the anticipatory bail granted almost two years back, relief so prayed now cannot be granted. For all above reasons, no good ground being made out to cancel the bail, following order is passed :

ORDER

Both the applications are hereby dismissed.

[ABHAY S. WAGHWASE, J.]