



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 271 OF 2022

Amir Ramjan Tadavi

... Applicant

VERSUS

The State of Maharashtra
and others

... Respondents

.....

Mr. Mahesh K. Bhosale, Advocate for Applicant

Mr. A.R. Kale, APP for Respondent Nos.1 and 2- State

Mr. Atul Pawar, Advocate h/f Mr. B.S. Deshmukh, Advocate for
Respondent No.3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th FEBRUARY, 2024

ORDER :

1. By this application, filed under section 439 (2) of the Code of Criminal Procedure Code, applicant/informant seeks cancellation of anticipatory bail granted to accused No.4/respondent No.3.

2. At the instance of informant, C.R. No.191 of 2022 was registered at Savada Police Station, District Jalgaon for offences under sections 307, 324, 143, 147, 149, 337, 323 and 504 of the Indian Penal Code and sections 37(1)(c), 135 of the Maharashtra Police Act. It is alleged by informant that 20 accused persons named in the FIR assaulted him and others with sticks, stone, bricks and iron rod.

3. Heard learned advocate for applicant, learned APP for respondent Nos.1 and 2 – State and learned advocate for respondent No.3. Perused the investigation papers.

4. Perusal of FIR shows that allegations of assault with stick are made against accused Amin Tadvī and Sultan Tadvī. Shahrukh Tadvī pelted stone, which hit on the nose of his aunt Dagubai Majid Tadvī, she was also assaulted with sticks.

5. Learned advocate for applicant submits that Sessions Court has committed an error in granting anticipatory bail to the third respondent only on the ground of alibi. Ground of alibi is not available while considering anticipatory bail application. In support of this contention, he relied on ***Vikas Ganpat Dhas Vs. The State of Maharashtra, 2016 SCC OnLine Bom 12347***. He, therefore, submits that bail granted to the third respondent is liable to be cancelled.

6. Learned advocate for the third respondent, opposed the application contending that informant has alleged that Sultan Kadar Tadvī and Amin Tadvī have assaulted with sticks and caused bleeding injuries to informant and witnesses, however, informant has not filed application for cancellation of bail of those two accused. Only because respondent No.3 is

government servant, present application is filed seeking cancellation of anticipatory bail.

7. Learned APP placed on record papers of investigation including charge-sheet.

8. Charge-sheet is filed against in all 21 accused persons, respondent No.3 shown as accused No.13 in the said charge-sheet. While granting anticipatory bail, the Sessions Court has observed that respondent No.3 is Secretary in Gram Panchayat and he has produced on record a certificate of the Junior Engineer, Gram Panchayat, Yawal, that on 28.09.2022, accused was present in the office from 3.30 p.m. to 5.45 p.m. This rather strengthens the claim of accused that he was not present on the spot when the alleged incident occurred.

9. Learned advocate for applicant has urged that distance between the office of respondent No.3 and the spot of incident is only 20 k.m. and as there are eye witnesses who have stated his presence at the time of incident.

10. Perusal of investigation papers and charge-sheet reveal that general and omnibus allegations are levelled against the third respondent. As many as 21 accused are implicated in the present crime by informant. Injury certificate

do not support the allegations made against respondent No. 3. There is merit in the contention of respondent No.3 that main accused persons i.e. accused Nos. 1 and 2 against whom assault with sticks is alleged, applicant has not filed any application for cancellation of their bail.

11. Reliance placed by learned advocate for applicant in ***Vikas Ganpat Dhas*** (supra), is misplaced and misconceived in the facts of that case. Learned Single Judge of this Court has observed that plea of alibi cannot be considered at the stage of bail, for the reasons stated in the said decision. This decision is not applicable to the facts of the present case.

12. No fault can be found with the order of Sessions Court thereby granting anticipatory bail to respondent No. 3. The application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE