

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.356 OF 2017

The State of Maharashtra	...Applicant
Versus	
Samir Vishnu Gaikwad	...Respondent

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Ms P.P. Shinde, APP for the Applicant-State.
Mr. Sanjiv Punalekar for the Respondent.
Mr. Somnath Shendge, API, ATS, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th JANUARY, 2024.

P.C. :-

1. By this Application filed under Section 439(2) r/w. 482 of the Cr.P.C., the Applicant-State has sought to cancel the bail granted to the Respondent by the learned Sessions Judge, Kolhapur by order dated 17/06/2017 in Sessions Case No.3 of 2016.

2. The bail is sought to be cancelled mainly on the ground that the previous two bail applications were rejected on merits by the same court and bail application No.695 of 2016 was dismissed by this Court by order dated 11/07/2016. Ms Shinde, learned APP submits that the Applicant is involved in a serious offence of committing murder of Govind Pansare, while he was returning from morning walk alongwith his wife. She submits that the

incident was witnessed by a child witness Atharva, who had identified the Respondent-accused in the Test Identification parade. She submits that relying upon the statement of this witness, this Court had dismissed the bail application on merits. It is contended that the learned Sessions Judge was not competent to entertain and grant bail when the previous bail application was rejected on merits by this Court and particularly when there was no change in circumstance to entertain the subsequent bail application.

3. Per contra, learned counsel for the Respondent submits that subsequent to order dated 11/07/2016, the investigating agency had filed supplementary charge-sheet. The supplementary charge-sheet indicated that the widow of the deceased had identified the co-accused as an assailant and it is in view of this change in circumstance that the learned Sessions Judge entertained the subsequent bail application.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records prima facie indicate that on 16/02/2015, while the deceased Govind Pansare and his wife Uma Devi were returning from morning walk, two unknown persons came on a motorcycle and fired bullets

on the duo. Pursuant to the FIR lodged by Mukund Dinkar Kadam, C.R.No. 39/2015 came to be registered at Rajarampuri Police Station, Kolhapur for offences under Section 307 r/w. 34 of the Indian Penal Code and Section 3(25) of the Indian Arms Act. Said Govind Pansare expired on 20/02/2014 as a result of the injuries sustained in the said incident. Hence, Section 302 IPC came to be added.

6. The Respondent was arrested on 16/09/2015. The Bail Applications filed by the Respondent during the pendency of the investigation as well as after filing of the charge sheet, were rejected by the learned Additional Sessions Judge, Kolhapur on 28/01/2016 and 23/03/2016. The Respondent thereafter filed the Bail Application before this Court which was rejected by order dated 11/07/2016 mainly relying upon the statement of the child witness – Atharva Shive, who had witnessed the incident and identified the Respondent in the Test Identification Parade.

7. Despite rejection of the bail application by this Court on merits, the Respondent filed a fresh application for bail before the learned Sessions Judge, which came to be allowed by order dated 23/03/2016. Suffice it to say that when a higher court has refused to grant bail to an accused on

merits, judicial discipline and propriety requires the subordinate court not to entertain a successive application for bail. In this regard, it would be relevant to refer to the decision in ***Kalyan Chandra Sarkar v/s. Rajesh Ranjan @ Pappu Yadav, 2005(2) SCC 42***, wherein the Apex Court has held thus :-

‘16. The principles of res judicata and such analogous principles although are not applicable in criminal proceeding, that the Courts are bound by the doctrine of judicial discipline, having regard to the hierarchical system prevailing in our country. The findings of higher court or co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same has been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

17. The decision given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters, unless of course, there is material change in the fact situation, falling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application, in cases where applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent bail application. ...”

8. In the instant case, this Court having rejected the bail application on merits, the Respondent was required to file the subsequent bail application before this Court and not before the Sessions Court. As noted above, judicial propriety required the Sessions Court not to entertain the subsequent application for bail. The course adopted by the learned Sessions Judge in entertaining and granting bail to the Respondent, despite rejection of his earlier application by this Court on merits, amounts to grave indiscretion which impinges upon judicial discipline and propriety.

9. In view of the above, the question which falls for consideration is whether the bail granted to the Respondent should be cancelled at this stage solely on the ground of violation of judicial discipline or propriety by the learned Sessions Judge.

10. As noted above, this Court had rejected the previous bail application mainly on the basis of the statement of the eye witness – Atharva Shive. This child witness had stated that two persons had come on a motor cycle and that the pillion rider had fired bullets on Govind Pansare. In the Test Identification Parade, he had identified the Respondent as the assailant. It is pertinent to note that in the supplementary charge sheet filed against the co-accused – Sarang Akolkar, the Investigating Agency has relied upon

the statement of Uma Pansare, the widow of the deceased. She has stated that the two assailants had come on a motorcycle and one of them had fired bullets at them. She was shown photographs in presence of panchas and out of about 40 photographs, she had identified Vinay Pawar and co-accused – Sarang Akolkar as the persons involved in the incident of firing. This subsequent material brought on record by the prosecution, prima facie raises a doubt about the involvement of the Respondent in the aforesaid crime.

11. It is also pertinent to note that the Respondent was granted bail in the year 2017. Though the Application for cancellation of bail was filed within a short span of time, the matter remained pending before this Court for considerable time. During the interregnum period, the trial has commenced and 19 witnesses have been examined. It is stated that the Respondent has not violated the terms and conditions of the bail and has not misused his liberty. In such circumstances and particularly in view of the statement of the widow of the deceased, I am not inclined to cancel the bail granted to the Respondent. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)