

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

CRIMINAL REVISION APPLICATION NO. 229 OF 2024

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1. **Rohan Santosh Yadake**
Age : 22 Years, Occu. : Education and Agri.
2. **Akshay Santosh Yedake**
Age : 23 Years, Occu. : Education and Agri. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr.Jaydeep D. Mane:-	Advocate for Applicants.
Ms.Sangita E. Phad:-	APP for Respondent-State.
Mr.Prashant Bhagwat – PSI:-	Mohol Police Station : Solapur Rural.

CORAM : S. M. MODAK, J.

DATE : 21st JUNE 2024

P. C. :-

1. Heard learned Advocate for the Applicants and learned APP.
2. The Court of Additional Sessions Judge – Solapur as per the order dated 28th March 2024 was pleased to cancel the bail granted to these Applicants. The bail was granted on 23rd February 2022 by the Court of Additional Sessions Judge – Solapur. They were arrested in C.R. No. 1046 of 2021 registered at Mohol Police Station for the

offences under Sections 302, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860 ("IPC" hereinafter). The First-Informant is one Anil Ghodake who is the brother of the deceased Sunil. The incident took place on 26th November 2021.

3. While granting the bail on 23rd February 2022, certain conditions were imposed. The prosecution applied for cancellation on 9th January 2023 for following reasons:-

- (a) There were 4 N.C., complaints registered at Mohol Police Station. The details are given in Para No.3 of the said Application. (Now, the number has rose to 7).
- (b) The Applicant No.2 – Akshay posted certain offensive messages on Whats-app and Instagram addressing the First-Informant, wife and son of the deceased.
- (c) The apprehension is expressed that similar offence will be committed because the Accused No.1 – Arun has not deposited the revolver inspite of suspension of licence. Whereas, on Instagram, the Applicant No.1 – Rohan is shown along with the revolver and live cartridges. Certain screen shots are produced for perusal of this Court.

4. The present Applicants opposed the prayer for cancellation of bail. Learned Advocate for want of instructions could not point out whether any reply is filed. He has annexed few papers to the present

Revision Application. He claims that they were also annexed before the Sessions Court but they were not considered. He could not substantiate this argument.

5. I have read the impugned order. Predominantly, following considerations weighed his mind:-

- (a) The Opponent No.1 has not produced the weapon though licence is suspended. (Para No.3).
- (b) There are 4 offences registered against the Applicant.
- (c) Due to Whats-app messages and Instagram messages, the Applicants have tried to glorify the offence under Section 302 of IPC.

6. First two observations are factually incorrect for two reasons:-

- (a) The revolver licence of Accused No.1 – Arun is suspended and not the licence of the Applicant No.1 – Rohan. (See averments in Para No.5 of cancellation Application moved before the Court of Additional Session Judge, Solapur).
- (b) The offences which were registered after grant of bail are in fact not cognizable offences but they are of non cognizable offences.

7. Learned Judge has quoted condition No.3 in Para No.2 of the impugned order. Condition No.(iii) says about :-

“not committing similar offence during the period of bail”.

In fact, if we take literal meaning, it means the similar offence for which they have been arrested. Whereas, in fact Condition No.(ii) says about not tampering the evidence of prosecution. In fact, this condition ought to have referred in the order.

8. It is true the considerations for grant of bail are different from the conditions for cancellation of bail which is already granted. The prayer for cancellation can be considered only when there is a convincing material. Let us see what are those materials and what the Applicants want to say about those materials.

(a) There are 4 non cognizable offences. Learned APP shown me extracts of 7 non cognizable offences. I have perused them. In many of them, these 2 Applicants are the Accused persons. They were registered on following dates:-

- (i) 21st December 2020,
- (ii) 29th April 2022,
- (iii) 23rd October 2022,
- (iv) December – 2022,
- (v) 18th March 2023,
- (vi) 20th March 2023.

(b) Whereas, I have also seen the screen shots from the Instagram Account. The person shown in the

photograph along with revolver in his hand is nothing but the Applicant No.2 – Akshay. There are few other screen shots wherein Akshay is shown along with the revolver.

9. It is true that there are certain objectionable messages thereby intimidating his rival party. It is true the learned trial Judge in Para No.6 observed:-

“These messages cannot take place of proof without there being any evidence about the same”.

Learned APP explained as to how, this Application is moved. The First-Informant Anil Ghodake has written a letter to the learned District Government Pleader on 27th December 2022 thereby apprehending danger from the Accused who were granted bail and others. On that basis, learned DGP asked the Police Inspector – Mohol Police Station on 28th December 2022 for taking necessary action.

10. As against this, learned Advocate Shri.Mane made following submissions:-

(a) The conduct of Mohol Police Station is favouring the First-Informant because in a counter case registered against them under Section 307 of IPC, no charge-sheet is filed.

- (b) Even Sangram who is the son of the deceased has also posted certain messages on Instagram. He produced their screen shots. There is one screen shot wherein some weapon is shown in one hand.
- (c) Even there are certain threatening messages. There is also photo of Sangram.
- (d) He invited my attention to the various complaints made to the Superintendent of Police – Solapur Rural and other officials from Page No.35 to Page No.44.
- (e) There is also N.C., complaint registered on 9th May 2023 by the Applicant Akash against Rohan Ghodake.

11. If it is presumed that the materials relied upon by the Applicants before this Court were placed before the trial Court, then the trial Court ought to have perused those materials. None of the materials is referred in the order. Secondly, the merits of the grounds of cancellation ought to have been considered in the light of the materials relied upon by the Applicants. If considered from that perspective, I think, the learned Judge has wrongly exercised the discretion under Section 439(2) of the Code.

12. It is important to note that the Applicants have raised a grievance against the Mohol Police Station for not filing charge-sheet in an offence under Section 307 of IPC registered at the instance of the

Applicants. In fact, the certified copy of one application moved on behalf of the Accused in Sessions Case No.14 of 2022 wherein the Applicants are facing the prosecution is filed. They have prayed for recording the evidence of the First-Informant. It was not recorded as the muddemal was not produced. The trial Court issued necessary directions.

13. A query is put to learned APP *“in Instagram Account, when a revolver is shown by the concerned persons, whether any enquiry is made with anyone”*. After taking instructions, she submitted that the weapon is not produced, however, suspension of licence is for Accused No.1 and not for these Applicants. The weapons are shown **in the Instagram Account of Sangram** who is the son of the deceased and **in the Instagram Account of Akshay**. Even there are N.C., complaints against both of them. Learned Advocate Shri.Mane has even shown readiness to stay outside Mohol Taluka. So, I think, the cancellation of bail ought not to have been ordered because it has got a drastic effect of taking away the liberty. The apprehension could have been taken care by imposing certain additional conditions. Section 439(1)(b) empowers the Court to modify the conditions. The facts and circumstances warrant to add few more conditions in the bail order.

Hence, order:-

ORDER

- (i) The Revision Application is allowed.
 - (ii) The order dated 28th March 2024 passed by the Court of Additional Session Judge – Solapur thereby cancelling the bail of these Applicants is set aside.
 - (iii) Both the Applicants are directed not to enter the Mohol Taluka till the conclusion of the trial.
 - (iv) They are permitted to attend the Court of Additional Sessions Judge – Solapur only for the purpose of attending the trial.
 - (v) Both are directed to give their alternate place of address to the Court as well as to the Investigating Officer.
14. In view of the above, Revision Application stands disposed of.

[S. M. MODAK, J.]