



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.4 OF 2023

The State of Maharashtra Police Station Officer, Police Station,
Buldhana (City), District Buldhana

Vs.

Samadhan Bhagwan More

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Sneha Dhote, APP for the applicant/State.

Mr. Anil S. Mardikar, Senior Counsel a/b Mr. Digvijay Prakash Singh,
Counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/08/2024

1. By this application, the State is seeking cancellation of bail granted to the non-applicant in connection with Crime No.83/2021 registered under Sections 143, 147, 149, 302, 307, 326, 324, 452, 336, 504 and 506 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act.

2. The application is filed on the ground that the present non-applicant after releasing him on bail has committed the similar type of crime registered under Sections 307, 323, 504 read with 34 of the Indian Penal Code and under Section 4 and 25 of the Arms Act. It is further contended that this non-applicant is having criminal antecedents and chart showing details of crime annexed. Thereafter also, he was released on bail and taking into

consideration the conduct of the present applicant, the application for cancellation is filed.

3. Heard Ms. Dhote, learned APP for the applicant/State. She submitted that the allegation against the present non-applicant that he and the other members of his family assaulted Mrs. Kantabai and her husband Mr. Ankush with iron pipe, stick and stone. They formed the unlawful assembly and in furtherance of their common object, they have eliminated the deceased i.e. Kantabai in the said incident. She submitted that considering the gravity of offence and considering the criminal antecedents against the present non-applicant, application ought to have rejected by this Court but this Court has granted bail to the present non-applicant and after releasing on bail, he misused the liberty and involved in various crimes.

4. Per contra, Mr. Anil Mardikar, learned Senior Counsel for the non-applicant submitted that he is falsely implicated in the subsequent offence. In fact, the criminal antecedents aspect was considered by the Court and it is observed that the non-applicant is not a flight risk and he was released on bail. He further submitted that the consideration for grant of bail and considerations for cancellation of bail are different in view of the decision of the Hon'ble Apex Court in the case of **Prabhakar Tewari vs. State of Uttar Pradesh and another** reported in **(2020) 11**

SCC 648 wherein the Hon'ble Apex Court considered and observed that the criminal antecedents are not sufficient to reject the bail application of the applicant. In view of that no case is made out by the State for cancellation of bail.

5. After hearing the learned APP for the applicant and learned Senior Counsel for the non-applicant, perused the impugned order, wherein this Court has considered the submission as well as the investigation papers and observed that considering the version of the eye witnesses which has come on record in the 164 statements, the fact that investigation is completed and chargesheet is filed and the applicant is not a flight risk and case for bail is made out and released him on bail.

6. As far as the ground mentioned in the application that he has committed the breach of the condition is not substantiated by any material. The condition imposed on the non-applicant was that he shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence and he shall not leave the country without the permission of the trial Court. As far as these conditions are concerned, there is no material to show that he has either tamper the evidence or hamper the investigation. As far as the criminal antecedents is concerned, learned Senior Counsel for the non-applicant rightly placed reliance on the

decision of the **Prabhakar Tewari** (supra) wherein the Hon'ble Apex Court has held that on considering the submissions of the learned counsel for the parties, having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of ***Mahipal vs Rajesh Kumar [(2020) 2 SCC 118]*** for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper and the appeal was dismissed.

7. Similar is the case in the present matter while considering the bail application of the present non-applicant, this Court has considered that he is not a flight risk, the investigation is completed and chargesheet is filed.

8. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in Catena of decisions in **Myakala Dharmarajam and others vs State of Telangana and others** reported in **(2020) 2 SCC 743** wherein it is held that:

"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."

9. In **Deepak Yadav Vs. State of U.P. and another** reported in **2023 (2) Mh. L. J. (Cri) (S.C.) 196** wherein it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important.

10. The Hon'ble Apex Court laid down illustrative circumstances where the bail can be cancelled:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
- iii) Where bail has been granted on untenable grounds.
- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- v) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

11. In the light of well settled legal position if the facts of the present case are taken into consideration, this Court has considered that the investigation is completed and chargesheet is filed and the applicant is not at a flight risk. As observed earlier in the light of the Hon'ble Apex Court merely because there are criminal antecedent is not sufficient to reject the prayer of a bail, in view of that, this Court has granted the bail to the applicant. As far as the grounds made out by the State are

concerned, which is not substantiated by any material. It is well settled that overwhelming and supervening circumstances are required for cancellation of bail which are not available in the present case, in view of that, the application is devoid of merits and liable to be rejected.

12. Accordingly, I proceed to pass following order:

The application is rejected.

(URMILA JOSHI-PHALKE, J.)