



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APPP) NO.831/2024

IN

CRIMINAL APPLICATION (BA) NO.132/2024

Vrukshapal s/o Sevakdas Patil

..VS..

State of Maharashtra, through PS Kalmeshwar, District Nagpur and anr

Sanjay s/o Ruprao Thakre : Applicant / Complainant

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

Court's or Judge's Order

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Shri P.S.Tiwari, Counsel for the Applicant/Complainant.
Shri A.C.Jaltare, Counsel for the Accused.
Shri C.A.Lokhande, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 11/07/2024

PRONOUNCED ON : 18/07/2024

1. This application is moved by complainant Sanjay s/o Ruprao Thakre for cancellation of bail granted by this court to accused Vrukshapal s/o Sevakdas Patil in Criminal Application (BA) No.132/2024 on 20.3.2024.

2. Accused Vrukshapal Patil came to be arrested on 16.4.2023 on the basis of report lodged by complainant Sanjay Thakre, who is brother of deceased Vijay. As per his report, deceased Vijay was married with one Lata @ Megha and he

suspected that his wife is having love affairs with co-accused Sharad Thakre and, therefore, on that count, there used to be frequent quarrels between them. The wife of deceased Vijay left the matrimonial house with her children to live at her parental house. It is further alleged that deceased Vijay informed complainant Sanjay Thakre on 15.4.2023, at about 5:00 p.m. that his wife from last four days is calling him at her parents house and asking him to stay there for a day and, therefore, he has to go to the parental house of his wife. On this, complainant Sanjay Thakre along with one Arun Moze dropped deceased Vijay on his motorcycle at Piplafata at about 6:00 to 6:30 pm. On the next date, i.e. 16.4.2023, at about 8:00, complainant Sanjay Thakre came to know that dead body of deceased Vijay was found at Dhapewada, Bhadangi Road. Immediately, he rushed to the spot and witnessed injuries on the person of deceased Vijay. On the same day, he lodged the report with Kalmeshwar Police Station, Nagpur. The police registered the crime against the accused and other co-accused.

3. Heard learned counsel Shri P.S.Tiwari for applicant/complainant Sanjay Thakre, learned counsel Shri A.C.Jaltare for accused Vrukshapal Patil, and learned Additional Public Prosecutor Shri C.A.Lokhande for the State.

4. Learned counsel for complainant Sanjay Thakare submitted that accused Vrukshapal Patil has obtained the order of bail by suppressing earlier order passed in Criminal Application (BA) No.965/2023 wherein this court mentioned that, “this court has shown disinclination to grant bail and permission was granted to withdraw the said application with a direction to the trial court to expedite the trial”. He submitted that the said order even was also not brought to the notice of this court by learned Additional Public Prosecutor for the State. Thus, by suppressing the fact and misrepresenting the court, the order of bail was obtained in favour of accused Vrukshapal Patil. He submitted that initially, this court has shown disinclination to grant bail and, therefore, the application was withdrawn. The order was suppressed from the court. Thus, a mischief is played by accused Vrukshapal Patil while obtaining the order of bail in his favour and on that ground itself, the said order granting bail deserves to be revoked.

5. Learned Additional Public Prosecutor for the State supported contentions made by learned counsel for complainant Sanjay Thakre and prays that the application be allowed.

6. Learned counsel for accused Vrukshapal Patil submitted that insofar as suppression of material fact, which is not mentioned,

is concerned, the same is not sufficient to cancel the bail granted in favour of accused Vrukshapal Patil. He submitted that considerations for grant and cancellation of bail are different. The supervening and overwhelming circumstances are required to cancel the bail. He admitted that the earlier order was not mentioned. However, he submitted that the said earlier order inadvertently was not mentioned and there was no intention to mislead or misrepresent the court. This court granted the bail on its own merits. He submitted that as initially various aspects were not pointed out to the court, this court has shown disinclination to grant the bail. While considering the subsequent bail application, the court considered merits of the case and found that evidence in circumstantial in nature is having some inconsistency and released accused Vrukshapal Patil on bail. Thus, no ground is made out to cancel the bail.

7. Having heard learned counsel appearing for respective parties, it reveals that the present application is filed mainly on ground that as the earlier order passed expediting trial and showing disinclination was not brought to the notice of this court while granting the bail in favour of accused Vrukshapal Patil, it is not sufficient to cancel the bail.

8. It is well settled that once bail granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. A very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. In the case of **Dolat Ram and ors vs. The State of Haryana, reported in 1995(1) SCC 349**, the Honourable Apex Court laid down grounds for cancellation of bail, which are as under:

- (i) interference or attempt to interfere with the due course of administration of Justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of accused absconding;
- (v) likelihood of/actual misuse of bail, and
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

9. It is no doubt true that cancellation of bail cannot be limited to occurrence of supervening circumstances. The court has discretion to cancel the bail of an accused even in the absence of supervening circumstances, in following circumstances:

- a) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record;
- b) 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;
- c) where the past criminal record and conduct of the accused is completely ignored while granting bail;
- d) where bail has been granted on untenable grounds;
- e) where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

10. Thus, where a court considering an application for bail fails to consider relevant factors, the court has discretion to cancel the bail. While cancelling the bail, it has to be seen, whether the order granting bail suffers from non-application of mind or is not borne out from *prima facie* view of the evidence on record. Thus, it is necessary for the court to see, whether on the basis of record there existed a *prima facie* case or reasonable ground to believe that the

accused has committed crime.

11. While releasing accused Vrukshapal Patil on bail, in Criminal Application (BA) No.132/2024, this court considered that the entire case is rested on circumstantial evidence and two circumstances, on which the prosecution relied upon, are the last seen and seizure of clothes and vehicle. The prosecution also relied upon CCTV Footage wherein accused Vrukshapal Patil was seen with the deceased on 14.4.2023 between 5:55:30 to 6:6:12. Whereas, the statement of complainant Sanjay s/o Ruprao Thakre shows that he dropped the deceased at Piplafata at about 6:00 to 6:30 pm. The statements of other witnesses show that the deceased was seen by them at about 7:00 to 7:30 pm in the village. Considering a long gap between the deceased was lastly seen with accused Vrukshapal Patil and finding of dead body and intervention of third person cannot be ruled out, he was released on bail. Thus, initially these facts were not pointed out and, therefore, this court has shown disinclination and subsequently on pointing out merits of the matter, accused Vrukshapal Patil was released on bail.

12. The present application for cancellation of bail granted to accused Vrukshapal Patil is filed mainly on the ground that accused Vrukshapal Patil has suppressed a fact that the earlier

application was withdrawn and the trial was expedited. The said aspect was considered by the Allahabad High Court in Criminal Misc.Bail Cancellation Application No.172/2022 (**Shanti Rani Agarwal vs. State of UP and another**) and by referring the decision in the case of **Colby Furniture Company, Inc. vs. Belinda J.Overton, reported in 299 So.3d 259** observed that the purpose of doctrine is to prevent a party from obtaining relief when that party's own wrongful conduct has made it such that granting the relief would be against equity and good conscience. It is true that, the clean hands doctrine states that one "who comes into equity must come with clean hands.

13. In the present case, question is, whether merely on the ground of suppression of material fact, the bail can be cancelled.

The said aspect was considered by the Honourable Apex Court in the case of **Kashmira Singh vs. Duman Singh, reported in (1996)4 SCC 693** wherein it is held that the ground regarding suppression of facts is still weaker. In the first place, knowledge of two bail applications of the co-accused having been rejected has been imputed to the accused without valid basis. Secondly, the fact that the co-accused had applied for bail and had later not pressed the application, had been disclosed since it was known to the accused. That was sufficient indication that the co-accused had not been

enlarged on bail. His decision not to press for bail would be indicative of the fact that the court was disinclined to grant bail or, he did not see sufficient grounds to press the bail application. Be that as it may, the fact remains that the court was aware that the co-accused was not granted bail. That was sufficient for the court when it considered the accused's application for bail. Besides, it was the prosecution/complainant's duty to bring to the court's notice that two applications of the co-accused for bail were rejected. If the accused did not mention it, nothing prevented the opposite side from placing it on record. It seems to be an omission on the part of the prosecution/complainants side, but, for that, it would be wrong to charge them with having suppressed facts. So also, for the accused, more particularly because, there is no positive evidence to attribute knowledge to the accused. Hence, the ground is not unsustainable.

14. In the case of **Kulwant Singh vs. State of Punjab, reported in 2022 SCC OnLine P&H 2399** also by referring the decision in the case of **Arunima Baruah vs. Union of India, reported in (2007)6 SCC 1201** it is held that the Honourable Apex Court discussed meaning and scope of expression 'material fact' and effect of suppression of the same. It was observed that a material fact would mean material for the purpose of determination of the *lis* and

the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact which has been suppressed is not material for determination of the *lis* between the parties, the Court may not refuse to exercise its discretionary jurisdiction.

15. Here, in the present case, accused Vrukshapal Patil was granted bail on the basis of merits of the matter and there is no grievance raised by anybody to the effect that the said accused has misused the liberty granted in his favour or there is any illegality or perversity in the order granting bail by this court. As such, suppression of the material fact of non-disclosure of the earlier order would not be sufficient to curtail the liberty of accused Vrukshapal Patil since the bail order was passed on own merits of the case.

16. In the case of **Arunima Baruah vs. Union of India** *supra*, it is observed that it is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case.

17. The only question remains, whether accused Vrukshapal Patil should be kept behind the bars. The bail granted to accused Vrukshapal Patil was on the basis of merits of the case. Insofar as the suppression of the fact is concerned, there is no propriety to keep the said accused behind the bars.

18. In view of the above, the application for cancellation of bail deserves to be rejected and the same is **rejected**. However, it is directed that accused Vrukshapal s/o Sevakdas Patil shall deposit costs Rs.10,000/- with the High Court Legal Services Sub Committee at Nagpur within a period of one month from today for suppressing the earlier order passed by this court. If accused Vrukshapal Patil fails to deposit the said costs within the stipulated period, learned Additional Sessions Judge, Nagpur to recover the costs.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!