



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

CRIMINAL APPLICATION (APPLN) NO.55/2023

Sarita Balu Munde

..VS..

Rohan Gajanan Ingle s/o Gajanan Ingle and anr

AND

CRIMINAL APPLICATION (APPLN) NO.38/2023

Sarita Balu Munde

..VS..

Gowardhan Janardhan Kaple and anr

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

Court's or Judge's Order

.....
APPLN No.55/2023

Ms.Tasmiya Taleha, Advocate h/f Shri C.J.Dhruv, Counsel for the Applicant.

Shri Akshay A.Naik, Counsel for NA No.1.

Shri N.R.Rode, Additional Public Prosecutor NA No.2/State.

APPLN No.38/2023

Ms.Tasmiya Taleha, Advocate h/f Shri C.J.Dhruv, Counsel for the Applicant.

Shri Akshay A.Naik, Counsel for NA No.1.

Shri N.R.Rode, Additional Public Prosecutor NA No.2/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 17/01/2024

PRONOUNCED ON : 31/01/2024

1. By these applications under Section 439(2) of the Code of Criminal Procedure, the applicant seeks cancellation of bail in connection with Crime No.640/2022 registered with Ramdaspath Police Station, Akola for offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Heard Advocate Ms.Tasmiya Taleha for the applicant, learned counsel Shri Akshay Naik for non-applicant No.1 (in both

applications), and learned Additional Public Prosecutor Shri N.R.Rode for the State.

3. As per contentions of the applicant, deceased Vishal Kaple was associated with a prominent political party. During years 2019 to 2022, he was popular due to his social activities especially raising his voice against various social evils like prostitution and illegal sale of liquor.

4. Rohan Gajanan Ingle (accused Rohan), who is non-applicant No.1 in Criminal Application No.55/2023, as per allegations of the prosecution, was aggrieved by the drive of the deceased in putting an end to the sale of illegal liquor. The deceased wrote a letter to the Superintendent of Police regarding threats by accused Rohan Ingle and other co-accused. It is alleged that with the help of Kashinath Changdev Bagde, the deceased made a complaint to the State Excise against illegal sale of liquor. As a result of complaint dated 13.10.2022, the excise department initiated legal action on 19.10.2022. It is alleged by the informant and prosecution witnesses that on 20.10.2022, when Kashinath Bagde was proceeding on his two-wheeler, he was intercepted by accused Rohan Ingle and other co-accused and was taken to "Om Dhaba" owned by co-accused Ballu Wankhede. Later on, Kashinath was brought by accused Rohan Ingle and other co-accused at the house of the deceased and family member of the

deceased were threatened by saying that the deceased has to face dire consequences if he is not withdrawing the complaint. On 21.10.2022, two unknown persons visited house of Kashinath and threatened his family members and, therefore, he lodged complaint with Civil Lines Police Station Akola. As per allegation, said Kashinath witnessed co-accused Gowardhan Janardhan Kaple (accused Gowardhan), who is non-applicant No.1 in Criminal Application No.38/2023, and Ashwin Kaple along with Shivanand Dorvhekar who eliminated the deceased. It is further alleged that on 29.10.2022, accused Rohan contacted Kashinath for settlement and took him to "Shubham Hotel" wherein other co-accused were present and said Kashinath was pressurized to withdraw the complaint. As per allegations, accused Gowardhan, along with the other co-accused, hatched conspiracy and hired co-accused Shivanand and Vinod Kamble. On 30.10.2022, at 6:30 pm, the deceased was stabbed by the co-accused. On the basis of report lodged by Rahul Nagorao Dhaye, the crime is registered against the co-accused and during investigation, involvement of accused Rohan and accused Gowardhan revealed and, therefore, they were arrested.

5. Accused Rohan and accused Gowardhan, approached the Sessions Court by filing application Exhibit-52 by accused Rohan and Misc.Criminal Application No.57/2023 by accused Gowardhan for grant of bail. Learned Judge of the trial court

allowed applications and granted bail on the ground of parity as the co-accused are released on bail by this court in Criminal Bail Application No.342/2023. Another co-accused Ashwin was also released on bail by the Sessions Court.

6. Being aggrieved with the said orders passed by the Sessions Court, the applicant, who is sister of the deceased, preferred these applications for cancellation of the bail.

7. Advocate for the applicant submitted that the ground of parity was not available to accused Rohan and accused Gowardhan as their role is distinguishable from co-accused Abhishek Jagtap as there was no criminal antecedent against him as well as there was no involvement in illegal liquor or business. Whereas, several offences are registered against accused Rohan and accused Gowardhan. Insofar as accused Gowardhan is concerned, there is a direct evidence against him showing that he threatened the deceased as well as his family members. The CDRs show that accused Rohan was in a continuous contact with Shiva Dorvhekar who eliminated the deceased. The trial court has not considered *prima facie* material showing involvement of accused Rohan and accused Gowardhan in a previous incident of threatening to prosecution witness Kashinath Bagde. The trial court had also not considered the association of accused Rohan and accused Gowardhan with the co-accused. The parameters or

principles for grant of bail are also not considered by the trial court.

8. Learned counsel for the applicant further submitted that the Honourable Apex Court in the case of **Neeru Yadav vs. State of U.P., reported in (2016)15 SCC 422** frowned upon the concerned High Court which totally ignored the criminal antecedents of accused and weighed the doctrine of parity in granting bail.

She further submitted that orders passed by the trial court are without application of mind and, therefore, the same are liable to be quashed and set aside. The trial court mechanically granted the bail in heinous offence.

9. *Per contra*, learned counsel Shri Akshay A.Naik for accused Rohan and accused Gowardhan submitted that perusal of statements of witnesses reveals that similar allegations are made against accused Rohan and accused Gowardhan and the co-accused who are released on bail. The trial court assigned reasons mentioning that it is material to note that co-accused Dhnyaneshwar, who was also similarly involved in the conspiracy and was giving threats to the deceased and Kashinath, is released on bail by the High Court as well as the co-accused are also released on bail and, therefore, the principle of parity was applied. He further submitted that CDRs and documents, placed

on record, are collected by the investigating officer during further investigation under Section 173(8) of the Code of Criminal Procedure. At the relevant time, details regarding mobile numbers of co-accused Shivanand and the accused and a detailed material showing their calls to each other were not placed on record. The investigating agency has only placed on record CDRs without giving details regarding names of customers. Further details are collected subsequently and filed along with supplementary chargesheet. Thus, at the relevant time, when bail applications of accused Rohan and accused Gowardhan are considered, the said material was not before the Court. Considering CDRs collected during further investigation, while deciding applications, it will cause prejudice to accused Rohan and accused Gowardhan. He further submitted that on merits also, involvement of accused Rohan and accused Gowardhan in the incident dated 30.10.2022 is neither narrated by the applicant nor by any of family members while recording their statements by the investigating officer. In a subsequent statement, first time, prosecuting witnesses came along with a theory of threatening by accused Rohan and accused Gowardhan. He further submitted consideration for grant of bail and cancellation of bail is different. Supervening and overwhelming circumstances are required for cancellation of bail. The orders passed by the trial court granting bail were on the basis of material of investigation papers placed

before the court. If new material is collected during further investigation, the applicant is always at liberty to prefer an appropriate application for cancellation of bail before the trial court. In view of Section 439(2) of the Code, similar powers are to the Sessions Court also to cancel bail granted. If this court considers the material which was not before the trial court at the relevant time, when the bail was granted, it would certainly cause prejudice to accused Rohan and accused Gowardhan and, therefore, he prayed for rejection of applications.

10. Before advertng to the discussion, whether the trial court granted the bail mechanically or on the basis of material placed before it, it is necessary to see settled law regarding cancellation of bail.

11. It is well settled that very cogent and overwhelming circumstances or grounds are required to cancel bail already granted. Ordinarily, unless a strong case based upon any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) of the Code of Criminal Procedure.

12. The Honourable Apex Court in the case of **Bhagirathsingh Mahipat Sing Judeja vs. State of Gujarat, reported in (1984)1 SCC 284** held that if there is no *prima facie* case, there is no question of considering other

circumstances. But, even where a *prima facie* case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence, we would have certainly overlooked this aspect of the matter if the approach of the learned judge was otherwise one which would commend to us.

13. In the case of **Deepak Yadav vs. State of Uttar Pradesh, reported in (2022)8 SCC 559** it is held that the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. It is further held that it is well settled that the factors to be borne in mind while considering an application for bail are, (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced, and (viii) danger, of course, of justice being thwarted by grant of bail.

Thus, for grant or denial of bail, the nature of crime has a huge relevancy.

It is further observed that the grounds for cancellation of bail are: (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.

The Honourable Apex Court further held that cancellation of bail cannot be limited to the occurrence of supervening circumstances and gives illustrative circumstances where the bail can be cancelled; 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; f) 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, and g) when the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

14. In another judgment in the case of **Vipan Kumar Dhir vs. State of Punjab, reported in (2021)15 SCC 518**, the Honourable Apex Court held that the the well settled legal principle is that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail.

15. Thus, in view of the well settled legal principles, it is required to be borne in mind that when a prayer is made for cancellation of bail, cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to allow fair trial. The cancellation of bail has to be dealt on a different footing in comparison to a proceeding for grant of bail. No doubt, each

case would have its peculiar facts and the same are required to be taken into consideration for adjudication of bail matters including cancellation of bail.

16. Thus, in view of the above well settled legal position, it is to be considered whether the trial court has granted bail without considering parameters for grant of bail and by ignoring the material evidence against accused Rohan and accused Gowardhan.

As far as order passed by the trial court, in connection with accused Rohan is concerned, the trial court observed in paragraph No.19 that, "the role of co-accused Ashwin was not only about the grievance on the point of complaint against his businesses, but also for the reason of rising political dominance of Vishal as compared to his status. Under such circumstances, it cannot be believed at this stage that the accused Rohan had different, rather any more severe role in relation to co-accused Ashwin."

In paragraph No.20 it is further observed that, "it is most material here to note that co-accused Dnyaneshwar who was also similarly involved in the conspiracy and giving threats to Vishal and Kashinath is also released on bail by the Hon'ble High Court of Bombay, Bench at Nagpur, Nagpur in BA No.342/2023 by order dated 15.6.2023. The co-accused Ashwin is already

released on bail by this court by order dated 22.6.2023 whereas co-accused Gowardhan is already on bail. Under such circumstances, the principle of parity would certainly prevail even present proceeding.”

17. In the light of the above observations, if investigation papers are considered, allegation against accused Rohan is on the basis of statement of Kashinath Bagde who alleged that on 20.10.2022 accused Rohan and one more person restrained him and abused him and took him at “Om Dhaba” of Balu Wankhede wherein Balu Wankhede and accused Rohan and Ashwin abused him and took him at the house of the deceased. At the house of the deceased, family members of the deceased were threatened by accused Rohan, accused Gowardhan Kaple, Ballu Wankhede, and Ashwin Kaple that if the complaint is not withdrawn, Vishal has to face dire consequences. The statements of the informant and other family members neither make a reference of this incident dated 20.10.2022 nor they have mentioned the incident in their subsequent statements. The wife of the deceased, namely Vaishnavi Vishal Kaple, has also not referred this incident in her statement though her statement was recorded on 4.11.2022. The information was lodged on 31.10.2022 wherein no role is attributed to accused Rohan. Though statement of the informant was recorded on 4.11.2022, he has also not mentioned threatening by accused Rohan by visiting the house of the

deceased on 20.10.2022. Thus, the trial court has considered that the role attributed to the applicant and Ashwin is similar on the basis of statements of various witnesses. Admittedly, Kashinath has attributed role to the present non-applicants by mentioning the incident dated 20.10.2022. It is pertinent to note that his statement was recorded on 10.11.2022.

18. The another circumstance, on which accused Rohan and accused Gowardhan relied upon, is CDRs. Initially, CDRs were filed before the court which were not mentioning any calls between accused Rohan and accused Gowardhan and co-accused Shiva Dorvhekar. In fact, there was no detail by obtaining the record from the concerned company regarding the customer details etc.. In subsequent investigation carried under Section 173(8) of the Code of Criminal Procedure, the investigating officer collected the said details and supplementary chargesheet was filed wherein the said details including applications filed by accused Rohan and accused Gowardhan and other co-accused for obtaining prepaid SIM Cards were collected which disclosed that customer namely Rohan Ingle, having his Mob No. 9359623607, had called on the mobile phone of Shivanand who actually executed the act having mobile number 9822822477. Thus, admittedly, these call details were not before the trial court when the bail applications of the non-applicants were considered. In the above circumstances, if this record is considered, definitely, it

will cause prejudice to accused Rohan and accused Gowardhan. In such circumstances, the applicant is at liberty to approach the trial court and brought to the notice of the trial court aforesaid documents i.e. CDRs.

19. As far as accused Gowardhan is concerned, the trial court observed that allegations against him are only on the basis of statement of Kulkdeep Ingle who stated that once he heard co-accused Ashwin saying to the deceased, “अभी तेरे थोड़े दिन बाकी है” and accused Gowardhan gave a clap to the co-accused. The only words uttered by accused Gowardhan were that “बाकी कोर्ट का काम मैं संभालता हूँ”. As far as criminal conspiracy is concerned, the material against accused Gowardhan is far less than that of the co-accused and released Gowardhan on bail.

20. Learned counsel for the applicant submitted that the trial court has not considered CDRs between accused Gowardhan and the other co-accused.

21. As observed earlier, details of CDRs were collected by the investigating officer during further investigation and the same were not placed before the trial court at the relevant time and, therefore, on the basis of the statements, the trial court held that the co-accused, who are released on bail, and accused Rohan and accused Gowardhan played similar role and on the ground of parity the bail was granted.

22. In the above circumstances, the applicant is at liberty to approach the trial court and bring these facts to the notice and pray for cancellation of bail.

23. At this stage, it cannot be said that the trial court has ignored this material while considering bail applications as CDRs were never produced before the trial court being it was not part of the earlier chargesheet.

24. In this view of matter, applications deserve to be rejected and the same are **rejected**.

25. The applicant is at liberty to approach the trial court by filing an appropriate application and the trial court shall consider the same in the light of new facts placed on record.

The applications stand **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!