



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

CRIMINAL APPLICATION (APPLN) NO. 54 OF 2023

Ashok Jangluji Ghumde Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Anirudh Ananthakrishnan, counsel for applicant.

Ms. T.H. Udeshi, APP for non-applicant/State.

Mr. A.R. Rawlani, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2024.

1. By this application, the applicant is seeking cancellation of bail granted to the non-applicant No.2 in connection with Crime No. 18/2023 registered with Police Station Hingna, District Nagpur for the offence punishable under Sections 143, 147, 148, 302, 504, 212, 109, 323 read with Section 149 of the Indian Penal Code, along with Sections 3, 7, 25, 27 of the Arms Act, and Section 37 read with Section 135 of the Maharashtra Police Act.

2. The non-applicant No. 2 came to be arrested on 09/01/2023 in connection with the above-mentioned crime, on an allegation that co-accused Deepak, who is the husband of the present non-applicant No. 2, deceased Avinash, and co-accused Deepak were friends. On 08/01/2023, while co-accused Deepak had gone to attend the party along with his friend, at about 7.30 p.m., the deceased came to the house of the accused No. 1 Deepak, and at that time he did not notice the co-accused Deepak

as well as his wife, i.e. the present non-applicant No. 2 Shivani, and therefore, he made a telephonic call to the co-accused and told him that his wife Shivani is not at home. It is further alleged that, at that time, present non-applicant No. 2, Shivani, heard the telephonic conversation and told him she was at home and why he was giving wrong information to her husband that she was not at home. Though deceased replied to the present non-applicant No. 2, Shivani, that she just arrived at home in a car with an unknown male, and there was an alternation of words between them, and the deceased has narrated the incident to the co-accused Deepak. Subsequently, Deepak came home along with his friend, and the other co-accused started beating the deceased with fist and kick blows. Thereafter, the co-accused Deepak asked his wife to bring his gun, and accordingly, she brought the said gun and handed it over to the co-accused, and the co-accused fired the bullet towards the deceased. Due to which, he sustained the injuries and died on the spot. On the basis of the said report, police have registered the crime against the present non-applicant as well as other co-accused.

3. After registration of the crime, she approached the Sessions Court for grant of bail. The Sessions Court has considered the investigation papers, the role of the non-applicant No. 2, and released her on bail by passing an order on 26/06/2020.

4. Being aggrieved with the same, the present application is filed by the original complainant for cancellation of bail on the ground that the deceased was assaulted brutally by the other co-accused and the involvement of the present non-applicant No. 2 revealed from the investigation papers. The ground raised is that the learned trial Court has not considered the investigation papers and the role attributed to the present applicant, which attracts the liability under Sections 143, 147, 148 i.e. she was a member of the unlawful assembly. In furtherance of the common object of that assembly, the deceased was assaulted and eliminated by the present applicant as well as the other co-accused.

5. Heard learned counsel for the applicant, who submitted that on perusal of the order of the Sessions Court, it reveals that the Sessions Court has considered that there are statements of the witnesses, who are eye-witnesses of the incident and the role of the present non-applicant, though narrated by the said eye-witnesses. The Sessions Court has granted bail only on the ground that the Hon'ble Apex Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) Cri.L.J.702]***, wherein it is held by the Hon'ble Apex Court that even in heinous criminal offence punishable with death or imprisonment for life also, the bail can be granted to women, minors, and infirm persons, except the orders can be passed with stringent direction of conditions on bail.

6. He submitted that this observation itself is erroneous, and it is apparent that the Sessions Court has ignored the relevant material and released the non-applicant No. 2 on bail, whose involvement is revealed in a grievous offence.

7. Learned APP has also supported the contention and submitted that a plain reading of Section 149 makes it clear that an overt act of some of the accused persons of an unlawful assembly with the common object eliminated the deceased and caused grievous injuries is revealed. She submitted that the act of the present non-applicant No. 2 bringing of the weapon and instigating the other co-accused is sufficient to attract the provisions, but this was not considered by the Sessions Court, and by ignoring the relevant material, the bail was granted, and therefore, it deserves to be canceled.

8. Per contra, learned counsel for non-applicant No. 2 strongly opposed the said application on the ground that all co-accused are already released on bail. The non-applicant no.2 is woman having two small children, there is nobody to look after the small children. He further submitted that with the similar allegations, the other co-accused were also attributed with the similar role are already released on bail. Now, there is no reason to interfere with the order of the Sessions Court by canceling the bail.

9. He further submitted that, considering the limited role attributed to the non-applicant No. 2, the bail was granted. The learned Sessions Court has considered the statements of the eye-witnesses, and thereafter come to the conclusion in the light of the decision of the Hon'ble Apex Court in the case of ***Sanjay Chandra*** (supra).

10. In support of his contention, he placed reliance on ***Bhuri Bai Vs the State of Madhya Pradesh [2022 LiveLaw (SC) 956]***, wherein it is held that in a case where the bail has already been granted, its upsetting under Section 439(2) Cr.P.C. is envisaged only in such cases when the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. Unless a strong case based on a supervening event is made out, an order granting bail is not to be lightly interfered with.

11. Learned counsel also raised the ground that the bail application of the co-accused is considered by the co-ordinate bench. In respect of the similar crime, and therefore, this application is to be decided by the said co-ordinate bench.

12. After hearing both the sides and on perusal of the order passed by the Sessions Court, it is necessary to see whether the complainant has made out a case for cancellation of bail. The considerations of cancellation of bail admittedly are different then the granting of bail. Under Chapter XXXIII, Section 439(1) empowers the High

Court as well as the Court of Session to direct any accused person to be released on bail.

Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where the bail has been granted under the provision of Section 167(2) for the default of the prosecution in not completing the investigation in sixty or ninety days, after the defect is cured by the filing of the charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody.

13. In the light of the above principles laid down by the Hon'ble Apex Court, if the facts of the present case are taken into consideration, it reveals that there was an altercation of words between the deceased and the husband of the present non-applicant No. 2. During the altercation of the words, the co-accused Deepak and other co-accused assaulted the deceased by fist and kick blows. During that incident, the co-accused asked the present non-applicant No. 2 to bring his firearm, i.e. pistol, which was kept in the drawer, and immediately the present applicant rushed inside the house and brought that weapon and handed it over to the co-accused, and thereafter, the co-accused fired the bullet towards the deceased, and the deceased succumbed to the death. This incident is witnessed by several eye-witnesses namely Rajesh Dhage, Ekta Ramesh Ghanchakkar, Rupali Sanjay Ghanchakkar. The deceased has sustained the bullet injury which resulted into his death.

The ballistic expert report also supports the said fact as detection of ballistic lead and copper in presence of blackening and powder residues around the periphery of short hole or skin piece Exhibit (1) and Exhibit (2) are consistent with the passage wipe of copper jacketed bullet having been fired from within the powder range of the weapon is analysis by the expert.

The Post Mortem report also shows that firearm entry wound was present over right anterior aspect

chest, the 2 cm below suprasternal notch and 2.5 c.m. from midline of size 1.7 cm. x 1cm x into cavity deep, abrasion collar present surroundings the wound. The another firearm entry wound present over left anterior aspect of chest 2 cm below suprasternal notch and 3 x 5 cm from midline, of size 1 cm x 1 cm cavity deep, abrasion collar present surroundings the entry wound, margins inverted. The firearm exit wound corresponding injury No.1- firearm entry wound present over posterior aspect of chest on right side, 10 cm below lower in a right scapula and 11 cm from mid of size 1.6 cm x 1 cm, margin. The cause of the death of the deceased is due to firearm injuries to chest.

14. Thus, it is apparent that the death of the deceased is caused due to the firearm injury. Admittedly, the firearm injury is not caused due to the act of the present applicant, but it reveals that it was the present applicant, who was the member of the unlawful assembly, who handed over the weapon to the other co-accused, and thereafter, the other co-accused fired the bullet and caused the death of the deceased. During the altercation of the words, the non-applicant No. 2 has given the weapon in the hands of the co-accused, and the co-accused has executed the act. Thus, the present applicant was a member of the unlawful assembly. A plain reading of Section 149 makes it clear that an overt-act of some of the accused persons of an unlawful assembly with the common object to kill the deceased and to cause grievous hurt to him is enough to show his or her involvement in the

alleged offence. The non-applicant No. 2 is not only the member of the unlawful assembly, but the entire cause behind the alleged incident is the non-applicant No. 2 only. Thus the root cause of the entire incident was non-applicant No. 2.

15. Learned counsel for the non-applicant No. 2 vehemently submitted that she is a lady and has two children. However, on perusal of the order passed by the Sessions Court, that was not the aspect either argued before the Court or the ground raised with the application, but the court has considered that there is direct evidence available against the non-applicant No.2. It is observed that she was along with the co-accused, and she has handed over the pistol, which was kept in the bed-room in a locked drawer. Thus, it is not the case that the weapon was lying with there and she was only handed over the same to the other co-accused, but the entire episode shows that after the said weapon was demanded by the co-accused, she went inside, opened the lock, and thereafter brought the said weapon and handed over the said weapon to the co-accused, and thereafter, the act was executed by the co-accused.

16. The trial Court has taken the assistance of decision of the Hon'ble Apex Court in the case of ***Sanjay Chandra*** (supra) while releasing the non-applicant No.2 on bail. The facts of the case which are dealt in the case of ***Sanjay Chandra*** that the offence lodged against the

accused, therein were involved in huge financial loss is caused to the State exchequer. The secondary ground which was raised in that of the possibility of the accused persons tampering with the witnesses and the charge against the accused of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offences is imprisonment for a term which may extend to seven years, and by considering all these aspects, the applicants of the co-accused wherein released on bail. But the trial court has considered this aspect and applied the same to the present crime for which the punishment for life imprisonment and capital punishment is provided.

17. As already observed that the considerations for grant of bail and the cancellation of bail are different. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in a 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.

18. Moreover, in the case of **Deepak Yadav Vs. State of U.P and another [2023 (2) Mh. L. J. (Cri) (S.C.) 196]**, wherein also 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.

19. The Hon'ble Apex Court has laid down illustrative circumstances where the bail can be cancelled are as follows:-

- 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 of 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.

20. In light of the well-settled legal position, if the facts of the present case are taken into consideration, admittedly, the Sessions Court has not considered the material which was collected during the investigation, especially the statements of the eye-witnesses which show the active participation of the present applicant in the commission of the crime.

21. It is pertinent to note that the Sessions Court has considered the evidence, i.e. the eye-witnesses, but merely on the basis of applying the decision of the Hon'ble Apex Court wrongly, the non-applicant No.2 is released on bail.

22. Thus, the order passed by the Sessions Court is admittedly ignoring the relevant material which is showing the involvement of the non-applicant No. 2 in the alleged offence. It is submitted by learned counsel for the non-applicant No.2 that the other co-accused are already released on bail. Admittedly, they are released on bail by

considering the material against them. The allegation against them is that they have assaulted the deceased by fist and kick blows. Thus, considering the role, they were released on bail.

23. His further submission is that as one of the applications of the co-accused was dealt with by the coordinate bench, and therefore this application is to be sent to the co-ordinate bench. There is no difficulty in sending the application for deciding the said application to the coordinate bench, but this submission was made by the learned counsel after both the parties have tendered their final submission and when the Court has expressed its opinion as to the entertaining of the application. Thus, after expressing the opinion in the open Court, he made these submissions, and therefore, it is apparent that it is an attempt on the part of the learned counsel to get it decided by the other coordinate bench, and this would be the hunting of a bench in deciding the applications. Such practice is to be deprecated.

24. He placed reliance on the office note. The office note shows that all bail applications, including the appeals seeking regular and anticipatory bail and the Special Act during the pendency of trial arising from the same FIR, shall be placed before the same Hon'ble Judge to avoid conflicting the decisions. It further shows that the anticipatory bail application of a co-accused is decided by one Judge then the regular bail application of another

co-accused arising from the same FIR shall be placed before the same Judge and vice-versa.

25. Here in the present case, the application is for cancellation of bail i.e. also granted by the Sessions Court and not by this court, and if this is within the knowledge of the learned counsel for the applicant then it has to be mentioned before this Court prior to taking of this matter for the final disposal. But as soon as this Court has expressed the opinion as to the order passed by the Sessions Court and shown the inclination to entertain the application, this submission was made, and admittedly this practice deserves to be deprecated, and therefore, this application is disposed of by this Court.

26. In the light of the settled legal position as observed earlier, the role of the present non-applicant No. 2 is revealed from the investigation papers. The role is also a vital role played by the non-applicant No.2. However, considering the investigation is already completed and charge-sheet is already filed, therefore, liberty is granted to the non-applicant No.2 to approach the Sessions Court for grant of bail by filing a fresh application. The Sessions Court shall consider the application on its own merits and shall decide the same at the earliest. Accordingly, I proceed to pass the following order.

- a] The bail granted to the non-applicant No.2 is hereby cancelled with liberty to approach before the Sessions Court.

- b] The non-applicant No.2 shall surrender before the Sessions Court on or before 17/12/2024.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]