



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

CRIMINAL APPLICATION NO. 108 OF 2022

State of Maharashtra Vs Raja @ Jangli Suresh Malewar

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

Court's or Judge's Order

Mrs. H.N.Prabhu, counsel for applicant/State.

Mr. Amol Hunge, counsel h/f Mr. O.K. Masurke, counsel for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/08/2024.

1. By this application, the State is seeking cancellation of bail of the non-applicant, who was released on bail, in Criminal Bail Application No. 670/2022 under Sections 302, 114 read with Section 34 of the Indian Penal Code, 1860.

2. The non-applicant was arrested in the said crime, and he filed an application for bail bearing criminal application (BA) No. 670/2022. While considering his bail application, the condition was imposed on him. The applicant shall not enter within the vicinity of Tumsar till completion of trial, except for the purposes of attendance in the trial.

3. However, on 28/08/2022, the police constable-Mangesh Gedam, who was on patrolling duty, received the secret information that one unknown person was coming from the Tamaswadai, and he was carrying a sharp weapon; therefore, the trap was arranged. The police staff, along with the said panchas, searched, and the present applicant was

found, who was carrying the sharp weapon like a sword. The said weapon was seized in the presence of police. Accordingly, the report was lodged, and on the basis of the same, the crime was registered under Crime No. 328/2022 for the offence punishable under Sections 4 and 25 of the Arms Act.

4. Learned APP submitted that the non-applicant was released on bail by observing that the non-applicant is in jail since November 2021. The investigation is completed and further incarceration is not required. This court has also considered that the other two accused are released on bail, and the non-applicant is behind bar since November-2021. Considering the apprehension raised by the State and the condition was imposed on the present applicant, that he shall not enter into the vicinity of Tumsar till completion of the trial, except for the purposes of attendance in trial. Admittedly, the trial of the present non-applicant was in Bhandara.

5. Learned APP further submitted that the non-applicant has shown complete disregard to the order passed by this Court and not only entered the vicinity of Tumsar, but he also found alongwith weapon in his hand. The intention of the non-applicant is clear from the fact and circumstances, that he was found along with the weapon in his hand. Thus, considering there is

a breach of condition, the cancellation of bail deserves to be allowed.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the bail order, which was earlier passed, the present non-applicant was involved in the offence punishable under Sections 302, 114, read with Section 34 of the Indian Penal Code. While releasing him on bail, this court has considered the role attributed to the present non-applicant. The evidence collected during the investigation and the other two co-accused are already released on bail therefore, the non-applicant was also released on bail. The apprehension was raised that he would tamper with the prosecution evidence, and therefore, considering the gravity of the offence, the condition was imposed that, he shall not enter within the vicinity of Tumsar, till the culmination of the trial.

7. After releasing the non-applicant on bail, the non-applicant was under obligation to observe the condition, and as he was not permitted to enter into the vicinity, he was not supposed to enter into the vicinity of Tumsar. The report filed by the police constable, Mangesh Gedam, shows that on 28/08/2022, he received the secret information that one unknown person was entering into the village and proceeding from Tamaswadi Road. Therefore, he, along with two panchas, conducted the raid and intercepted the present non-applicant, who was found in Vinoba Nagar, Tumsar, in a suspected condition. On his personal search, one sword was

recovered from him, and therefore, the crime was registered against him under Sections 4 and 25 of the Arms Act. The description of the sword shows that he was holding a sharp weapon with a blade length of 13.5 inch and a width of 1 inch. Thus, the intention of the non-applicant appears from the circumstance that he entered into the premises along with deadly weapon. The Spot Panchanama also shows that the alleged incident has taken place in the Vinoba Nagar i.e. vicinity of Tumsar.

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, [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. In the light of the above facts and considerations for cancellation of bail, it reveals that the non-applicant was involved in a serious crime registered under Section 302 of the IPC. Considering that there was an apprehension of tampering of the witnesses, the protection of the witnesses is also a material aspect. The condition was imposed that he shall not enter into the vicinity of Tumsar till the culmination of the trial. The non-applicant was found in the vicinity of Tumsar itself, sufficient to show that he has shown complete disregard of order passed by this Court and jumped from the bail conditions. It is true that the bail cannot be cancelled on flimsy ground, but considering the ground mentioned in the application itself, it is sufficient to show that the applicant has jumped from the bail conditions and contravened the term imposed on him. Moreover, he was not only found in the vicinity of Tumsar, but he was also found along with deadly weapon. The roaming of the

accused in the vicinity of Tumsar alongwith weapon itself is sufficient to show his intention.

12. Thus, the State has made out a case to show that there was an intentional contravention of the terms and conditions imposed on the non-applicant for cancellation of bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The bail granted to the present non-applicant by order dated 18/07/2022, in connection with crime No. 401/2021 is hereby cancelled.
- b) The non-applicant shall surrender before Principal District and Sessions Judge, Bhandara on 08/08/2024.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]