



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

CRIMINAL APPLICATION (APPLN) NO. 117/2022

Smt. Savita wd/o Sanjay Murarka V/s State of Maharashtra and others

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

Court's or Judge's Order

Ms. Akshaya Pande, counsel h/f Mr. A.A. Gupta, counsel for applicant.
Mrs. Sneha Dhote, APP for the non-applicant No.1/State.
Mr. H.R. Gadhia, counsel for the non-applicant Nos.2 to 5.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/01/2024.

1. By this application, the applicant who is the first informant seeking cancellation of bail granted to the non-applicant Nos. 2 to 5 in connection with Crime No. 485/2022 registered at Police Station Officer, Shegaon, District Buldhana for the offences punishable under Sections 304-B, 452, 427, 506(2), 143, 147 read with Section 149 of the Indian Penal Code, 1860.

2. As per the contention of the applicant, she lodged report against the respondent nos. 2 to 5 on 09/10/2022 alleging therein that, on 08/10/2022 at about 11.30 a.m. near about 40 to 50 persons entered her residential premises along with weapons like wooden beams, axe, iron rod including the respondent Nos. 2 to 4 and informed that the respondent No.5 had taken a contract to occupy the possession of the property in which the informant is residing along with her husband. At the time of incident, the deceased who is the husband of the

informant had been to Nagpur for some personal work. When the aforesaid persons forcibly trying to dispossess her, at that time, she telephonically informed her husband and her husband returned back from his on the way journey to Nagpur and reached at home at about 8.00 p.m.

3. It is further alleged that she narrated the entire incident to her husband and suddenly her husband fell down on the ground, thereafter he was immediately admitted in the hospital and he succumb to the death. On the basis of said report, the Police have registered the crime against present non-applicant Nos. 2 to 5.

4. The non-applicant Nos. 2 to 5 have approached to the Sessions Court for grant of anticipatory bail by preferring Application No. 485/2022 and the Sessions Court after considering the FIR and the investigation papers, pleased to release the non-applicant Nos. 2 to 5 on bail, in the event of their arrest.

5. Being aggrieved with the same, the present application is preferred by the informant on the ground that learned trial Court has only considered the reason that custodial interrogation of the applicants is not required. In fact, the sale-deed on the basis of which, the non-applicants are claiming their ownership is sham and bogus document.

6. It is further contention of the applicant that learned trial Court had not consider that, custodial

interrogation of the non-applicant is required to ascertain their involvement. The presence of Non-applicant No.5 is witnessed by the informant as well as the other witnesses. However, the learned trial Court observed that the presence of the non-applicants were not there and released them on anticipatory bail and the order passed by the learned trial Court is merely on the basis of reasoning that custodial interrogation is not required which is arbitrary and illegal one and liable to be set aside.

7. Heard learned counsel for the applicant. He reiterated the said contentions and submitted that from perusal of the order para No.5 itself shows that the only consideration considered by the learned trial Court is that there was no presence of the non-applicant at the spot. In fact, non-applicant No.5 was present at the spot. The sale-deed is a sham and bogus document, 40 to 50 persons were gathered with a common intention to dispossess the informant and her husband entered illegally in the premises. The involvement of the non-applicants requires to be ascertained by the investigating officer by investigating and by interrogating with the non-applicants which is not done due to relief granted in favour of the Non-applicant Nos. 2 to 5.

8. He further submitted that for grant of anticipatory bail, the considerations are different. The only consideration is that the physical custody of the applicant is not required. It may be one of the considerations, but it cannot be a sole consideration. The learned trial Court has

taken it as a sole considerations and granted them anticipatory bail, the order passed by the learned trial Court is arbitrary, illegal and liable to be set aside. He fairly submitted that though C-Final Report is filed by the investigating agency, however, if the consideration is taken into consideration by the learned trial Court is the only the sole criteria i.e. custodial interrogation of the applicant is not required, which is absolutely arbitrary on the part of the trial Court and therefore, the bail granted to the present non-applicants deserves to be cancel.

9. Per contra, learned counsel for the non-applicant Nos.2 to 5 submitted that now C-summary report is filed showing that during the investigation the involvement of the present applicants not revealed to the investigating officer. Moreover, the offence under Section 304-B is not made out. The said C-Final report is accepted by the learned trial Court and the order of acceptance of the C-summary report is not challenged by the applicant.

10. He further submitted that settled law regarding the cancellation of bail is that only supervening and overwhelming circumstances are required to cancel the bail. If the order of the learned trial Court is perused, it shows that the presence of the non-applicants was not there. During the investigation, the investigating officer could not ascertain the involvement of the present non-applicants', once the bail is granted, it cannot be cancel casually and therefore, the application of the applicant deserves to be rejected.

11. In support of his contention he placed reliance in the case of ***Bhuri Bai vs The State of Madhya Pradesh [2022 LiveLaw (SC) 956]*** wherein the Hon'ble Apex Court held that the powers of cancellation of bail cannot be approached as if disciplinary proceedings against the accused. In a case where bail has already been granted, its upsetting under Section 439(2) Cr.PC. 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 and supervening event is made out, an order granting bail is not to be lightly interfered. In the case of ***Brijmani Devi vs Pappu Kumar and another [(2022) 4 SCC 497]***, wherein also, the similar issue is discussed by the Hon'ble Apex Court and Hon'ble Apex Court observed that the reasoning of the High Court while granting bail. As noted from the aforesaid judgment, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised.

12. He further placed reliance in the case of ***Savitri Agarwal and others V/s State of Maharashtra and another [(2009) 8 SCC 325]***, wherein also, it is held by the Hon'ble Apex Court moreover, merely because the High Court had a different view on the same set of a material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to

label the order passed by the Sessions Judge as perverse. In the case of *Bhagirathsinh s/o Mahipat Singh Judeja V/s State of Gujarat [(1984) 1 SCC 284]* wherein also, it is held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. In the case of *Bhaurao Sampatrao Tayde vs Tulsiram Sampatrao and others [1981 Mh.L.J. 693]* wherein also, the issue of granting of B Summary is dealt with and it is held that when Judicial Magistrate refuses to take cognizance and files the proceedings that gives finality to the said proceedings, fresh cognizance thereafter not permissible on complaint being filed. And lastly, he placed reliance in the case of *Dolat Ram and others vs State of Haryana [(1995) 1 SCC 349]* wherein also, the same principle is laid down that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted. On the basis of this catena of the decision he submitted that the application of the applicant for cancellation of bail deserves to be rejected.

13. After hearing the learned counsel for the applicant, the learned counsel for the non-applicant Nos. 2 to 5 and learned APP for the State, perused the recitals of the FIR. The recitals of the FIR shows that on the day of alleged incident, the mob of 40 to 50 persons came at the house of the applicant and attempted to dispossess her from the property. At the relevant time, deceased was not present in the house. She informed the said incident to her

husband when he returned back to the home. After hearing the alleged incident from wife, he fell down on the ground thereafter succumb to the death.

14. The cause of the death is cardiac arrest. I have also perused the order passed by the learned trial Court releasing the non-applicant Nos. 2 to 4 on anticipatory bail. Admittedly, it is observed by the learned trial Court that custodial interrogation of the non-applicants is not required. It is to be seen whether the non-applicants are released on bail in the event of their arrest, only on the sole criteria that their presence for the investigation purpose is not required and therefore, they are released on bail. On perusal of the order, it show that the learned trial Court has observed that there is no connection regarding the death of the deceased and the act of the applicants/accused.

15. The presence of the applicants/accused prima-facie was not on the spot. The sale deed and other property can be recovered by the investigating officer without seeking the physical custody of the applicant/accused, and the applicants/accused are released on bail. Thus, on perusal of the order of the learned trial Court it reveal that the learned trial Court has not only considered that the physical custody of the non-applicants No. 2 to 4 is not required for the interrogation purpose, but the learned trial Court has considered the role of the present applicant, nature of the incident and the circumstances

under which the death of the deceased is caused and released them on bail.

16. From, the facts on record show that the entire dispute resolves around the sale-deed which according to the applicant is a bogus and sham document. Whereas as per the non-applicant Nos. 2 and 4, on the basis of the said sale deed, they are seeking the possession of the disputed property. Admittedly, at the time of incident, when the mob of 40 to 50 persons came at the house of the informant, the deceased was not present at the house. The death of the deceased admittedly occurred after the mob has left the place and after hearing the incident from his wife i.e. informant and the cause of the death of the deceased is death due to cardiac arrest. According to the applicant as the deceased suffered tremendous mental shock and due to which he lost his life and therefore, the non-applicant Nos. 2 to 5 are responsible for the death.

17. After registration of the crime, the investigating agency has investigated the matter, on investigation, it revealed to the investigating officer that the applicants are not connected with the alleged offence and no offence is made out against the non-applicant Nos. 2 to 5 and therefore, C-Summary report is filed. The same C-Summary report is accepted by the learned trial Court and till today, it is not challenged. Thus, the C-summary report is now finalized as it remained unchallenged.

18. As far as the contention of the learned counsel for the applicant for cancellation of bail is concerned, it is well settled that rejection of a bail in a non-bailable case at the initial stage, and the cancellation of bail which is already granted requires the different considerations. The rejection of the bail in a non-bailable case at the initial stage is to be considered, on the basis of the material collected during the investigation, the allegation levelled against the accused, nature of the offence, the gravity, possibility of the accused regarding fleeing away from the justice, and there availability at the trial. Whereas for cancellation of the bail, overwhelming and supervening circumstances are required to cancel the bail. Mere allegation of the applicant for cancellation of bail on the ground that the trial Court has not recorded the reasons or there are chances of tampering of the witnesses are not sufficient, but the circumstances which are overwhelming and supervening are required to be considered while cancelling the bail.

19. On the settled principle of law that if the facts of the present case are taken into consideration. Admittedly, there is no allegation that either the non-applicants have attempted to tamper the prosecution evidence, but the allegation is that the learned trial Court has not considered the material and granted the bail without assigning the reasons. In fact, the learned trial Court has assigned the reason that the non-applicants are not directly concerned, regarding the connection of the

death of the deceased, and nothing is to be recovered from the present non-applicants and therefore, their physical custody is not required. So, no elaborate reason though given by the learned trial Court, but prima facie reasoning by the learned trial Court is granting anticipatory bail to the non-applicants and its satisfaction before granting the bail in the event of their arrest is recorded by the learned trial Court.

20. Thus, the applicant has not shown any overwhelming and supervening circumstances or the extraordinary circumstances to cancel the bail. The satisfaction of the Court on the basis of material placed on record show that the trial Court has satisfied itself before granting the anticipatory bail and accordingly discretion is used in favour of the non-applicants 2 to 4. Thus, no sufficient grounds are made out by the applicants to cancel the bail. The criminal application is devoid of merits and this is not a fit case to cancel the bail. Accordingly, I pass the following order:

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]