



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

**CRIMINAL APPLICATION NO.95 OF 2023**

(Anil s/o Gayaprasad Vishwakarma Vs. State of Maharashtra and ors.)

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

Court's or Judge's Order

Mr. V.R. Borkar, Advocate for the applicant.  
Mr. K.R. Lule, APP for the State.  
Mr. A.S. Manohar, Advocate for respondent Nos.2 and 3.

**CORAM:- URMILA JOSHI-PHALKE, J.**  
**DATED :- AUGUST 6, 2024.**

By this application, the applicant is seeking cancellation of bail of non-applicant Nos.2 and 3 on the ground that the learned Sessions Court has not considered that there are criminal antecedents against the present non-applicant Nos.2 and 3 and Sessions Court have also not considered the reply filed by the State.

2. Learned Counsel for the applicant submitted that the Sessions Court had only considered that the dispute seems to be of a civil nature and no criminal offence is made out. It is further observed by the Sessions Court that without going into the merits of the case and limiting the observation to the point of granting anticipatory bail, the bail was granted by ignoring the fact that from the case diary substantial evidence reveals against the accused. He submitted that thus the observation of the Sessions Court for granting the anticipatory bail is on the basis of wrong considerations

and therefore, the bail granted to the present non-applicant Nos.2 and 3 deserves to be cancelled.

3. Learned Additional Public Prosecutor supported the contention of the applicant and submitted that there are criminal antecedents against the present non-applicant Nos.2 and 3 which are not considered while releasing the non-applicants on bail.

4. Per contra, learned Counsel for non-applicant Nos.2 and 3 submitted that while granting the bail learned trial Court has considered that the dispute is of a civil nature. Informant raised substantial construction of wall of which photographs are filed on record before the Sessions Court. The original land owner has also filed his affidavit stating that he was and is ready to abide by all the terms and conditions of the agreement to sale with the applicant. By taking this into the consideration, the non-applicant Nos.2 and 3 are released on bail. As far as the criminal antecedents are concerned he placed reliance on ***Prabhakar Tewari Vs. State of Uttar Pradesh [AIR Online 2020 SC 96]*** wherein the Hon'ble Apex Court has held that though the offence is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.

5. He further placed reliance on ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and anr. [2012 Cri. L.J. 1444]*** wherein also the Hon'ble Apex Court has

considered the aspect of the criminal antecedents and held that cannot be a ground to deny bail. Considering the fact that accused had been in a jail for about a year and the trial has started and Court refused to cancel the conditional bail granted to the accused.

6. I have heard learned Counsel for both the sides. Perused the impugned order which is under challenge. From the impugned order, it reveals that the report was lodged by the informant Anil Kakadi wherein he alleged that he is having his scrap godown on Fulchur-Gondia road by name Durga Traders. It is further alleged that on 21/07/2023 at about 12.00 noon while his son was in the godown with workers, applicants and Vinod Meshram alongwith 10 to 12 persons came in the godown and threatened his son and claimed that the plot belong to them and also threatened to give Rs.25,00,000/- otherwise they will kill both of them. Thereafter his son was slapped by non-applicant Nos.2 and 3 and they forcibly took Rs.18,000/- from his pocket. On the basis of same, the crime was registered. The non-applicants approached to the Sessions Court for grant of anticipatory bail. The trial Court has considered the application and ground mentioned therein and also perused the case diary and after hearing both the sides, it is observed by the Sessions Court that on perusal of the case diary and report reveals that report was lodged by the informant against non-applicant Nos.2 and 3 and 10 to 12 unknown persons. The incident took place on three dates i.e on 15/07/2023,

19/07/2023 and 21/07/2023. It further reveals that non-applicants entered into an agreement for sale with land owner Dahikar. The copy of 7/12 extract filed on record reveals that Dahikar is having 17.38 R in his name, whereas, the informant is having 18 R in his name. Apart from it there are other owners also and their names also appear in the 7/12 extract. The investigation papers further reveals that the measurement map filed on record shows there was joint measurement and boundary marks were fixed by Cadestral Surveyor. Thus, *prima facie* grounds which are raised by the non-applicant Nos.2 and 3 are considered by the Sessions Court and it is held that the dispute seems to be of civil nature and informant raised the substantial construction of wall of which photographs were also filed on record. The affidavit of the original land owner Dahikar was also taken into consideration wherein the original land owner has agreed and accepted that he is ready to abide by the terms and conditions of the agreement to sale with the non-applicants. Thus, taking into consideration the documents on record the bail was granted to the non-applicant Nos.2 and 3. Thus, contention of the learned Counsel of the applicant that the learned trial Court has not considered the material and also not considered the reply filed by the State is not substantiated by any other material. On the contrary, the order passed by the Sessions Court shows that he had considered the various aspects also considered the affidavit of the original land owner and on the basis of

same he came to the conclusion that the *prima facie* it was an attempt to give criminal colour to civil dispute. He further considered that the case diary reveals substantial investigation is carried out and released the non-applicant Nos.2 and 3 on the anticipatory bail. As far as the aspects of the criminal antecedents are concerned, now it is settled that merely because there was a criminal cases pending against the accused is not sufficient to refuse the bail. Moreover, the considerations for the grant of bail and considerations for cancellation of bail are different.

7. 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.

8. 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.

9. 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.

10. Thus, on going through the order passed by the Sessions Court it reveals that the Sessions Court has considered the every aspects, case diary and thereafter come to the conclusion that the dispute is of a civil nature and protected the non-applicant Nos.2 and 3 by granting anticipatory bail. Thus, no case is made out for cancellation of bail. In view of that application deserves to be rejected.

11. Hence, the application is rejected accordingly.

**(URMILA JOSHI-PHALKE, J.)**