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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL No.95 OF 2024

Shankar S/o Sharad Shinde,
Age: 27 years, Occu.: Agril.,
R/o. Patsangavi, Tq. Bhoom,
Dist.Dharashiv.

... Applicant
(Orig. Complainant)

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Bhoom,
Tq. Bhoom, Dist. Dharashiv.
2. The Superintendent of Police,
Dharashiv, Dist. Dharashiv.
3. Apparao Bhimrao Naiknaware,
Age: 53 Years, Occu.: Agri.,
R/o. Patsangavi, Tq. Bhoom,
Dist. Dharashiv.
4. Rajkumar Bhimrao Naiknaware,
Age: 51 Years, Occu.: Agri.,
R/o. As above
5. Dattatray Bhimrao Naiknaware,
Age: 55 Years, Occu.: Agril.,
R/o. As above

... Respondents

.....
Mr. K.R. Doke, Advocate for Applicant
Ms. Vaishali S. Choudhari, APP for Respondent No.1 – State
Mr. Shambhuraje V. Deshmukh, Advocate for Respondents No.3 to 5
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 12 FEBRUARY 2025
PRONOUNCED ON : 14 FEBRUARY 2025

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PER COURT :-

1. Present application is filed for cancellation of bail granted by the learned trial Court vide order dated 13.06.2024.
2. Learned counsel for the applicant pointed out that grave offence of murder has been committed on the day of election that too in presence of hundreds of voters, police personnel and election officials. That, there are statements of eyewitnesses that the present respondents No.3 to 5 facilitated stabbing by the main accused, namely, Gourav. That, only because of it, there was stabbing. That, in spite of there being over ten direct eyewitness account, learned trial Court has granted bail by merely taking into account the statement of Police Naik. That, even at the time of grant of bail, investigation was incomplete, and charge-sheet was yet to be filed. Therefore, according to learned counsel, with such quality of evidence, learned trial Court ought not to have granted regular bail, and hence, he seeks its cancellation by setting aside the bail order dated 13.06.2024.
3. The learned APP also pointed out that there is overwhelming and direct evidence that a serious offense was committed, and even according to her, the learned trial court ought not to have granted bail.

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4. Learned counsel for the respondents No.3 to 5 resisted the application on the ground that, after hearing both the sides, learned trial Court has granted bail. That, there are variances in the statements of the witnesses. That, taking the statement of police personnel, who was on election duty, learned trial Court has used its discretion in a judicious manner, and as such, according to learned counsel, liberty once granted cannot be withdrawn without just and sufficient cause, and so according to him, here there is no sound reason for withdrawal of liberty already granted. He pointed out that allegations of threats levelled subsequently is a mere attempt to get bail cancelled.

5. Heard. Perused the papers. FIR seems to be at the instance of present applicant Shankar Sharad Shinde, who claims that on 07.05.2024, he received information about Bharat being beaten by Gourav in the vicinity of Bus Stand. When they visited there, they found that, father of Gourav, his uncles namely, Rajkumar and Dattatrya quarreling with Bharat, and then, Shankar and Samadhan being caught hold by Apparao Naiknaware, Rajkumar Naiknaware and Daddatrya Naiknaware, Gourav stabbed in the left side of stomach of Samadhan by means of knife, so also given blow of knife on the left arm of the informant. On above

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report, crime has been registered by Bhoom Police Station on 07.05.2024.

6. Papers show that respondents No.3 to 5 preferred Criminal Bail Application No.81 of 2024 before the learned Additional Sessions Judge, Bhoom, who after issuing notice seems to have heard learned counsel for accused as well as learned APP, and allowed the bail application. Reasons for granting bail are reflected in paragraph 5. Primarily, learned trial Court seems to have considered the FIR and statement of Police Naik Yogesh Shinde, Buckle No.1751, who was said to be on election duty and was said to be present on at the very spot. Learned trial Judge has compared his statement and contents of the FIR, and noted that his statement does not corroborate with the contents of the FIR, and on such ground, bail seems to have been granted.

7. Admittedly, after bail order dated 13.06.2024, the State has not taken steps to seek cancellation. The present applicant, by tendering the instant application, seeking cancellation of bail. On re-appreciation of FIR, apparently, allegation of stabbing by a knife is attributed to Gourav. Learned counsel for the applicant has taken this Court through the statement of alleged injured

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witness Bharat Pail, recorded under Section 164 of the Code of Criminal Procedure on 12.06.2024, and he pointed out that, even this witness is also a direct eyewitness. On careful going through the same, it is emerging that, he has reported on 07.05.2024, Gourav initially quarreling with police present there, and then addressed to this witness saying that, 'you reported about taking mobile', and that, 'he would see him'. He further claims that, after half an hour, in the vicinity of Bus Stand, Gourav rushed over him and gave him fist and kick blows, and even lifted and flung him on the ground. He further reported that, when his cousins Samadhan, Shankar and Sharad reached on hearing that this witness being beaten, Gourav went away, but returned back, and at that time, Appa, Rajkumar and Datta came, and caught hold to Samadhan and Shankar, and Gourav took out a knife and stabbed Samadhan, on the left side, below the chest, as a result of which he fell down. Gourav also stabbed Shankar on the left arm. on the left arm Be it so, now investigation is said to be over, and charge-sheet is already stated to be filed on 03.08.2024 itself.

8. There is no adverse report about misuse of liberty or non cooperation during investigation, i.e. after respondents No.3 to 5

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stood beneficiaries of bail. Therefore, taking the same into consideration, liberty once granted cannot be withdrawn as no case for withdrawing liberty granted is made out. Hence the following order:

ORDER

Application for cancellation of bail is rejected.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane