



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 206 OF 2023
IN ABA/8/2023

Macchindra Ankush Kharad & anotherApplicants

VERSUS

The State of Maharashtra & anotherRespondents

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Mr. S. B. Parnere, Advocate for Applicants.

Mr. R. S. Wani, APP for the State.

Mr. Shaikh Ashraf Patel, Advocate holding for Mr. A. P. Avhad,
Advocate for Respondent No. 2.

CORAM : ADVAIT M. SETHNA, J.

DATE : 20 JUNE, 2025.

P. C. :

1. Heard learned Advocates for the parties.
2. Applicants have filed this Application for cancellation of bail against accused Satish Shrirang Kharad.

SUBMISSIONS :

3. The learned Advocate for the Applicants at the outset would draw the attention of this Court to the order dated 6 February 2023. By the said order, accused Shrirang Kashinath Kharad and

others including the **present accused i.e. Satish Shrirang Kharad** were granted anticipatory bail on certain terms and conditions as recorded in the said order. He would next submit that pursuant to the order dated 6 February 2023, a letter dated 20 February 2023 was addressed to the Judicial Magistrate First Class, Paithan. The said letter recorded the fact of death of one Avinash Kharad who was the son of the present Applicant. It was also recorded that pursuant to the death of said Avinash on 19 February 2023, (inadvertently recorded as 19 February 2022 in the said communication at Page No. 33), offences alleged under Sections 307, 324 etc. of the Indian Penal Code (for short '**IPC**') were enhanced to Section 302 of IPC against the present accused person. He would next submit that in the light of such enhancement of the offences from Section 307 etc. of IPC to Section 302 of IPC, the accused ought to have preferred a fresh bail application as mandated in law. In this regard, he would place reliance on the decision of this Court in the case of Rahul Namdeo Salgar vs. State of Maharashtra & others in Criminal Application No. 2738/2017 dated 14 February 2018. The said judgment gainfully refers to the decision of the Supreme Court in case of Pralhad Singg Bhati vs. N.C.T. of Delhi, **(2001) 4 Supreme Court Cases 280** to submit that in such facts and circumstances as in the present

proceedings, it would be appropriate for the accused persons to apply for a fresh bail and to be relegated before the Trial Court, considering the enhancement of the offences against them. He would also submit that the accused/Applicant in the present case has failed to disclose the criminal antecedents arising out of First Information Report (for short '**FIR**') dated 28 May 2020 registered by Paithan Police Station under Sections 324, 323, 504, 506 and 34 of the IPC which ought to have been disclosed before the Court which granted anticipatory bail to the accused persons. According to him, despite being aware of such criminal antecedents the same were suppressed. He would next submit that the Court in the order dated 6 February 2023, had imposed certain conditions mainly condition in regard to tampering with the evidence etc. has also been breached by the accused as much as the NCR dated 4 September 2023 in NCR No. 0582/2023 has been filed under Section 155 of Code of Criminal Procedure with Paithan Police Station. He would submit that this is a case which would warrant cancellation of bail of the accused Satish Shrirang Kharad for the reasons as submitted above.

4. Mr. Ashraf Shaikh, the learned Advocate for the accused would very fairly submit that as far as position of law as decided in

Criminal Application No. 2738/2017 in case of Rahul Namdeo Salgar (supra) is concerned, there is no dispute. He would also submit that he also accepts the decision as laid down by the Supreme Court in the case of Pralhad Sing Bhati (supra). However, he would refute the contention raised by the learned Advocate for the Applicants in regard to the criminal antecedents against the accused. He would submit that the Advocate for the Informant was very much present when the order dated 6 February 2023 was passed and his appearance is duly recorded. Despite the criminal antecedents being of the year 2020 which were well within the knowledge of the said Informants i.e. present Applicants, it was deliberately not disclosed to the court. As far as the other contentions with regard to the lodging of NCR is concerned, it is submitted that this is done only to create record and prejudice the Court.

FINDINGS :

5. Heard learned Advocates for the parties at length. It is not disputed that by order dated 6 February 2023, the Applicants therein which include the present accused Satish Shrirang Kharad was allowed indulgence of anticipatory bail on certain terms and conditions. There is also no dispute in regard to the fact that offence

under Sections 307, 324 etc. of the IPC which were initially alleged against the said accused persons were subsequently enhanced to Section 302 of the IPC pursuant to the death of one Avinash Kharad son of the present applicant. In this regard, a charge-sheet dated 24 February 2023 was filed by the investigating agency in which Section 302 of the IPC was duly added/incorporated against the applicant/accused. In such facts and circumstances it is apposite to refer to the law laid down by the Supreme Court in the case of Pralhad Singh Bhati (supra) in Paragraph Nos. 9 and 10 which are reproduced below :-

“9. In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where the accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for

an offence punishable under Sections 498-A, 306 and 406 IPC. The Magistrate committed an irregularity by holding that “I do not agree with the submission made by the learned Prosecutor inasmuch as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not in the spirit of law”. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer on him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

10. Despite the involvement of important question of law, the High Court failed in its obligation to adjudicate the pleas of law raised before it and dismissed the petition of the appellant by a one-sentence order. The orders of the Magistrate as also of the High Court being contrary to law are liable to be set aside.

6. The above decision has been gainfully referred to by this Court in Criminal Application No. 2738/2017 dated 14 February 2018, which follows the judgment of the Supreme Court in the case of Pralhad Singh Bhati (supra). Accordingly the accused were

relegated to the Magistrate to apply for fresh bail. It is trite law as laid down by the Supreme Court in the case of Pralhad Singh Bhati (supra) followed subsequently by this court as noted (supra) that the accused persons in these proceedings also ought to apply for fresh bail before the Trial Court i.e. Court of Sessions at Paithan, in the given factual complexion.

7. As far as the submission on criminal antecedents is concerned, having heard the learned Advocates for the parties, it is apposite for the Court to refer to a recent decision of the Supreme Court in the case of Munnesb vs. State of Uttar Pradesh decided on 3 April 2025 wherein the Supreme Court has inter-alia observed in Paragraph no. 11 as under :-

“11. However, before parting, we consider it necessary to dwell on one aspect. A growing trend is being noticed of individuals, seeking from this Court the concession of bail or concession of protection from arrest, not disclosing in the special leave petitions their involvement in other criminal cases. In such cases where involvement is not disclosed, on a prima facie satisfaction that long incarceration without reasonable progress in the trial is invading the right to life of the accused or that the offences for which the FIR has been registered are not too serious, notices are issued and

only thereafter, information of criminal antecedents is being provided in the counter affidavits filed by the respective respondents-States, as in the present case. The result is that this Court, being the apex court of the country, is being taken for a ride. This Court has shown leniency in the past but we think it is time that such state of affairs is not allowed to continue further.”

8. Such observations as noted above are clear as crystal. Infact it would serve as a guiding light in proceedings where the issue of criminal antecedents often come up and/or arise often before the Courts.

9. In such peculiar facts and circumstances as the learned Advocate for the accused has agreed to follow the decision of the Supreme Court in the case of Pralhad Singh Bhati (supra) and the decision of this Court (supra), I refrain from making any observations on the aspect of criminal antecedents at this stage, of the proceedings.

10. With regard to the allegation of tampering of evidence at the behest by the accused person is made by the learned Advocate for

the Applicants, I am not inclined to delve into that controversy as it is trite law that mere filing of NCR is legally not sufficient.

11. In light of the above discussion, in my view, the following order would meet the ends of justice :

ORDER

- i) The Application is Allowed in the above terms.
- ii) The Anticipatory Bail granted to accused Satish Shrirang Kharad stands Cancelled. However, he is granted liberty for a period of 14 days from the date this order is uploaded to apply for bail afresh before the Sessions Court at Paithan. Only until such time, the accused Satish Shrirang Kharad shall not be arrested.

12. The Sessions Court shall decide the Application for fresh bail as and when filed, as directed above, on its own merits and in accordance with law. All contentions of the parties are expressly kept open to be decided by the said Court.

(ADVAIT M. SETHNA)
Judge

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