



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

CRIMINAL APPLICATION (APPLN) NO. 01 OF 2025

Atish Sanjay Gangawane Vs 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

Mr. S.D. Chande, counsel for applicant.

Mrs. Sneha Dhote, APP for non-applicant/State.

Mr. A.M. Jaltare, counsel for non-applicant Nos. 2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/03/2025.

1. The present application is moved by the applicant under Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 [439(2)] of Code of Criminal Procedure, 1973 for cancellation of bail in respect of Crime No. 344/2023 for the offence punishable under Sections 302 and 506 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Aatish Sanjay Gangawane on an allegation that there was a previous dispute between the present applicant and his father, and his cousin uncle. The cousin uncle has lodged the report against his son, i.e. present non-applicant No. 2, at the police station. On 29/11/2023 at about 5.00 p.m., he had been to his agricultural field, at the relevant time, his father was also in the agricultural field at about 7.00 p.m. When he came at the bus stand, he heard the shouts in a loud voice, and

therefore, he immediately rushed towards the spot from which he heard the shouts and witnessed the son of the present applicant assaulting his father by giving him a blow of brick on his head. His father sustained grievous injuries on his head and subsequently succumbed to death. On the basis of the said report, police have registered the crime against the present non-applicant Nos. 2 and 3.

3. The non-applicant Nos. 2 and 3, approached this court for grant of bail by filing Criminal Application (BA) No. 361/2024 and Criminal Application (BA) No. 898/2024. Both the applications are allowed by this Court by releasing them on bail on executing a P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount. While releasing him on bail, the condition was imposed that the applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

4. Now, this application is filed for cancellation of bail on the ground that without filing an exemption application, the non-applicant Nos. 2 and 3 are remaining absent, and trial is held up due to their absence. Thus, they have contravened the terms and conditions imposed by this Court while releasing them on bail, and therefore, the bail granted to them deserves to be cancelled.

5. Heard learned counsel Mr. S.D. Chande, who invited my attention towards the bail order passed by this Court on 02/05/2024 in Criminal Application (BA)

361/2024 and Criminal Application (BA) 898/2024 dated 11/10/2024. He also invited my attention towards the Roznama and submitted that without assigning any reason, the non-applicant no. 2 and 3 remained absent, and due to their absence, the trial is held up. As the non-applicant Nos. 2 and 3 have contravened the terms and conditions imposed by this Court while releasing them on bail, the bail granted to them deserves to be cancelled.

6. Learned counsel Mr. A.M. Jaltare, for non-applicant Nos. 2 and 3, invited my attention towards the Roznama and submitted that the non-applicant Nos. 2 and 3 were present before the Court on 17/10/2024 and the matter was adjourned on 11/11/2024. Subsequent to that, on the same day, the investigating agency had filed a reply vide Exhibit 22 on the Supartnama application, and therefore, the matter was fixed for the hearing on the Supratnama application on 21/10/2024. He submitted that this Roznama itself shows that on 21/10/2024, the application on Supratnama was fixed for hearing and the presence of present non-applicants was not at all necessary. He also filed on record this subsequent Roznama and submitted that on 11/11/2024, as per the direction of the trial Court, the non-applicant Nos. 2 and 3 were present before the Court, therefore grounds raised are not sustainable, and therefore, the application deserves to be rejected.

7. Upon hearing both sides and on perusal of the record, it reveals that the Criminal Application (BA) 361/2024 was filed by the non-applicant No. 3 for grant of bail, whereas the non-applicant No. 2 has preferred an application bearing Criminal Application (BA) No. 898/2024 both are considered by this Court, and by releasing them on bail on 2/05/2024 and 11/10/2024, the condition was imposed that they shall attend the proceedings before the trial Court without seeking any exemption, unless there are exceptional circumstances.

8. On perusal of the Roznama, it reveals that on 17/10/2024, the accused No. 1 was produced before the Court, and accused No. 2 was also present before the Court. Thereafter, the surety papers of the accused were accepted, and the matter was adjourned on 11/11/2024. Later on, the investigating officer filed a say on the Supratnama application, and for the hearing of the Supratnama application, the matter was kept on 21/10/2024. The Roznama dated 06/11/2024 shows that the matter was adjourned on 04/02/2025, and on 04/02/2025, the non-applicant Nos. 2 and 3 were both present before the Court.

9. Thus, considering the Roznama, it reveals that on 21/10/2024, the matter was not fixed for the presence of the present non-applicant No. 2. Thereafter, on 21/10/2024, the matter was adjourned on 24/10/2024 for hearing of the Supartnama application. On 24/10/2024,

the matter was adjourned on 06/11/2024, on which date, the non-applicant Nos. 2 and 3 were present before the Court. On 04/02/2025, the non-applicant Nos. 2 and 3 were both present there.

10. As far as the law regarding the cancellation of bail is concerned, it is well settled that considerations for grant of bail and cancellation of bail are different. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in catena of decisions in ***Myakala Dharmarajam & Ors. Etc. Vs The State Of Telangana & Anr [2020 (2) SCC 743]***, wherein it is held that:

“It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail”.

11. In ***Deepak Yadav Vs. State of U.P and another [2023 (2) Mh. L. J. (Cri) (S.C.) 196]***, wherein also it is held that there is certainly no straight jacket formula which exists for Courts to assess an application for grant

or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima-facie* view of the involvement of the accused are important.

12. The Hon'ble Apex Court laid down the illustrative circumstances where the bail can be cancelled are as follows:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) 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.
- iii) Where bail has been granted on untenable grounds.
- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- v) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

13. In light of the above well-settled legal position, if the facts of the present case are taken into consideration, admittedly, the non-applicant Nos. 2 and 3 were present before the Court when their presence was required after they are released on bail. Thus, the application itself is devoid of merits and liable to be rejected. Accordingly, I proceed to pass the following order;

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]