



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

CRIMINAL APPLICATION (APPLN) NO. 05 OF 2025

Bharti wd/o Dipak Satdeve Vs State of Maharashtra and another.

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

Court's or Judge's Order

Mr. S.A. Walde, counsel for applicant.

Mr. Anant Ghongre, APP for non-applicant/State.

Mr. P.A. Gupta, counsel h/f Mr. A.V. Khare, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/07/2025.

1. By this application, the applicant is seeking cancellation of bail of non-applicant No. 2 on the ground that the learned Sessions Court has not considered that there is evidence against the present applicant, who is involved in a crime that eliminating the deceased and threatening the deceased, and Sessions Court has also not considered the various statements recorded during the investigation.

2. Heard learned counsel for the applicant, who submitted that the Sessions Court had only considered that the role attributed to the present applicant is assault by fist and kick blows, but the Sessions Court has not considered that the act executed by the other co-accused was in furtherance of the common intention. The observation of the Sessions Court in para-18 that, in that fight, Khushendra stabbed the deceased on his stomach and on his back, and the omnibus allegations

against the present applicant that he has beaten the deceased with fist and kick blows, and no overt-act as such alleged against the present applicant is erroneous.

3. He further invited my attention towards the various statements of the witnesses and submitted that the observations of the Sessions Judge are contrary to the statements made by the witnesses. The witnesses have specifically attributed the role to the present applicant, who was not only assaulted by fist and kick blows but was present there to hold the deceased, and thereafter, the other co-accused has executed the act by giving a blow of knife on his vital part of the body. Thus, the learned Sessions Judge, without considering the gravity of the offence, allowed the application and released the accused on bail. In view of that, the bail granted to the present applicant deserves to be cancelled.

4. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court *Ajwar Vs Waseem and another* reported in [2024] 10 SCC 768 and *Mahipal Vs Rajesh Kumar alias Polia and another reported in [2020]2 SCC 118*.

5. Learned APP supported the contention of the applicant and submitted that considering the various statements of the witnesses, there is sufficient material against the present applicant, who attributes the specific role to the present non-applicant No.2, which was not

considered by the Sessions Court while releasing the accused on bail. In view of that, the application deserves to be allowed.

6. Per contra, learned counsel for the non-applicant No. 2 submitted that, while considering the application for grant of bail, the learned Sessions Judge has considered the considerations for grant of bail. Learned Sessions Judge has also considered the various statements of the witnesses which were recorded during the investigation, which specifically alleged that Khushendra Khobragade has given a blow of knife on stomach of the deceased. As far as the present applicant is concerned, except his presence at the spot of the incident and assault by fist and kick blows, no other allegations is levelled against him, and therefore, the order passed by the learned Sessions Judge is a proper and legal one, and no interference is called for. There is no allegation that the present non-applicant No.2 has misused his liberty or tampered with the prosecution evidence. In view of that, the application is devoid of merits and liable to be rejected.

7. On hearing both sides and on perusal of the application and the investigation papers, it reveals that as per the prosecution case, prior to one day before the alleged incident, there was a quarrel between the deceased and accused persons on account of Gram Panchayat Election and Collection of Boudha Pornima contribution, and in the alleged quarrel, the applicant

ran towards the deceased with an axe in his hand and threatened him that he would kill him. On 12/08/2024 at about 3.00 p.m. the applicant Santosh and co-accused, Jitendra, came in front of the informant's house and called the deceased to come to Durga Chowk, hence deceased went by his motorcycle along with them. At about 3.37, one Rajat Deshbharatra called the informant and told him that the deceased, Deepak, is lying at Durga Chowk in an unconscious condition. Therefore, the informant immediately rushed to the Durga Chowk and saw that Deepak was lying on the road and there was a pool of blood around him. He was injured on his right side stomach by a knife, and blood was oozing.

8. He further stated that applicant was present in the spot and the other co-accused left the said spot. On the basis of the said report, police have registered the crime against the present applicant. During the investigation, the investigating officer has visited the alleged spot of incidence drawn the spot panchanama, and arrested the accused. The query was referred to the medical officer as to the injuries by referring to the knife. The statements of various witnesses are recorded. On the basis of the memorandum statement of co-accused Khushendra, the incriminating weapon knife is recovered at his instance, and after completion of the investigation, the charge-sheet was filed against the accused.

9. I have also perused the order passed by the Sessions Judge while releasing the present applicant on bail. The Sessions Judge has observed that perusal of the charge-sheet shows that the deceased was admitted in Supreme Super Specialty Hospital, Gondia, at that time, his main assessment was disturbing. He was operated for stab wound. As per the statement of the witnesses, the only allegation made against the present applicant is that he was one of the co-accused and he assaulted the deceased by means of fist and kick blows. As far as the role of giving a axe blow is attributed to the other co-accused. Considering the specific role attributed to the present non-applicant No.2, and as there are no criminal antecedents, which brought before the Court, he was released on bail.

10. On perusal of the entire investigation, it reveals that admittedly the weapon of the offence is recovered at the instance of the co-accused Khushendra. I have also perused the Post Mortem report, which shows the injury was sustained on the stomach, which is attributed to the co-accused, Khushendra. Column No. 17 of the P.M. Report shows there are four injuries shown; 3 are sutured wounds, and one is a surgically stapled wound with intact staples, and the death of the deceased is due to an injury sustained by him on his vital organ due to the stab injury.

11. On perusal of the statements of various witnesses, who alleged to be eyewitnesses of the incident, including the statement of Yograj Bhaiyalal Neware, which shows that it was Khushendra Khobragade who was took out the knife and gave a blow on the abdominal portion as well as on the right-side rib of the deceased, and thereafter, all accused fled away from the spot of incidence. It was further stated that the present applicant was holding the deceased, and at that time, other brothers were assaulting him with fist and kick blows. The statement of Devdas Mansaram Gajbhiye is on a similar line. That Santosh was holding Deepak, and the other brothers were assaulting him. As far as the submission made by the learned counsel for the applicant that when the blow of the knife was given, the present applicant was holding the deceased from the backside, it is not narrated by the witness, either Yograj or Devdas. His specific statement is there, when he was holding Santosh, at that time other brothers were assaulting him by means of fist and kick blows. The statement of Jitendra Shriram Deshbartar is also on a similar line. The statements of these witnesses are rerecorded under Section 183(1) of the BNSS and (under Section 164 of the Cr.PC). In the said statement, they have only assigned the role to Khushendra Khobragade, and as far as the present applicant is concerned, it is stated by them that Sanotsh was holding the deceased. Thus, as far as the role of the

present non-applicant No.2 is concerned, which is to the extent of assaulting him by fist and kick blows and holding the deceased when other brothers were assaulting him by fist and kick blows. The Sessions Judge has considered this aspect while releasing the non-applicant No.2 on bail.

12. The present application is filed for cancellation of bail. The considerations for cancellation of bail are admittedly different than the considerations for grant of bail. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of the application for the cancellation of bail.

13. The Hon'ble Apex Court in the case of ***Mahipal Vs Rajesh Kumar (supra)*** wherein by referring its earlier judgment observed that the considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening

circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v State of U.P.*, [AIR 2015 SC 3703], the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail and it is as observed as under ;-

“12.....It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

14 Thus, where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima-facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.

15. In the case of ***Ajwar Vs Waseem and another*** referred (supra) wherein also, this aspect is considered by the Court and the considerations for grant of and cancellation of bail are considered and it is held that as under :-

The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any

instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima-facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

16. By referring the judgment in the case of ***Jagjeet Singh Vs Ashish Mishra @ Monu reported in 2022 (9) SCC 321***, a three-Judges bench of the Hon'ble Apex Court, the Apex Court has observed that the power to grant bail under Section 439 Cr.PC is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon

utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail.

17. Thus, 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. The grounds for cancellation of bail, which can be enumerated 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.

18. 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.

19. 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.

20. Thus, on going through the order passed by the Sessions Court it reveals that the Sessions Court has considered, the role of the present applicant, and statements of the witnesses and thereafter came to the conclusion that the considering the dispute, limited role is attributed to the present non-applicant No.2 and as the involvement of the non-applicant No.2 is not actual assault by means of any weapon and therefore, use the discretion in his favour and granted bail. Thus, considering the order passed by the Sessions Court, it appears that after application of mind, he comes to the conclusion discretion can be used in favour of the non-applicant No.2 and granted bail.

In view of that, the contention the learned counsel for the applicant that without application of mind, and without considering the relevant record, the bail is granted is not sustainable. Thus, no case is made out for cancellation of bail, in view of that, application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]