



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

CRIMINAL APPLICATION NO. 59 OF 2024

State of Maharashtra Vs Purushottam s/o Maroti Awari

AND

CRIMINAL APPLICATION NO. 62 OF 2024

State of Maharashtra Vs Sarita wd/o Laxman Balki and another

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

Court's or Judge's Order

Mrs. Ritu Sharma, APP for applicant/State. [Appln Nos.59 and 62/2024]

Mr. P.R. Agrawal, counsel with Mr. Ambatkar, counsel for non-applicants [Appln Nos.59 and 62 / 2024]

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/02/2025.

1. The applications are filed by the State for cancellation of bail, which is granted to the present applicants in connection with Crime No. 658/2023 dated 15/10/2023 registered with Police Station Chandrapur City, District Chandrapur.

2. As per the prosecution case that on 14/10/2023 at about 6.00 a.m. in the morning, the informant had been to his agricultural field, he received a phone call at about 6 p.m. of Narayan Adbale, who informed him that there is a scuffle took place at the house of the Laxman Balki. The Laxman Balki has been assaulted by the co-accused Devendera, Purushottam, Sarita Balki, and Suchita, and the co-accused Devendara had assaulted Laxman Balki by means of stick on his head, and the other co-accused assaulted him with fists and slaps. The

injured was taken to the hospital, and subsequently, he succumbed to death. On the basis of said report, police have registered the crime. Thereafter, applicants approached this Court for grant of anticipatory bail. Considering their role attributed to them in the FIR and the investigation papers, initially they were released on anticipatory bail. The death of the deceased is caused on 07/01/2024. The Post Mortem report shows that death is due to the complications following head injury, and therefore, the offence punishable under Section 326 is converted under Section 302 of the Indian Penal Code, 1860.

3. After the offence is converted under Section 302 of the Indian Penal Code, 1860, as the non-applicants Purushottam, Sarita, and Suchita apprehended the arrest at the hands of police, and therefore, they approached this Court for grant of anticipatory bail.

4. Considering their role, this Court has granted ad-interim anticipatory bail to them. Now, these applications are filed by the State for cancellations of bail on the ground that a grievous offence is now added, and therefore, the bail granted to the present non-applicants deserves to be cancelled.

5. As far as the merit of the matter is concerned, the facts of the case show that the non-applicants to whom the role is attributed are only to the extent of assault by fist and slaps, whereas the death is caused by the head injury, which is attributed to the co-accused, who are already released on bail.

6. The said applications are strongly opposed by the non-applicants on the ground that merely because the grievous offence is added is not sufficient to cancel the bail. The State has to show for what purpose the custody of the present non-applicants is required.

7. It is further submitted by learned counsel for non-applicants that this aspect is dealt in a catena of decisions and held that unless and until the bail of the accused is cancelled, they cannot be asked to surrender, and they cannot be arrested. As far as the ground for cancellation of bail is concerned, which is also not sufficient, as no overwhelming and supervening circumstances are brought on record to cancel the bail. Moreover, the role attributed to the present applicants is sufficient to show that they are not the persons who caused the death of the deceased. The person because of whose blow the deceased has sustained the head injury and subsequently succumbed to the death, is now already released on bail. Moreover, the investigation is already completed, supplementary charge-sheet is filed, and therefore, these applications deserve to be rejected. Considering the submissions made by the learned APP and learned counsel for the non-applicants, the law laid down by the Hon'ble Apex Court is required to be stated.

8. In *Pradeep Ram Vs State of Jharkhand and another [(2021) 8 SCC 753]*, wherein the Hon'ble Apex Court, dealt with a situation where an accused had been bailed out in a criminal case in which new offences were added subsequently

and a question arose as to whether it would be necessary to cancel the bail granted earlier for taking the accused in custody, a Division Bench of this Court took pains to examine the view taken by several High Courts including the High Courts of Rajasthan, Madras, Allahabad and Jammu and Kashmir as also the observations made by Apex Court in the previous decisions on this aspect and held thus :-

“31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail.”

9. As can be discerned from the observations made in ***Pradeep Ram*** (supra), addition of a serious offence can be a circumstance where a Court can direct that the accused be arrested and committed to custody even though an order of bail was earlier granted in his favour in respect of the offences with which he was charged when his application for bail was considered and a favourable order was passed. The recourse available to an accused in a situation where after grant of bail, further cognizable and non-bailable offences are added to the FIR, is for him to surrender and apply afresh for bail in respect of the newly added offences. The investigating agency is also entitled to move the Court for seeking the custody of the accused by invoking the provisions of Sections 437(5) and 439(2) Cr.P.C., falling under Chapter XXXVIII of the Statute that deals with provisions relating to bails and bonds. On such an application being moved, the Court that may have released the accused on bail or the Appellate Court/Superior Court in exercise of special powers conferred on it, can direct a person who has been released on bail earlier, to be arrested and taken into custody.

10. Coming back to the facts of the instant case, it is not in dispute that present non-applicants were released on bail earlier, as the offences registered against them under Sections 323 and 326 read with 34 of the Indian Penal Code, 1860. Considering the role attributed to them, they were released on bail. Subsequently, on 7/01/2024, as the injured succumbed to death and therefore, the offence was converted under Section 302 of the Indian Penal Code, 1860, and therefore, the

non-applicants approached this Court for grant of anticipatory bail.

11. Considering the role attributed to them, this court has considered the anticipatory bail and released them in the event of their arrest. Now, these applications are filed by the State for cancellations of bail on the grounds that graver offences are registered against the present applicants. Though graver offences are registered against the present applicants, but at the same time, the role attributed to them is to be looked into. The role attributed to all the non-applicants is only to the extent of assault by fist and slaps, and admittedly, the death of the deceased is caused due to the head injury, which is attributed to the other co-accused, who is already released on bail. As far as the investigation's purpose is concerned, it is an admitted position that the investigation is already completed and a supplementary charge-sheet is also filed.

12. The first important question which arises for determination in this case as to whether only because the earlier lesser offences converted into the graver offence is sufficient to cancel the bail. While considering the grant of bail, the considerations are always in the nature of the offence, the punishment provided for the offence and the role attributed to the applicants therein. Thus, considering the role attributed to the present applicants, which is not to the extent of causing the death of the deceased, and considering the fact that the investigation is already completed, there is no ground

raised for what purpose; the custodial interrogation of the present non-applicants is required.

13. Thus, the legal position is beyond doubt that once an accused is order to be released on bail under any of the Sections of Chapter-XXXIII of the Code of Criminal Procedure, admittedly, the police had no power to arrest him by merely adding another sections which may be non-bailable. The court can consider whether they can make out the case for grant of bail after adding the graver offence. The police can seek an order from the court for cancellation of bail, but then the considerations for cancellation of bail are to be looked into. As far as present matter is concerned, no supervening or overwhelming circumstance are brought on record, there is no allegation that the present applicant either misused the liberty to granted to them. Thus, after appreciating the investigation papers and fact of the present case, the non-applicants have already made out a case for grant of anticipatory bail, and therefore, their applications are allowed. As far as the present applications for cancellation of bail is concerned, no grounds are made out to cancel the bail, as the State could not show the reason or the grounds for which the custodial interrogation of the present non-applicants is required, and therefore both the applications deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal applications are **rejected**.

[URMILA JOSHI-PHALKE, J.]