



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.649 OF 2024

Kartik s/o Sanjiv Awhad
Aged about 30 years, Occupation – Business,
R/o 406, Kaveri Kailas Nagar,
Valevli Road, Badlapur (West)

...PETITIONER

VERSUS

1. The State of Maharashtra,
through its Police Station Officer,
Police Station Borgaon Manju,
Tah. and District Akola
2. Ambadas s/o Eknath Sonwane,
Aged about 42 years,
Occupation – Contractor
3. Bhanudas s/o Eknath Sonwane
Aged about 42 years,
Occupation – Contractor,

Both respondent Nos.2 and 3 are
R/o Janefal (Gaikwad), Bhokardan,
Tq. Bhokardan, District Jalna
at present Vidya Nagar,
in front of Riya Hospital,
Seven Hill Chowk,
Tq. and District Chatrapati Sambhajinagar

...RESPONDENTS

Mr. T.S. Deshpande, Advocate for the petitioner.
Ms S. Kolhe, APP for the State.
Ms R.M. Kulkarni, Advocate for respondent Nos.2 and 3.

CORAM : **URMILA JOSHI-PHALKE, J.**

DATED : **JANUARY 21, 2025.**

ORAL JUDGMENT :

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. By this petition, the petitioner has challenged the rejection of the application which was filed by the State for cancellation of pre-arrest bail granted to respondent Nos.2 and 3 on the ground that they have contravened the condition imposed on them to attend the concerned police station once in a week i.e. on every Wednesday. The said application is rejected by the learned Additional Sessions Judge, Akola. Being aggrieved with the same, the original complainant is approached before this Court.

3. As per the contention of the petitioner, respondent Nos.2 and 3 were granted anticipatory bail subject to the condition that they shall cooperate with the investigating agency and they shall attend the concerned police station once in a week i.e. on every Wednesday between 3.00 to 5:00 PM; however, respondent Nos.2 and 3 failed to observe such condition and they have not cooperated the investigating agency whereas offence is serious and the investigation is in progress. The State has filed an application for cancellation of bail. The respondent Nos.2 and 3 contested the application and submitted that

they have not committed any breach of conditions. On the contrary, they have attended the police station and they are harassed by detaining them in the police station for a whole day. The respondent Nos.2 and 3 have travelled from Aurangabad to the concerned police station and cooperated with the investigating agency.

4. Learned Additional Sessions Judge has considered that the considerations for grant of bail and the cancellation of bail are different and also considered that there is no such breach of the terms and conditions, and no overwhelming and supervening circumstances are brought on record for cancelling protection granted to the respondent Nos.2 and 3.

5. Learned Counsel for the applicant submitted the additional affidavit filed by respondent Nos.2 and 3 is after thought. They have not contended the fact that they have attended the police station on such and such dates and this dates and the defence taken in an additional affidavit is after thought. It be remanded back for the reconsideration of the Sessions Court and the Sessions Court be allowed to reconsider the application of the State for cancellation of bail.

6. Learned APP supported the said contention and submitted that considering there was breach of terms and conditions, learned Additional Sessions Judge ought to have considered the application for

cancellation of bail. In view of that, the present petition deserves to be allowed.

7. Learned Counsel for respondent Nos.2 and 3 vehemently submitted that learned Sessions Court has considered that no overwhelming and supervening circumstances are brought on record to curtail the liberty of the present respondent Nos.2 and 3, and therefore, there is no merits in the petition and the petition deserves to be dismissed.

8. Respondent Nos.2 and 3 are charged with an offence punishable under Section 379 read with Section 34 of the Indian Penal Code vide Crime No.269/2023 registered at police station Borgaon Manju, District Akola. After registration of the crime, they approached to the Additional Sessions Judge, Akola for grant of anticipatory bail. The Additional Sessions Judge considered the ground raised by respondent Nos.2 and 3 for grant of anticipatory bail and observed that there is a delay about four months in lodging the report. The applicants therein have sustained the loss of Rs.2 lakhs as they required to hire trailers from another company and it is a breach of contract. The Sessions Court further observed that there was a transaction appears between the parties for delivery of trucks of the complainant to the petitioner for work of road project and petitioner had also given advances towards

such contract. It is apparent that in spite of the advance is being paid, the complainant had not sent trucks as per agreement and as the petitioner had no permission, stone crusher machine were not sent to him and the dispute is of a civil nature, and therefore, granted the anticipatory bail subject to the condition that they shall attend the concerned police station once in a week i.e. on every Wednesday between 3.00 PM to 5.00 PM. Thereafter the State has filed the application for cancellation of bail on the ground that in view of the order passed by the Additional Sessions Judge, respondent Nos.2 and 3 have not attended the police station and thus there is a contravention of the condition imposed, and therefore, the liberty granted to them deserves to be cancelled, and therefore, anticipatory bail requires to be cancelled.

9. On perusal of the impugned order passed by the Sessions Court it reveals that Sessions Court has considered that the impugned order shows that it is an offence punishable under Section 379 of IPC. It was observed in the impugned order that the possession of the vehicle is admittedly with the accused. It is further observed that mere there is a dispute of civil nature between the parties and considering the same, anticipatory bail was granted. The Sessions Court further considered that respondent Nos.2 and 3 have attended the police station on various dates and thus there is no breach of conditions. The additional affidavit

filed by respondent Nos.2 and 3 also shows that only on 5 to 6 dates, they have not attended the police station due to some unavoidable circumstances, otherwise they have cooperated with the investigating agency and attended the police station since 27/09/2023 to 24/01/2024. The affidavit is also supported by one receipt of the travel agency showing that on 28/11/2023 respondent Nos.2 and 3 travelled to attend the concerned police station.

10. It is settled law that considerations for grant of bail and cancellation of bail are different. 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. In the case of *Dolat Ram and ors vs. The State of Haryana*, [1995(1) SCC 349], the Honourable Apex Court laid down parameters for cancellation of bail, which are 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.

11. 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.

12. 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.

13. Admittedly, for cancelling the liberty granted to the accused overwhelming and supervening circumstances are required. Once bail is granted it cannot be cancelled casually. Considering the ground raised in the application and the fact that the respondent Nos.2 and 3 have attended the concerned police station and appears to have cooperated with the investigating agency, no ground is made out for cancellation of bail. In view of that, the writ petition has no merits and deserves to be dismissed.

14. Hence, the writ petition is dismissed.

15. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)