
Satish Kendre Vs The State of Maharashtra, The Police Inspector, Police Station (City), Ambajogai, Dist. Beed and Suryakant Chate

Criminal Application No. 409 of 2012

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Aug. 8, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 169, 437, 439, 439(2), 482#Evidence Act, 1872 â€” Section 27#Penal Code, 1860 (IPC) â€” Section 149, 302, 307

Citation: (2012) BomCR(Cri) 143 : (2013) 1 Crimes 131

Hon'ble Judges: T.V. Nalawade, J

Bench: Single Bench

Advocate: S.W. Munde holding for . Mr. Eknath G. Irale in Criminal application Nos. 409 420, 897, 896, 898, 1238, 1237, 1836 of 2012, for the Appellant; R.P. Phatke, Assistant Public Prosecutor for respondent Nos. 1 and 2 in Criminal Application Nos. 409 420, 897, 896, 898, 1238, 1237, 1836 of 2012, Mr. T.G. Gaikwad, Advocate for respondent No. 3 in Criminal Application Nos. 409, 420, 896, 898 of 2012, Mrs. Uma S. Bhosale, Advocate for respondent Nos. 3 and 4 in Criminal Application No. 897 of 2012, Mr. S.S. Ambore h/f. Mr. V.D. Salunke, Advocate for respondent No. 3 in Criminal Application No. 1237 of 2012, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T.V. Nalawade, J.

All the applications are filed u/s 439 (2) of Criminal Procedure Code for cancellation of bail granted to respondents -

accused in C.R. No. 163/2011 registered in Ambajogai City Police Station for offences punishable under sections 302, 307, 149 etc. of Indian

Penal Code. Both the sides are heard. Papers of investigation were made available. The State has supported the applications. Both the sides have

filed affidavits in support of their rival contentions. The papers of investigation show that the incident took place on 23.10.2011 at about 7.15 p.m.

in the office of deceased Megharaj. The complainant Satish is the husband of a sister of Megharaj. The complainant is a resident of Ambajogai and

he is working as an advocate. The office of deceased is situated in Ambajogai. At about 6.30 p.m. Megharaj called complainant to the office and

so the complainant went to the office and they were having talk in the office from 6.30 p.m. onwards.

2. Accused Bibhishan Chate is a resident of village Sakud and accused Balasaheb Shep is resident of Shepwadi. These two persons were known

to the complainant from prior to the date of incident and they were also known to the deceased. At about 7.15 p.m. these two persons entered the

office of deceased along with four unknown persons. They were holding weapons like choppers and swords. Accused Balasaheb Shep gave first

blow of chopper to the deceased and then accused Bibhishan gave many blows of sword on the face and other portion of the body of the

deceased. When complainant tried to intervene in the incident, he was also assaulted by Bibhishan and blows of sword were given on the head and

on the hands of the complainant. All the six persons, who had entered the office, assaulted the deceased with choppers and sword. During the

incident, accused Bibhishan said that he was taking the revenge in respect of murder of his father. They left the place only when Megharaj was

dead.

3. Satish was seriously injured in the incident. Due to the shouting of Satish, some persons rushed towards the office of Megharaj. Nandraj,

brother of deceased, was present in the vicinity of the office with Balaji Chate and he also rushed to the spot. After their reaching to the spot,

accused Balasaheb Shep and Bibhishan left the office. These two persons knew the other four persons, who had entered the office and they were

Shrihari Chate, Govind Chate, Suryakant Chate and Sanjay Chate. These two witnesses noticed that the weapons which were in the hands of

these six persons were stained with blood.

4. Complainant Satish went to police station from the spot. He was referred to Government Hospital by police. In the hospital at about 11.15

hours, his report came to be recorded on 23.10.2011 itself. In the F.I.R., the complainant gave the names of only two persons, who were known

to him as Balasaheb Shep and Bibhishan Chate. He informed that other four persons were not known to him. However, in supplementary

statement dated 24.10.2011, he gave the names of four other persons. These names were given by two witnesses Nandraj and Balaji when their

statements came to be recorded on 24.10.2011.

5. The papers of investigation show that the glass frame of entrance door was totally broken in the incident. The furniture of the office was in

scattered condition. Blood was lying everywhere in the office. The articles of the deceased like Chappal etc. were lying there. One leather case

cover generally used for keeping sharp weapon of the length of 10 inches was also found on the spot. The M.L.C. in respect of complainant shows

that one bleeding injury was found on parito occipital region and it was caused by sharp weapon. The complainant had sustained other injuries like

two abrasions and fracture of right radius. He was examined in hospital at 7.55 p.m. of 23.10.2011.

6. The P.M. Report in respect of dead body of Meghraj shows that 17 chop wounds were found on his head, face and neck. These injuries had

caused fractures of underlying bones. There was a chop wound over chest. There were multiple defence wounds over upper limbs. Avulsion of

neck was found and its size was 26 c.m. x 13 c.m. It was horizontally directed and it had cut blood vessels, muscles and bones. There was

amputation of left thumb. There was sub scapular haemorrhage at frontal and parietal region. There was linear fracture of scalp. The trachea was not

in a position due to the aforesaid chop, cut injury. Megharaj died due to haemorrhagic shock due to aforesaid injuries and the injuries were caused

by sharp weapons.

7. Accused Suryakant came to be arrested on 24.10.2011. The record collected as against Suryakant like panchanama shows that there was no

injury on his person and no blood was found on his clothes. Accused Balasaheb Shep came to be arrested on 12.11.2011. The clothes were

seized, but the panchanama shows that no blood was found on the clothes. Sanjay came to be arrested on 13.11.2011 and the panchanama

shows that on his clothes also no blood was found. Similar is the case of accused Govind, Arun, Bittu alias Mahadev Chate and Pintu alias

Bhimrao Musle. They were also arrested after many days of the incident. One auto-rickshaw of accused Arun was also taken over.

8. The police papers include the statements of some employees of Santosh Bear Bar. They show that on 23.10.2011 at about 6.00 p.m. in one

auto rickshaw persons like Bibhishan Chate, Vaijnath Chate, Bittu alias Mahadev Chate and two unknown persons had come together to the bar.

They had consumed liquor there. Sandipan Munde knew Bibhishan, Vaijnath and Bittu alias Mahadev Chate. The two unknown persons were

Pintu Musle and Arun Munde and they were brought to the bear bar subsequently after their arrest by police.

9. The police papers show that two choppers having blood stains are recovered by the police on the basis of statement given by the accused Bitto

alias Mahadev. They came to be recovered on 19.11.2011. On the basis of statement given by Pintu alias Bhimrao Musle, one chopper having

blood stains came to be recovered on 19.11.2011.

10. Accused Bibhishan came to be arrested in the month of December 2011. No blood was found on his clothes. The statement of Bibhishan

came to be recorded u/s 27 of Evidence Act on 6.12.2011. On the basis of this statement, the weapon like a cookery, having blood stains and a

chopper, having blood stains came to be recovered.

11. The police papers show that the statements of some doctors of Ghati Hospital, Aurangabad, are recorded. The statements show that on

24.10.2011 one Sidharth Vaidya aged about 26 years had received treatment in Ghati Hospital as he had sustained bleeding injury to his right

hand. He was indoor patient till 27.10.2011 and he left the hospital without taking permission. After the arrest, Bibhishan was taken to the hospital

and the doctors identified Bibhishan as the same person, who had given his name as Sidharth Vaidya for receiving treatment. The relevant record is

collected by police. He had injuries to hands and there were fracture of second and third metacarpals and the fracture of proximal phalynx. He had

given history of accident to doctor and for undergoing the treatment, he had also given undertaking to doctor. There is record of laboratory

showing that the same name was given by Bibhishan for lab test. There is record collected by police of Gadiya Hospital Akola. This record shows

that the implant fixed by Ghati Hospital was removed in Gadiya Hospital on 25.11.2011. The record is collected to show that in his hospital,

Bibhishan gave his name as Shivaji Mahadev Chate.

12. Clothes of Vaijnath Chate came to be seized after his arrest in December 2011. Though there was no blood on his clothes, the record is

collected to show that he was in the company of Bibhishan, even after the incident and he was there in the hospital where Bibhishan received

treatment. He had also given false name, and he had informed that he was a relative of Vaidya (Bibhishan), who was receiving treatment.

13. There are statements of witnesses like relatives of the deceased to show that there was a motive for the incident. There was political rivalry

between deceased and accused Sanjay. In the political rivalry accused Balasaheb Shep was helping Sanjay and so there relations were strained. In

the past, father of Bibhishan had died due to poisoning and the case was filed against the deceased and his family members that they had forcibly

administered poison to the father of Bibhishan. They were acquitted in the said case.

14. The orders of bail made by Sessions Court show that Sessions Court has considered the remand report dated 21.11.2011, which contains the

statement of accused Arun. It appears that during remand, Arun took the names of four persons like Pinto Musle, Bibhishan Chate, Vaijnath Chate

and Bitto Chate as persons, who had entered the office to make the assault. Arun had gone there with his auto and he had reached these persons

to office. The Sessions Court has held that in view of such statement of one accused, it cannot be believed that Balasaheb Shep was also involved

in the incident. The Sessions Court has observed that there is no circumstantial check in respect of the material, which can be used as direct

evidence against Balasaheb Shep. Sessions Court has observed that there was political rivalry and there is the possibility of false implication of

Balasaheb.

15. In respect of the other accused, the Sessions Court has observed that the material collected against them is not sufficient to make out prima

facie case. In some cases, the aforesaid remand report is considered. The names some accused, who are granted bail, were not mentioned in the

F.I.R. and this circumstance is considered by the Sessions Court. The Sessions Court has considered the circumstance that the names of Bitto alias

Motiram, Lakhan Navnath Jadhav, Shaji Kerba Chandane, Arun Munde and Pintu Musle are not taken by the complainant in supplementary

statement also and these names are not given by two witnesses like Nandraj and Balaji. Police have filed report u/s 169 of Criminal Procedure

Code in respect of Lakhan Jadhav and Shahaji Chandane. This circumstance is also considered. The Sessions Court has observed that there is no

incriminating material to make out prima facie case against these persons.

16. This Court has carefully gone through the material collected by police. The statements of two employees of Santosh Bear Bar were recorded

on 18.11.2011. Though, these two witnesses had stated that there were two unknown persons in the company of three known persons, the police

did not take care to arrange the identification parade. It appears that Pintu and Arun were directly taken to the bar and they were shown to the

two witnesses. The statement of complainant Satish shows that the investigating agency has not taken care to confirm the identity of the four

persons mentioned by Satish in F.I.R. as unknown persons. Though Satish is an advocate, police ought to have taken care and they ought to have

done investigation independently without getting influenced by any circumstances. It appears that Satish took the names of other four persons in the

supplementary statement and the same names are taken by other two witnesses like Nandraj and Balaji and so, police did not go ahead to hold

identification parade.

17. Most of the accused persons were arrested after many days of the incident. Though there are aforesaid circumstances, at the stage like bail,

the Court is expected to consider only the material which can be accepted as evidence during trial. If such material is sufficient to make out prima

facie case for the offence punishable u/s 302 of Indian Penal Code, then the Court can consider other things like possibility of tampering the

prosecution witnesses, absconding of the accused etc. The probable defence of the accused cannot be considered at this stage. The Sessions

Court has committed gross error in considering the remand report in which there is the statement of accused Arun. If such a statement given by co-

accused is considered, in favour of accused, it will be very easy for a person to escape, if he has hired some persons for committing such offence.

Further, such statement cannot be considered during trial.

18. As per F.I.R. atleast six persons were involved in the incident as assailants. Their names are given by the complainant and two witnesses like

Nandraj and Balaji and they are as under :

(i) Balasaheb Shep,

- (ii) Bibhishan Chate,
- (iii) Shrihari Chate,
- (iv) Govind Chate,
- (v) Suryakant Chate, and
- (vi) Sanjay Chate.

The names of only Balasaheb Shep and Bibhishan Chate were given in the F.I.R. and the remaining four names were given in the supplementary

statement by the complainant and the statements given on the next day by other two witnesses.

19. The aforesaid material shows that there may not be a circumstantial check available in respect of the direct evidence, which will be given

against Balasaheb Shep, but this aspect cannot be considered at the stage of bail. The F.I.R. was given immediately and it was recorded in the

hospital. Balashaheb Shep was not available for many days and this circumstance will have to be kept in mind when argument is advanced that

there is no circumstantial check. Though his name was given in F.I.R., he could be arrested after many days of the incident. The material shows

that there will be evidence on motive also. Thus, there is sufficient material to make out prima facie case for offence of murder as against Balasaheb

Shep. It was brutal murder and from the aforesaid material, it can be said that with an intention to finish Megharaj, the assault was made.

20. It can be said in respect of accused Shrihari, Govind, Suryakant, Sanjay that these persons were known to the complainant on the day of the

incident, but their names were not given in the F.I.R. The material shows that the circumstantial check will not be available in respect of the direct

evidence which can be given against these four persons. The power to grant bail u/s 439 of Criminal Procedure Code is discretionary in nature and

in view of the aforesaid material, it cannot be said that the discretion is not properly used for giving bail to these four persons. It also needs to be

kept in mind that the charge-sheet is filed against eight persons when there were six assailants. Two more persons were arrested and now report

u/s 169 of Criminal Procedure Code is filed in their favour. This circumstance also needs to be kept in mind while considering the case against

these four persons.

21. From the material, it can be said that there will be circumstantial evidence available as against accused Vaijnath Chate. There will be the

evidence of employee of Santosh Bar that he was in the company of Bibhishan at about 6.00 p.m. Similar is the case of accused Bittu alias

Motiram Chate, Pintu alias Bhimrao Musle and Arun alias Amol Munde. There will be other circumstantial evidence like statements given by

accused Pintu and Bitto u/s 27 of the Evidence Act and recovery of some weapons on the basis of such statements. However, the prosecution

may face problem for proving the case as against these persons in view of the contents of the F.I.R. and the evidence which the aforesaid three

witnesses (complainant, Nandraj and Balaji) are expected to give. In view of these circumstances, this Court holds that it cannot be said that the

Sessions Court has committed error in granting bail to accused Vajinath, Bittu, Pintu and Arun. The material collected shows that there is nothing

as against Lakhan Jadhav and Shahaji Chandane. Investigation agency has also filed report u/s 169 of Cr.P.C. in respect of these two persons. In

view of these circumstances, it cannot be said that error is committed by Sessions Court in using discretion in their favour.

22. The aforesaid discussion shows that some grounds are made out only in the application made against accused Balasaheb Shep. It is already

observed that Sessions Court has granted bail by relying on statement given by co-accused, which cannot be admitted in evidence during trial. The

Sessions Court has also held that delay was caused in giving F.I.R. and so there is possibility of false implication. The incident took place at about

7.15 p.m. and the F.I.R. was recorded at 11.15 p.m. on the same day. Satish was injured and he was admitted in hospital. In view of these

circumstances, at this stage, it cannot be said that delay was caused in giving the report. The names of two persons were specifically given in F.I.R.

At this stage it cannot be inferred that there is possibility of false implication of Balasaheb Shep.

23. For respondents -accused reliance was placed on following reported cases.

(i) D.K. Jain and Others Vs. State of Haryana and Others, ,

(ii) Savitri Agarwal and Others Vs. State of Maharashtra and Another, ,

(iii) Hazari Lal Das Vs. State of West Bengal and Another, ,

(iv) 2012 ALL MR (Cri) 822 [Salim Khan Saheb Khan & Ors. Vs. State of Maharashtra],

(v) 2012 ALL SCR 723 [Maulana Mohd. Amir Rashadi Vs. State of U.P. and Anr.]

The Apex Court has observed in the aforesaid cases that ""very cogent and overwhelming circumstances are necessary for an order of cancellation

of bail already granted."" The general grounds for cancellation are quoted by the Apex Court as :

(i) interference in the administration of justice,

(ii) attempt to evade due course of justice or abuse to the concession granted, and

(iii) possibility of absconding of accused etc.

It is laid down by the Apex Court that the considerations for cancellation of the bail are drastically different. However, in the case of Salim Khan

cited supra it is laid down by this Court that bail granted illegally or improperly by a wrong or arbitrary exercise of judicial discretion, can be

cancelled, even if there is absence of supervening circumstances. For the applicant following reported cases were cited :-

(i) 2009 (3) SC 542 [Masroor Vs. State of U.P. and Anr.],

(ii) AIR 2007 SCW 5598 [Sudha Varma vs. State of U.P. and Anr.],

(iii) 1999 (10) JT 406 [Salim Khan Vs. Sanjay Singh],

(iv) 2008 ALL MR 2337, [Smt. Ranjanabai w/o. Kisansing Dumale vs. State of Maharashtra and Ors.]

(v) Mahendra Manilal Shah and etc. Vs. Rashmikant Mansukhlal Shah and Another, ,

This Court has gone through the facts of these reported cases and observations made by the Apex Court. The observations are similar to the

observations made in the Salim Khan's case cited supra. In one case bail was cancelled, when Supreme Court noticed that relevant factors were

not considered by High Court while granting bail.

24. In the case of Dolat Ram cited supra, Supreme Court has observed that general grounds on which bail can be cancelled and which are quoted

in the aforesaid cases are illustrative and they are not exhaustive. Thus, on one hand due to existing supervening circumstances (general grounds

which are not exhaustive) the bail can be cancelled and on the other hand, even when supervening circumstances are absent, bail can be cancelled,

if bail is granted illegally or improperly by a wrong, arbitrary exercise of judicial discretion.

25. Section 439 of Criminal Procedure Code gives special power to Sessions Court and High Court to grant bail in serious cases, but that does

not mean that the Sessions Court and High Court can ignore the distinction made by the legislature in serious offences and less serious offence both

in section 437 and 439 of Criminal Procedure Code. The provisions of sections 437 of Cr.P.C. shows that if there appears reasonable ground for

believing that the person arrested has been guilty of offence punishable with death or imprisonment of life, only in special circumstances mentioned

in this section, bail can be granted by the Court mentioned in this section. Though there is no similar restrictions mentioned in section 439 of

Cr.P.C., in view of the distinction made by the legislature in serious and less serious offences, it becomes necessary for Sessions Court and High

Court to see that there are reasons for granting bail in such serious cases. Serious offences are treated as offences against society as a whole and

State is expected to take care of interest of the Society in such cases. That is why notice to P.P. is made necessary before granting bail even u/s

439 of Cr.P.C. in such cases. For the same reason, the Sessions Court and High Court is expected to see that the balance between rights of

accused and the interest of society is maintained at the time of granting or refusing bail in such cases. For giving the reasons, the material collected

by police which can be used as evidence during trial needs to be considered by the Court to find out, whether the material is sufficient to make out

the prima facie case. If on irrelevant considerations bail is granted by the Court, not only the relatives of victim, but the society may get feeling in

such cases that justice is not being done. In view of this position of law, nature and seriousness of offence are always important considerations in

such proceedings. It can be said from the provisions of section 437 and also for that matter from section 439 of Cr.P.C. that bail and not jail is not

the rule of law. So the special power given u/s 439 of Cr.P.C. needs to be used both by Sessions Court and High Court in judicious manner and

not as the matter of course. When there are allegations of such serious offence, reasons for prima facie concluding why bail is granted must be

given by the Court. If the bail order shows that there are no such reasons or the reasons given are not at all acceptable in law, such perverse order

cannot sustain in law and in that case, it becomes duty of the Superior Court, High Court, to do the needful u/s 439 (2) of Cr.P.C. If there is direct

evidence and other evidence like P.M. report like in the present case to show that inference of intention of murder is easily available in ordinary

course, bail cannot be granted.

26. The provisions of section 482 of Cr.P.C. show that the High Court can cancel the bail granted by subordinate Court. The grounds can be, of

course, the grounds mentioned in section 437 and 439 of Cr.P.C. i.e. when High Court considers it necessary to do so. Section 439 (2) of

Cr.P.C. shows that such power can be used as the Court of ordinary jurisdiction also. Thus, the power of High Court in this regard is two fold.

27. In view of aforesaid facts of this case, this Court has no hesitation to hold that Sessions Court has committed error in granting bail to accused

Balasaheb Shep. This Court holds that accused Balasaheb Shep cannot be allowed to remain on bail during trial in this case.

28. In view of the discussion made above, application bearing No. 420/2012 is allowed. Bail granted to Balasaheb Shep is cancelled. This Court

directs that Balasaheb Shep be arrested and committed to custody in C.R. No. 163/2011 registered in Ambajogai City Police Station, Beed. All

other applications stand rejected. In Criminal Application No. 420/2012, advocate for respondent No. 3 accused requested for time of four

weeks as he wants to approach the Apex Court. In view of the facts of the case, this Court holds that time of two weeks can be given. So, for two

weeks he is not to be arrested.