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**(2013) 09 BOM CK 0160**

**In the Bombay High Court**

**Case No : Criminal Application No. 4123 of 2012**

Ganesh

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 12-09-2013**

**Acts Referred:**

**Citation : (2014) ALLMR(Cri) 585**

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

**Bench : Single Bench**

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## **Judgement**

T.V. Nalawade, J.—Rule. Rule is made returnable forthwith. Heard both sides. The application is filed for cancellation of bail granted to respondent Nos. 2 to 12 by Additional Sessions Judge, Ambajogai, Dist. Beed in Criminal Application Nos. 388/12 and 400/12. Charge sheet is filed against respondents by Bardapur police station for offences punishable under Sections 302, 324, 323, 504, 506, 143, 147, 148, 149 of IPC. It appears that previous application filed for bail by respondents before filing of charge sheet was rejected by same Court on merits.

2. Crime is registered on the basis of report given by Ganesh Gambhire. A sister of the complainant was given in marriage to Mahadeo. Land Gat Nos. 137 and 146 from village Tadola, Tq. Ambajogai, Dist. Beed were in the name of Vaishnav Mahadeo Karad and his cousin Ganesh Chandrakant Karad. Their father Mahadeo had died about a year prior to the incident. Vaishnav was aged about 8 years at the relevant time. This land was purchased in the year 2009 from Jagannath Haralkar nad Ankush Haralkar, The land was being cultivated by father in law of sister of the complainant viz. Vasant Karad. At the relevant time, there was standing crop of sugar cane in this land.

3. The respondents had dispute with Vasant Karad in respect of aforesaid lands. On 15/4/12, Vasant Karad learnt that the respondents accused had decided to cut and take away the sugar cane crop from the aforesaid land. On 16/4/12 at about 4.30 p.m. Vasant Karad, Laxman Gambhire, Babasaheb and Sheshrao Karad went to the aforesaid land to see as to what was happening. When they

reached the field, they noticed that respondents were present in the field. Respondents were cutting sugar cane crop and they were loading the crop into one truck.

4. Vasant asked the respondents as to why they were taking away sugar cane crop. Respondents, then picked up quarrel and they assaulted Vasant Karad. In the incident, respondent Madan Gurav assaulted Vasant Karad by using weapon chopper and respondent Pappu assaulted Vasant Karad by using axe. Blows were given on head and back. In the incident, respondent Rajkumar assaulted Laxman by using axe and respondent Ankush assaulted Laxman Gambhire by using chopper. Blows were given on the head and face of Laxman. These 2 persons sustained serious bleeding injuries. Attempt was made to save their lives. After shifting these persons to the hospital, doctor declared that Vasant Karad was already dead. Laxman succumbed to the injuries on the same day. Report came to be given on the same day and the crime came to be registered.

5. This Court has gone through two post mortem reports. The post mortem report in respect of Laxman's dead body shows that the injuries were caused to him by sharp cutting weapon like Koyata [chopper]. The death took place due to Hemorrhage and Shock due to injuries caused to vital organs like brain due to deep wounds. The injuries were caused to right parietal bone, at head, temporal region, right temporal region and some injuries were found on limbs also. The post mortem report is consistent with the allegations made against accused Rajkumar and Ankush.

6. The post mortem report in respect of dead body of Vasant Karad shows that he sustained injuries due to heavy cutting weapons like axe and Koyata. Cause of death is given as Hemorrhage and shock due to injuries to vital organs like brain which was caused due to deep wounds. The injuries were caused to temporal region and over frontal lobe. There were injuries over forearm also. The post mortem report is consistent with the allegations made against Madan and Pappu.

7. The submissions made and the documents show that many eye witnesses witnessed the incident. Dangerous weapons were used against the two deceased.

8. The learned counsel for applicant submitted that as there was civil dispute of aforesaid nature, matter was taken to civil Court and civil Court had granted ex parte temporary injunction on 12/4/12. However, he fairly submitted that this order was not served on the accused who had the dispute and against whom the relief was obtained. The incident in question took place on 16/4/12. There was standing crop of sugar cane. Though order was not served on the accused, in view of the aforesaid circumstances, prima facie, inference can be drawn at this stage that they had the knowledge about the order of temporary injunction. Submission made shows that the relief granted in favour of the complainant is still in existence. Further, as per record, property was purchased under registered deed from different persons by the side of the complainant. Accused persons could not have claimed that they were in possession of the property.

9. Learned counsel for respondents took this Court through some record to show that revenue authority had decided not to make entry with regard to possession. The learned counsel for accused submitted that subsequently authority found that one of the accused was cultivating some portion of the disputed land. The 7/12 extract on the record shows that the lands were standing in the name of complainant side and no specific entry about the cultivation was made in the year 2009 in favour of the accused.

10. The learned Additional Sessions Judge has granted bail by observing that the offence was committed at the spur of moment. The learned Additional Sessions Judge has considered the dispute which was going on in respect of the lands. Learned Additional Sessions Judge has observed that the accused have place of permanent residence and there was no possibility of absconding. Learned Additional Sessions Judge has imposed condition like attending police station for some time but they are allowed to live in the same village. This material was available when previous application was rejected by the same judicial officer before filing of charge sheet.

11. The aforesaid material is sufficient to make out strong prima facie case for offence of murder. Two murders were committed. At this stage, it is not possible to draw inference that the incident took place all of a sudden. Submissions made for the accused side do not show that the accused sustained some injuries or they gave report on the basis of which counter case came to be filed against some persons from complainant's side. It appears that it was contended before the Additional Sessions Judge that there was exercise of right of private defence. Though this defence is not considered by the Additional Sessions Judge, it can be said in view of the aforesaid circumstance that prima facie there was no right of exercise of such right of private defence of property. Learned counsel for applicant drew attention to Section 103 of IPC to show that such defence was not available. In view of Section 103 of IPC this Court holds that there is substance in the contentions made on behalf of complainant.

12. From the discussion made above, this Court has no hesitation to observe that the learned Additional Sessions Judge has not considered the relevant material which makes out strong prima facie case of murder against at least Madan, Pappu, Rajkumar and Ankush. This Court has no hesitation to observe that learned Additional Sessions Judge has committed error in granting relief to these 4 accused. Learned counsel for the applicant submitted that in view of the nature of material collected against accused, at present, he is not pressing application as against respondent Nos. 6 to 12.

13. Learned counsel for respondents accused placed reliance on reported case like Bhagirathsinh Judeja Vs. State of Gujarat, . The Apex Court has made following observations:

Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is now well settled by a catena of decisions of the

Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidences. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

14. Learned counsel for accused placed reliance on other case reported as Ashok Kumar Vs. State of U.P. and Another, . In this case, the Apex Court refused to cancel the bail by observing that it was not desirable to do so, in view of the fact that accused was on bail for considerable length of time. In view of facts of that case Apex Court held that bail cannot be cancelled even though order granting bail suffered from various infirmities. The facts of the reported case show that it was filed U/s. 307 of IPC.

15. On the other hand, learned counsel for applicant placed reliance on the case reported as Kanwar Singh Meena Vs. State of Rajasthan and Another, . In this recently decided case, Apex Court has discussed landmark case of Puran Vs. Rambilas and Another etc. etc., . The relevant observations can be found in para. No. 10 as under:

10] Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused feeling from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. The Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While canceling bail u/s 439(2) of the Code, the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials 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 canceling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from canceling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately results in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.

16. The observations made by Apex Court and interpretation of Section 439(2) of Cr.P.C., made by the Apex Court show that this Court can cancel the bail granted by Sessions Court if the Court finds that order granting bail suffers from serious infirmities resulting in miscarriage of justice and when the Court granting bail has ignored material indicating prima facie involvement of the accused. In view of this position of law, and facts of present case, this Court holds that the power needs to be exercised in the present case for canceling the bail granted to aforesaid 4 persons.

17. The submissions made show that the charge sheet was filed in the month of July 2012. The case must have been committed to the Court of Sessions at the most in August 2012. Submissions made show that the case has not made any progress. If there are many eye witnesses and when serious offence like the present one is committed, the accused always play delaying tactics. Inference is easy in this case that the defence is playing delaying tactics and so, case is not making progress. Unless the accused are kept behind bars, case will not make progress. Further order of bail made in favour of persons like aforesaid respondents, is sending wrong signal to the society. It appears that immediately after filing of the charge sheet, bail was granted to these 4 persons.

18. In the result, following order:

Application as against respondent Nos. (2) to (5) viz. Madan s/o Gyandeo Pujari; Pappu @ Mahadeo S/o Gyandeo Pujari; Rajkumar S/o Gyandeo Gurav/Pujari and Ankush s/o Gyandeo Pujari, is allowed. The order made by Additional Sessions Judge, Ambajogai in Misc. Criminal Application Nos. 388/12 and 400/12 in favour of these respondents is set aside. The bail granted to them stands cancelled. They are to be committed to the custody immediately. The application made as against respondent Nos. 6 to 12 is disposed of as not pressed.

19. Rule is made absolute in aforesaid terms in respect of application made against respondent Nos. 2 to 5 and the rule stands discharged in respect of other respondents. On the request made by learned counsel for respondent Nos. 2 to

5, time of 15 days is granted to them to surrender.