

(1995) 08 KAR CK 0062
In the Karnataka High Court
Case No : Criminal Petition No. 678 of 1995

State of Kadugodi Police, Bangalore

APPELLANT

Vs

Gulzar Khan

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 143, 147, 302, 341

Citation : (1996) CriLJ 624 : (1995) ILR (Kar) 2626 : (1995) 6 KarLJ 721

Hon'ble Judges : A.B. Murgod, J

Bench : Single Bench

Advocate : A.M. Farooq, S.P.P. and C.M. Srinivasa Reddy, for the Appellant; C.H. Hanumantharaya and C.M. Kempegowda, for the Respondent

Judgement

1. In this petition filed u/s 439(2) read with Section 482 of the Code of Criminal Procedure by the State, the State prays for cancellation of the anticipatory bail order granted in favour of the respondent on 16-3-1995 by the learned Additional Sessions Judge, Bangalore Rural District in Criminal Miscellaneous No. 130 of 1995 on his file.

2. Respondent is accused No. 1 in Crime No. 45 of 1995 of Kadugodi Police Station, Bangalore. The said crime number is registered for offences punishable under Sections 143, 147, 148, 149, 341 and 302, I.P.C. against twenty persons.

2A. According to prosecution, on 2-3-1995 Thimmaraju, resident of Dinnur village being an employee of N.G.E.P. prepared himself his house to go to the factory at about 5.45 A.M. and his wife Smt. Umadevi the complainant also joined him to go to her mother's house and when they came in front of Ujwal School building, Kadugodi "O" Farm Road between 5.55 A.M. and 6.00 A.M. the respondent and other accused persons came from school compound side and the respondent stabbed Thimmaraju on his stomach with a knife and accused-2 Shankar assaulted Thimmaraju with a machchu on the back of his head and all the accused surrounded him and assaulted him with weapons and when the

complainant Smt. Umadevi tried to rescue her husband she was threatened with injuries and the accused tried to attack her and by that time a lorry came on the road and seeing the same the assailants ran away from the place.

3. It is the prosecution case that seeing her husband done to death on the spot, Smt. Umadevi became panicky, went to Dinnur village, informed her neighbours and villagers and came back to the spot with the villagers. She was in a state of shock. She got the complaint prepared on the spot through Muralidhar and presented it herself in the Police Station at about 8.30 A.M. on the basis of which the Police registered crime No. 45 of 1995.

3A. The Circle Inspector of Police held inquest proceedings between 10.00 A.M. and 1.00 P.M. The complaint of Smt. Umadevi after registration of crime No. 45 of 1995 was sent to the learned Magistrate and it reached him at 3.15 P.M. on the same day. The inquest proceedings reached the Magistrate on 3-3-1995 at 7-30 P.M.

4. The eye-witnesses in the case are the complainant Smt. Umadevi the wife of the victim Thimmaraju and one Sri. Muniraju who came in the vehicle on seeing which the assailants allegedly including the respondent left the scene and ran away

5. Respondent filed the application u/s 438, Cr.P.C. for anticipatory bail. Objections were filed to the same on 10th March, 1995. The petition was heard on 14th and 15th of March 1995 and the impugned order allowing the same came to be passed on 16-3-1995 imposing certain conditions.

6. It is submitted by Sri. A. M. Farooq, the learned Staate Public Prosecutor and Sri. C. H. Hanumantharaya, learned counsel for the respondent that the investigation in the case is not yet completed and the charge-sheet is yet to be filed in the case.

7. The learned Staate Public Prosecutor has submitted before the Court that the learned Sessions Judge was not right in allowing the anticipatory bail application and according to him the way of the learned Sessions Judge has proceeded to consider the application is improper and illegal and in the fact of statements of eye-witnesses recorded by the investigating authority in support of the offences registered, the Sessions Judge was not right in admitting the respondent to bail. He further submitted that the investigation was in progress and no compelling circumstances had been made out by the respondent for grant of anticipatory bail and therefore he prayed for allowing the present petition. He also submitted that the learned Sessions Judge has by his observations and remarks pre-empted the trial of the case by giving undue importance to the contents of the inquest proceedings u/s 174, Cr.P.C. and thus has himself misled and his resultant order therefore is contended to be unsustainable and hence prayed for cancellation of the bail granted to the respondent.

8. The learned counsel Sri. C. H. Hanumantharaya has supported the order under

challenge and has contended that the learned Sessions Judge has got power and was competent to grant anticipatory bail and the discretion exercised by him cannot be said to be arbitrary or illegal. He further submitted that if some of the reasons given while admitting the respondent to anticipatory bail are not sustainable the same may be corrected and according to him there are no grounds made out by the petitioner for cancellation of the bail already granted to the respondent.

9. The counsel on both sides have submitted lengthy arguments and have placed reliance on number of decisions of this Court and the Supreme Court and other High Courts and the same will be referred to while considering the submissions.

10. The question for consideration is whether the anticipatory bail order granted in favour of the respondent needs to be cancelled. ?

REASONS

Section 439(2) of the Code of Criminal Procedure, 1973 empowers a High Court or Court of Session to direct that any person who has been released on bail under Chapter XXX III be arrested and commit him to custody. The learned Staate Public Prosecutor has referred to Gurcharan Singh and Others Vs. State (Delhi Administration), which deals with powers of the High Court to cancel the bail. Towards the close of paragraph 16 on page 183 the Court has observed as under at page 133 of Cri LJ) :-

"..... If however, a Court of Sessions had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the Superior Court under S. 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

Therefore the power of the High Court to cancel the bail granted to the respondent if grounds justify the same cannot be doubted.

11. The learned Staate Public Prosecutor by reading the order of the learned Sessions Judge pointed out that the reasons given by the learned Judge for holding that the respondent was entitled to anticipatory bail are not correct. The submissions made in this behalf are that the learned Sessions Judge unduly relied on the contents of the inquest proceedings u/s 174, Cr.P.C. and illegally proceeded to consider whether the materials placed on record by the prosecution disclosed an offence punishable u/s 302, I.P.C. against the respondent. The learned Sessions Judge when the investigation was in progress held in the

negative on the above point and found that the circumstances justified the grant on anticipatory bail to the respondent.

12. It is obvious from the way the learned Sessions Judge treated the matter that he has read the requirements of Section 437, Cr.P.C. into Section 438 giving him power to grant anticipatory bail even though he has noticed the decision of the Supreme Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, in which the Constitutional Bench of the Supreme Court in detail considered the powers of the Court for granting anticipatory bail under S. 438, Cr.P.C. In paragraph 18 of the judgment on page 1643 the Court has observed as under at page 1136 of Cri LJ :-

"We see no warrant for reading into this provisions the conditions subject to which bail can be granted under S. 437(1) of the Code. That section, while conferring the power to grant bail in cases of non-bailable offences, provides by way of an exception that a person accused or suspected of the Commission of a non-bailable offence, "shall not be so released" if there appears to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in S. 437(1) should govern the grant of relief under S. 438(1), nothing would have been easier for the legislature than to introduce into the latter section a similar provision."

In the same decision in paragraph 13 the Court's discretion to grant anticipatory bail is left free if it considers it fit to do so on the facts and circumstances of the case. The Court has stated as under :-

"The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in S. 437 or which are generally considered to be relevant under S. 439 of the Code."

13. In arriving at the conclusion that the prosecution has not made out an offence punishable with death or imprisonment for life to entitle the respondent to anticipatory bail, the learned Sessions Judge has placed reliance on the contents of columns 3 and 4 of the inquest proceedings in which the entries indicated that when the complainant was in her house in the morning somebody went to her and informed her that her husband's dead body was lying near the school and she accordingly went there and noticed the same. It was also found entered in those columns that her husband was last seen alive by her when he left the house for going to the factory. Heavily relying on these entries and not accepting the explanation offered by the prosecution in the statement of the Public Prosecutor filed before the Court that there was a mistake committed in making those entries on account of commotion and pressure of the public at the

time of inquest proceedings, the learned Sessions Judge has proceeded to observe that the material collected by the investigation did not make out an offence punishable u/s 302, I.P.C. and the complaint of Smt. Umadevi was a suspicious document.

14. As pointed out above it was not open to the learned Sessions Judge to read the requirements of Section 437, Cr.P.C. into Section 438 in granting or refusing to grant anticipatory bail. It was not necessary for the learned Sessions Judge to consider the question as to whether the materials placed on record by the investigation disclosed an offence punishable u/s 302, I.P.C. against the respondent. Patently the learned Sessions Judge has gone wrong in so proceeding to consider the application of the respondent for anticipatory bail.

15. The investigation was in progress and the statements of witnesses were being recorded and the investigating agency was collecting material in support of the offences registered against the respondent and others. In *Kuldip Singh Vs. State of Punjab*, the Court has stated as under :-

"No doubt, the contents of the inquest report cannot be treated as evidence but they can be looked into to test the veracity of D.W. 2"

16. In that case the statement of D.W. 2 who was examined as a witness before the Court was recorded during the inquest proceedings by the investigating agency and the Court held that though the contents of the inquest report could not be treated as evidence, the same can be looked into to test the veracity of the witness. In the case on hand it is for the prosecution to collect the material and place before the Court as to how the entries in columns Nos. 3 and 4 of inquest proceedings came to be recorded. With regard to the entries in columns III and IV in the inquest proceedings regarding intimation given to the complainant Smt. Umadevi the investigation is incomplete. Therefore, the learned Sessions Judge was not right in commenting on the prosecution material in the way he has done to conclude that the respondent was not guilty of an offence u/s 302, I.P.C.

17. The learned State Public Prosecutor relied on *Kiran Devi Vs. State of Rajasthan* in which the Court observed that anticipatory bail should not have been granted in the murder case when the investigation was still incomplete.

18. Following *Kiran Devi's* case in *v. Norti v. State of Karnataka* 1989 CriLJ 1050, a learned single Judge of this Court held that it lays down a salutary guideline to a principle to be applied to and acted on in cases in which the offence charged is murder and in which the investigation is incomplete. But a Division Bench of this Court in *I.Y. Chanda Earappa Vs. State of Karnataka*, following the decision in *Gurubaksh Singh's* case has held that Section 438 of the Code confers power on the High Court or the Court of Sessions, as the case may be, to grant anticipatory bail, in absolute terms and the power conferred under the provisions is not controlled by the limitation imposed in Section 437(1) of the Code and these limitations cannot be read into the provisions of Section 438 and the scope

of Section 438 of the Code has been fully expounded by the Supreme Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, and no law to the contrary has been laid down in Kiran Devi's case 1988 SCC (Cri) 106. The Division Bench disagreed with the view taken by the learned Single Judge in V. S. Nortti's case. Therefore the two decisions relied on by the State Public Prosecutor namely Kiran Devi's case and V. S. Nortti's case do not support his contentions.

19. The learned State Public Prosecutor has relied on the following decisions namely (1) Chain Singh Dhakad Vs. Hargovind and Others, (2) Gabriel Joseph Vs. Feroz Gulam Sarvar Khan and others, (3) Khimiben Vs. State of Gujarat and Another, The last mentioned case of Khimiben deals with the dowry death case. In that case following the Supreme Court Case of Samunder Singh Vs. State of Rajasthan and Others, , the Court observed that where the serious allegation of dowry death was made and anticipatory bail was granted even though investigation was in progress, bail was liable to be cancelled. The principle enunciated therein cannot be invoked and applied to the facts in the case on hand.

20. In Gabriel Joseph's case the Bombay High Court was concerned with situation in which the anticipatory bail had been granted by the learned Additional Sessions Judge turning down the request of the police to grant reasonable time to recover property without giving reasons. Therefore the Court had interfered and set aside the order granting anticipatory bail. The Chain Singh v. Hargovind the Madhya Pradesh High Court held that High Court can cancel the bail where it was obtained by influencing the Government Pleader namely by engaging the services of the son of the Government Pleader on behalf of the accused. The misconduct of the accused in obtaining the bail was made out and that was held to be sufficient to cancel the bail. These cases are therefore of little assistance to the State.

21. One more decision on which reliance is placed by the learned Pokar Ram Vs. State of Rajasthan and Others, This is a case dealing with the cancellation of the anticipatory bail granted to an accused involved in a murder case. In that case the offence was initially registered for offences under Sections 307, 447 read with Section 149 and Sections 148, 379 and 327, I.P.C. on August 24, 1983. Subsequently after the death of the victim the offence u/s 302, I.P.C. was also added. Even though the offence u/s 307, I.P.C. was registered no attempts were made by the Investigating Officer to arrest the accused and the second respondent in that case appeared before the learned Sessions Judge soon after the offence u/s 302, I.P.C. was added and applied for anticipatory bail but the Court proceeded to grant the same in spite of opposition by the Public Prosecutor on 30th September 1983. The Court in para 9 of the judgment observed as under :-

"When a person is accused of an offence of murder by the use of a firearm, the Court has to be careful and circumspect in entertaining an application for

anticipatory bail. Relevant considerations are conspicuous by silence in the order of the learned Sessions Judge."

Earlier in paragraph 8 of the judgment, the Court has observed as under :-

"Surprisingly, the Investigating Officer had not arrested him till Sept. 29, 1983 when he moved an application for anticipatory bail u/s 438 of the Criminal P.C. presumably after coming to know that injured Bhanwaria has succumbed to his injuries and the offence would be one of murder punishable u/s 302, I.P.C. This conduct of the Investigating Officer left us guessing. Some light is shed by some averments from the affidavit filed in the High Court and extracted by the learned Judge in his judgment. It is stated that the respondent is the Sarpanch of village Dhanwara and is an influential person and that his father Ranjit Singh is ex-M.L.A. and is at present pradhan of panchayat Samiti. Are these relevant considerations for not cancelling anticipatory bail when it appears to have been granted by a clear misconception of the relevant considerations governing the grant of anticipatory bail ? The answer is emphatically in the negative ..."

In para 11, the Court has stated as under :-

"The only question which we were called upon to decide is whether the learned Sessions Judge was justified in granting anticipatory bail in the fact and circumstances of this case. Unquestionably, no case was made out for granting anticipatory bail in this case. Let it be made distinctly clear that status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sphere of investigating of crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature. This case amply illustrates that the power was exercised sub silentio as to reasons or on irrelevant or considerations not germane to the determination. This Court, to avoid miscarriage of justice, must interfere."

The observations extracted above from the judgment disclose that the fact and circumstances of that case did not justify grant of anticipatory bail as no compelling circumstances had been made out by the person accused of committing murder and that too when the investigation was in progress. The conduct of the Investigating Officer was criticised for his omission to make any attempt to arrest the accused who had caused injuries by gun-shot and an offence u/s 307, I.P.C. had been registered. Irrelevant considerations of the status of the accused and his relations were found to have influenced the Court in granting anticipatory bail and therefore the Supreme Court held that grant of anticipatory bail in favour of the accused was unjustified and it had resulted into failure of justice and therefore the Court interfered to set it aside. The doing so the Supreme Court further observed that no grounds as referred to in paragraph 31 in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, had been made out for grant of anticipatory bail. Therefore cancellation of bail in *Pokar Ram's* case is limited to facts and circumstances of that case.

22. In *N. M. Narayanappa v. State of Karnataka* 1981 (2) Kar L Ch 96 : (1982 Cri LJ 57 , this Court has held that the fact and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail. In *State of Karnataka v. Aswathappa* 1989 (1) Crimes 630, in a case concerning cancellation of anticipatory bail this Court has further ruled that the facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing anticipatory bail u/s 438, Cr.P.C. and unless cogent and overwhelming circumstances are made out for cancelling the relief of anticipatory bail, the same cannot be allowed.

23. In *The State through the State (Delhi Administration) Vs. Sanjay Gandhi* , a case for cancellation of bail u/s 439(2), Cr.P.C., the Court ruled that it was necessary for the prosecution to show some act or conduct on the part of the accused from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the accused, to allow a prayer for cancellation of bail. Some more decisions relied on by the learned counsel for the respondent which lay down requisites for cancellation of bail u/s 439(2), Cr.P.C. are : (i) *The Assistant Director, Directorate of Revenue Intelligence v. Srinivasan* 1985 MLJ 202. Dealing with the permissibility of cancellation of bail already granted Madras High Court following the Supreme Court decision has stated in para 15 as under :-

"It is very clear from the above decisions that the gravity of the offence is not criterion for the cancellation of the bail, but only the two material factors viz., the accused is absconding and he is likely to abuse the discretion granted in his favour by tampering with evidence, have to be taken into consideration in dealing with an application for cancellation of bail ..."

(ii) In *Bhagirathsinh Judeja Vs. State of Gujarat* , dealing with application for cancellation of bail u/s 439, the Head Note states as under at page 161 of Cri LJ :-

"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 the evidence. 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.

(iii) In *Aslam Babalal Desai Vs. State of Maharashtra* , in which the question of cancellation of bail granted to an accused who had been released on bail for not

completing the investigation within the prescribed time u/s 167, Cr.P.C., the Court reversing the decision of the Bombay High Court held that once an accused is released on bail u/s 167(2), he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime.

Closing portion of the paragraph-11 of the judgment reads as under :-

"..... Once the order of release is by fiction of law an order passed u/s 437(1) or (2) or 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in *Raghubir Singh and Others Vs. State of Bihar*, , the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely bail granted u/s 437(1) or (2) or 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

Para 40 of the said judgment reads as under :-

"For cancellation of the bail after filing of the charge-sheet the factum of dismissal of the bail on the earlier occasion is not relevant. But during investigation some strong prima facie evidence and gravity and magnitude of the crime or the manner in which the crime was committed and other attending circumstances may be relevant as prima facie grounds to have fresh look to cancel the bail. The grounds for cancellation of the bail in Chapter XXXIII are, de hors the merits in the matter, namely, necessity due to the conduct of the accused and abuse of liberty i.e. obstruction of the smooth investigation or suborning witnesses or attempting to tamper the evidence, threatening the witnesses with dire consequences or making or attempting to remove himself beyond the reach of the Court to hamper the smooth trial, etc. are independent of the merits in the matter. Cancellation of the bail would be necessitated by the conduct of the accused himself after the release. I agree with brother Punchhi, J. that it might be possible to abuse the proviso by deliberate delay in completing the investigation to facilitate the release of the accused on bail. I also agree that merits brought out in the charge-sheet and attending circumstances are relevant, as the bail was granted due to default of the investigating officer without Court's advertent to the merits but strong grounds are necessary to cancel the bail."

(iv) The latest decision of the Supreme Court on the point of cancellation of anticipatory bail reported in *Dolatram v. State of Haryana* 1995 SCC (Cri) 237, in paragraph-4 lays down the principles as under :-

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

24. From a perusal of the decisions extracted above, it is clear that the question of grant or cancellation of bail depends upon the facts and circumstances of that case. Compelling circumstances have to be made out for granting anticipatory bail. Similarly cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. In the instant case cancellation of anticipatory bail granted to the respondent is prayed for. The grounds made out are that he had not made out compelling circumstances and that the learned Additional Sessions Judge did not proceed on correct legal principles in granting the same. The facts collected by the investigating agency disclose that the respondent, a land developer, buys and sells landed property and he is also a cine-actor, producer, singer and a social worker having to his credit some awards at State and National level. The complainant Smt. Umadevi is a member of the Village Panchayat and her husband was an employee in N.G.E.F. factory. They belong to Scheduled Caste. They and the respondent belong to Dinnur village. It appears the lands given to Scheduled Caste people were acquired by the Government for some public-purpose and in that connection the owners of the lands including the complainant and her husband had approached the respondent for getting them better price and in that connection it appears the respondent had agreements with them. In the connection there arose disputes and there was civil suit pending between the respondent on one hand and the complainant and her husband on the other. It is alleged that complaints were lodged against each other. It is also alleged that the District Head of the Police was siding with the complainant and others and he was encouraging complainants against the respondent. The motive alleged in

that behalf is that S.P. (Superintendent of Police) had approached the respondent for buying land from him and respondent had not obliged. In the background of these allegations and counter-allegations and in the background of material relied on by the learned Sessions Judge, it is to be seen whether grounds are made out for cancellation of bail. Though the learned Additional Sessions Judge has gone wrong in reading the provisions of Section 437 into Section 438 of the Code of Criminal Procedure, he has also considered the question independently as to whether the respondent had made out a case or grant of anticipatory bail. He has taken into consideration all the facts and circumstances of the case including the statements of the eye-witnesses namely the complainant Smt. Umadevi and Sri. Muniraju who came there in the lorry on seeing which the assailants allegedly went away with the weapons. Statement of Muniraju though an eye-witness and a relation of the deceased has been recorded ten days later, he was not present when the inquest proceedings were drawn. The statements made in inquest proceedings in columns Nos. 3 and 4 have been also looked into though it is open to the investigating agency to explain them at the time of trial. All these circumstances have been considered and a decision had been arrived at by the learned Additional Sessions Judge in granting the anticipatory bail, though his observations that at that stage the investigating agency did not place material to show that the respondent had been guilty of an offence punishable u/s 302, I.P.C. were uncalled for and improper.

25. In the present petition for cancellation of anticipatory bail, no cogent or overwhelming circumstances by way of interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner or omission to comply with the conditions imposed are made out. Therefore there is no scope for allowing the petition. The petition therefore stands rejected.

26. Petition dismissed.