

(1995) 11 BOM CK 0065
In the Bombay High Court
Case No : Criminal Appeal No. 2313 of 1995

State of Maharashtra

APPELLANT

Vs

Walchand Hiralal Shaha and another

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 439(2), 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1996) CriLJ 1102

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : Ms. S.J. Pingulkar, app, for the Appellant; T.E. Mane, for the Respondent

Judgement

1. I have heard Ms. S. J. Pingulkar, A.P.P., for the applicant-the State of Maharashtra and Mr. T. E. Mane, for the Respondents.
2. This is an application u/s 439(2) of Cr.P.C. read with Section 482 of the Cr.P.C. for cancellation of bail granted to the respondents vide the order dated 20th May, 1995 passed by the learned Additional Sessions Judge, Pandharpur.
3. The respondents have been charge-sheeted for the offence/punishable under Sections 147, 148, 149, 302, 307, 453, 324 of I.P.C., along with some other co-accused persons.
4. According to the prosecution, on 19-2-95 at about 7.30 p.m. the two respondents along with some others entered the house of Dattatraya Devappa Kamble in village Pandharpur within the limits of District Solapur. At that time Dattatraya's family members, including his brothers Laxman Devappa Kamble and Kailash Bhinge, were present inside the house assault is alleged to have been launched by the respondents with swords and by some others with sharp edged weapons on Laxman Devappa Kamble, Kailash Bhinge, Dattatraya Devappa Kamble, Bhaskar Babasaheb Bhinge and Mahesh Shinde. As a

consequence of this assault Kailash Bhinge died on the spot and Laxman Devappa Kamble succumbed to his injuries the same day; after a couple of hours of the incident. This incident is alleged to have been seen by a large number of eye-witnesses.

5. The F.I.R. of the incident was made within one hour and ten minutes of the incident taking place, i.e. on 19-2-1995 at 8.40 p.m. by Rajabhau Devappa Kamble at Police Station Pandharpur and in the aforesaid F.I.R. the two respondents and others are named.

6. The post-mortem examination of the dead bodies of Kailash Bhinge and Laxman Devappa Kamble was conducted on 20-2-1995. On the person of the former as many as 13 incised wounds were found and on that of the latter 15 incised wounds were found. On the person of three injured namely Bhaskar Babasaheb Bhinge, Mahesh Shinde and Dattaraya Devappa Kamble injuries were also found, which were medically examined on the same day.

7. The two respondents applied for bail before the Sessions Court and after the rejection of their prayer for bail by that Court, they filed an application for bail in this Court on 3-4-1995. An affidavit in the said bail application was filed on behalf of the State. Adjournment was sought in the bail application on behalf of respondents, from time to time and ultimately on 6-6-1995 their application for bail was allowed to be withdrawn by the orders of my learned brother D. K. Trivedi, J.

8. It appears that on 19-5-1995 application for bail on behalf of the respondent was made before the learned Additional Sessions Judge, Pandharpur and in the said Application a statement was made in writing by the concerned Advocate to the effect that no bail application on behalf of the respondents was pending in any Court, including the High Court.

9. A perusal of the facts mentioned in paras 7 and 8 would show that the statement at Bar to the effect that no bail application was pending in any Court, including the High Court, was obviously wrong. It appears that accepting this statement to be true the learned Additional Sessions Judge, Pandharpur granted bail to the two respondents.

10. It is well settled that an order resulting from suppression of material facts and on a false statement is a nullity in law. There is no need of any judicial precedent in support of the aforesaid proposition. This circumstance in my view, would alone be sufficient to cancel the bail granted to the two respondents.

11. But the matters do not end here. I wonder that in a double-murder case in which injured witnesses have assigned specific roles to the respondents (the roles of the respondents have been detailed out in the affidavit filed by the State) and their version is corroborated by the medical evidence, as to how the learned Additional Sessions Judge could grant bail to the respondents. A perusal of the order of the learned Additional Sessions Judge shows that he was swayed

away and wrongly, in my opinion, by the dying declaration made by Dattatraya Devappa Kamble. In the dying declaration the third question put to him was "injuries on your body when and how ?" In response to this question the injured replied as to all who had assaulted him. The learned Additional Sessions Judge misconstrued this answer as tantamount to the aforesaid injured not nominating the respondents in the incident.

12. It is not for me emphasis that in a murder case in which there are injured eye-witnesses who attribute a specific role to the accused, a role corroborated by medical evidence, a Court should be extremely slow in granting bail. It may be mentioned that eye-witnesses Bhaskar Bhinge, Kalpana Kamble and Sakubai Kamble, have specifically stated in their statements recorded u/s 161 of Cr.P.C. that the respondents assaulted the deceased Kailash Bhinge with sword. It may also be mentioned that the injured eye-witness Mahesh Bhinge stated in his statement u/s 161 of Cr.P.C. that the respondent No. 1 - Walchand Hiralal Shaha with a sword assaulted him, but he warded off the blow by raising his hand and received injury on his little finger. It further needs to be mentioned that eye-witness Suvarna Hendrao, the daughter of the deceased Kailash Bhinge, stated that the respondent No. 2-Manikchand Gulabchand Shaha caused injury to her uncle Bhaskar.

13. It appears that the learned Judge completely oblivious of the aforesaid facts and of the specific parts of the two respondents deposed to by the aforesaid witnesses, in a casual manner proceeded to grant bail to them. I am afraid that the approach of the learned Judge has not been in conformity with the required norms, to be followed by Courts, while considering the question of grant of bail in a murder case. Hence I am left with no option but to cancel the bail granted to the respondent.

14. In the result the bail granted to the two respondents vide order dated 20-5-1995 passed by the learned Additional Sessions Judge, Pandharpur is cancelled. The aforesaid bail order is quashed. The two respondents are on bail. They should be taken into custody forthwith. This order should be communicated to the Additional Sessions Judge, Pandharpur, who shall forthwith ensure its compliance. He shall send the compliance report to this Court by or before 29-11-1995. The compliance report should be shown on the Board of this Court prepared for 30-11-1995.

15. The learned Judge would not be influenced by this order in case an application for bail is made on merits and would also not take this order into account while disposing of the trial in this case.

Certified copy expedited.

16. Order accordingly.