

MHCH040000552021

**Sessions Case No.10/2021****Order below Exh.49**

01. Prosecution has filed this application under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to accused No.1 Amit Sundarlal Kewat and accused No.3 Anand Ramlal Nishad on 02.12.2020 in Misc. Cri. Apln. No. 245/2020 and Misc. Cri. Apln. No. 280/2020. The operative order reads as under ;

ORDER IN CASE NO.245/2020.

1. Applicant/accused by name Amit Sundar Kewat, aged about 35 years, be released on executing P.R.Bond of Rs.25,000/- with one or two solvent sureties in like amount in an offence punishable u/s. 302 r/w. 34 of Indian Penal Code vide Crime No. 219/2020, registered in P.S. Majri, on following conditions :
 1. He should not meet and pressurize the complainant and other prosecution witnesses by any mode.
 2. He should attend P.S.Majri on each Sunday in between 1.00 pm to 5.00 pm till the decision of main trial.
 3. He should not leave the area of Chandrapur District permanently without prior permission of this Court.
 4. He be punctual in attending the trial.

ORDER IN CASE NO.280/2020.

1. Applicant/accused by name Anand Rambhau Nishad, aged about 28 years, be released on executing P.R.Bond of Rs.25,000/- with one or two solvent sureties in like amount in an offence punishable u/s. 302 r/w. 34 of

Indian Penal Code vide Crime No. 219/2020, registered in P.S. Majri, on following conditions :

1. He should not meet and pressurize the complainant and other prosecution witnesses by any mode.
2. He should attend P.S.Majri on each Sunday in between 1.00 pm to 5.00 pm till the decision of main trial.
3. He should not leave the area of Chandrapur District permanently without prior permission of this Court.
4. He be punctual in attending the trial.

02. The allegation of prosecution is that, on 30.10.2021 case was posted for evidence of informant Yadav but, accused Amit and Anand have gave threat to him not to lead evidence else they will kill him. Informant bring this fact to the knowledge of Court. Thereafter, Warora Police registered N.C.No.1113/2021 u/s.504, 506 of IPC. Prior to that, they also threaten to mother of deceased and Smt. Ravikanta as such Crime No.3/2021 punishable u/s. 506 came to be recorded on 23.01.2021. Hence, prayed to cancel bail order.

03. Accused person have filed say at Exh.52 and opposed the application on the ground that the case was posted for evidence, however, muddemal property not deposited in the Court so, matter for evidence adjourned from time to time. The false report came to be lodged for misguiding to the Court. No threat given by them to any prosecution witness. Hence, prayed to reject application.

04. Heard, both Id. Counsel perused case record. In this matter charge came to be framed at Exh.32 on 28.07.2021 and thereafter informant Yadav deposed at Exh.45, but on the request of Id. APP case adjourned from time to time on account of not depositing muddemal. It is to be noted that, before recording the evidence of the prosecution witness, the investigating officer/Police Station officer of concerned Police Station is duty bound to produce to property before Court for trial so as to refer that property to the prosecution witnesses. Thus, P.S.Officer, Majri committed mistake for non-depositing of muddemal.

05. Before adventing on the facts and documents on record it is necessary to see the conditions laid down by Hon'ble Apex Court in the matter of **Surendrasingh Vs. State of Bihar reported in 1990 Cri.L.J. 1904**, for cancellation of bail. The conditions are as under ;

- (1) When the accused was found tampering with the evidence either during the investigation or during the trial.
- (2) When the person on bail commits similar offence or any heinous offence during period of bail.
- (3) When the accused has absconded and trial of the case gets delayed on that account.
- (4) When the offence so committed by the accused, that had created serious law and order problem in the society and accused had become a hazard on the peaceful living of the people.
- (5) If the High Court finds that the lower Court granting bail has exercised its judicial power wrongly.
- (6) If the High Court or Sessions Court finds that the accused has misused the privilege of bail.
- (7) If the life of the accused itself be in danger.

06. It is to be noted that in the recent past Maharashtra Government passed an approved Act in the year 2017, which is

called as the Maharashtra Witness Protection and Security Act, 2017. As per this Act Police is duty bound to protect the witnesses and to bring them from their house to the Court and assured as well as granted all kinds of security to the witnesses. In this case, there is nothing mentioned by the prosecution in the application at Exh.49 that, at any point of time Police followed the norms mentioned in the Maharashtra Witness Protection and Security Act, 2017.

07. At one time Police registered N.C. for threat and at another time Police registered crime against accused. Under such circumstances present application is not tenable as there is no affidavit attached alongwith this application Exh.49 of the so called person to whom allege threat given. The application filed by the prosecution on the basis of general allegation which is not sufficient to cover the ground mentioned by the Hon'ble Apex Court in the citation, Surendrasingh (*Supra*).

With this I find no substance in the application so, I proceed to pass following order.

ORDER

Application is rejected.

Date. 01.07.2022.

(R. N. Bawankar)
Addl. Sessions Judge, Warora.

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