

**COMMON ORDER BELOW EXHS.591, 599 & 615 IN SESSIONS CASE
NO. 103/2018**

(The State V/s. Bajirao @ Subhash Sajan Pawar, etc.-13)
CNR No.: MHDH01-002620-2018

These applications are filed by original informant Prashant Dagajirao Patil, P. W. 28 Harish Shinde and by the prosecution for cancellation of bail granted to accused No. 1 Bajirao @ Subhash Sajan Pawar.

02. It is submitted that on the basis of First Information Report lodged by informant Prashant Patil to West Deopur Police Station Crime No. 75/2018 for the offenses punishable under Sections 302, 307, 120-B, 341, 109, 143, 147, 148, 149 and 201 of the Indian Penal Code, Section 4/25 of the Arms Act, and Section 37 (1) (3) r/w Section 135 of the Maharashtra Police Act was registered against accused Bajirao Pawar and others in relation to double murder of the brother and nephew of the informant. The trial of the said case is in progress. On application for bail by accused Bajirao before the Hon'ble Supreme Court, the Court vide order dated 15/09/2023 passed in M. A. No. 1530/2023 ordered that the accused No. 1 Bajirao be released on bail on completion of three weeks from 15/09/2023. On completion of the aforesaid period of three weeks, the accused No. 1 preferred application Exh. 563 before this Court praying for his release on bail in view of the directions of Hon'ble Supreme Court.

03. Vide order dated 07/10/2023 below Exh. 563, in view of the directions of Hon'ble Supreme Court the following conditions were imposed by this Court on accused No. 1.

ORDER

- (1) Application is allowed.
- (2) Applicant / accused **Bajirao @ Subhash Sajan Pawar**, in connection with C.R. No. 75/2018 registered with West Deopur Police Station, Dhule for the offenses punishable under Sections 302, 307, 341, 201, 120 (B), 109, 143, 147, 148, r/w 149 of I. P. C., and Sections 4/25 of Indian Arms Act and Sections 37 (1) (3) / 135 of Maharashtra Police Act, be released on bail on furnishing Personal Bond of Rs. 1,00,000/- (Rs. One Lakh only) along with one solvent surety in the like amount, on the following conditions:
 - (i) The accused No. 1 shall not either directly or indirectly contact the informant or any other witnesses in any manner whatsoever till the trial of the case is over, shall not attempt to influence the prosecution witnesses and shall not commit any offence or indulge in any criminal activity while on bail.
 - (ii) The accused No. 1 shall not enter within the jurisdiction of Dhule District till conclusion of trial, unless specifically directed by this Court on the date of hearing.
 - (iii) The accused No. 1 shall furnish his mobile number, the mobile numbers of his two close relatives / friends who are residing in Dhule District along with their residential proofs to the concerned police station and shall not change his contact details till conclusion of trial.
 - (iv) The accused No. 1 shall also produce the proof of his identity and proof of residence, at the time of executing bail bonds.

04. It is the contention of applicants that on 10/11/2023 application Exh. 585 was filed by accused No. 1 that it is necessary to record the evidence in Sessions Case No. 103/2018 in his presence for the purpose of his identification. Therefore, permission was sought by him to remain physically present in the Court on each date of hearing of the case. Vide order dated 10/11/2023 the said application was

allowed and the accused No. 1 was ordered to remain present in the Court premises on every date of hearing at 10:00 a. m., and was directed to leave the jurisdiction of Dhule District as soon as the recording of evidence of witnesses is over on each date. By the said order the accused No. 1 was further directed not to enter the jurisdiction of Dhule District before 10:00 am on each date.

05. It is further submitted that Mr. Harish Anil Shinde is an important eye witness in the present case who is also victim of the crime. Before recording of his evidence, on 06/12/2023 at about 7:00 pm he received phone call from Bharti Nandkishor Yeole asking him to visit her home. On his visit, Bharti Yeole informed Mr. Harish Shinde that there is a message from accused No. 1 that in case if he cares for his life, he should accept the amount that would be given to him and to depose before the Court as per instructions of accused No. 1. Due to fear of accused No. 1, Harish Shinde agreed for the said proposal. Thereafter, Bharti Yeole informed him that she would contact with accused No. 1 and would inform about the same to Harish Shinde. On 07/12/2023 Bharti Yeole sent Whats App message on the mobile phone of Harish Shinde, and informed that accused No. 1 is ready to handover Rs. 20 Lakhs to him and that he should meet him. Thereafter, from time to time Bharti Yeole made phone calls to Harish Shinde, and insisted him to meet accused No. 1.

06. It is further submitted that on 12/12/2023 between 1:30 to 2:00 pm Bharti Yeole sent Whats App message to Harish Shinde and informed him that he will have to accompany her to meet a person. Accordingly, Harish Shinde went to village Fagne at 3:30 pm. There he met Bharti Yeole and Raju Bairagi. They informed him that there is

nobody behind him, 13 accused in the Sessions Case will get acquittal, they have killed two persons and even if one another person is killed, it will make no difference to them. Harish Shinde was further threatened to accept the amount and depose in the Court as per their instructions. At that time due to the fear and pressure of accused No. 1, Harish Shinde agreed to do so. Thereon Bharti Yeole and Raju Bairagi informed him to meet them on receiving their phone call. It is alleged that thereafter Bharti Yeole and Raju Bairagi use to send Whats App messages and used to threaten him and ask him to remain in their contact.

07. It is the contention of applicants that on 16/12/2023 at 9:00 pm Bharti Yeole ranged Harish Shinde and asked him to collect the amount. Raju Bairagi had also gave him Whats App call asking him to meet him. On 16/12/2023 Harish Shinde informed the said incidences to informant Prashant Patil who assured him that they would report the matter to police station in case of happening of future incidences. On 17/12/2023 at 11:00 a. m. Bharti Yeole ranged Harish Shinde informing him that at 1:00 pm accused No. 1 will meet him on Amalner road near Navnath Mandir. Then Harish shinde and informant Prashant Patil went to West Deopur Police station and narrated the incidences. Eventually, police decided to lay a trap in presence of two panchas. Thereafter, Harish Shinde and informant proceeded on motorcycle towards Amalner. While they were proceeding towards Amalner, Bharti Yeole and Raju Bairagi were in constant contact with them through Whats App call. They called Harish Shinde at different locations, but finally called him at Navnath Mandir, ahead of Amalner fata. Accordingly, Harish Shinde was giving information of different locations to police, but due to traffic jam and religious program of Muslim

community i.e. Ijtema, police lost the location of Harish Shinde. Near Navnath Mandir Harish Shinde met Walmik Patil, Raju Bairagi, Bharti Yeole and Abhishek Yeole. They took him by walk to Om Shanti Mahadev Mandir, where a white colour four wheeler was parked.

08. It is further submitted that accused No. 1 alighted from the said vehicle and asked Harish Shinde to accept the money he was offering. Accused No. 1 threatened him of dire consequences in case of his refusal and not deposing in the Court as per his instructions. He further assured him that he will pay excess amount to Harish, if he acts as per his directions. Then accused No. 1 gave missed call to Harish and informed him to rang him in case of any difficulty. Then accused No. 1 proceeded towards Amalner in the said four wheeler. Thereafter, Walmik Patil, Raju Bairagi, Bharti Yeole and Abhishek Yeole also left the spot on their motorcycles. As Harish Shinde wish to catch the accused persons red handed, he ranged accused No. 1 and informed him to direct the said persons to pay the amount at Parola road Choufuli, but accused No. 1 told him to visit the house of Bharti Yeole. Harish Shinde informed the said developments to police and informant Prashant Patil on phone and then ranged Bharti Yeole by informing her that he will visit her house for accepting the amount. However, Bharti Yeole told him to come near Natraj Talkies. Accordingly, Harish went there. After sometime Bharti Yeole and her son Abhishek arrived there on motorcycle. Police were present near the said spot. Raju Bairagi and Walmik Patil also arrived there. Raju Bairagi was having a cotton bag containing amount. Raju Bairagi and Walmik Patil handed over the said bag to Bhartibai and as they got suspicious, they left the spot hurriedly. Bharti Yeole handed over the said bag to Harish Shinde and left the spot. An amount of Rs. 1,00,000/- was found in the said bag. It was

informed by Harish Shinde to the informant and the police. Police seized the said amount before panchas and then Harish Shinde lodged report in West Deopur Police Station against accused No. 1, Bharti Yeole, Abhishek Yeole, Walmik Patil and Raju Bairagi. Crime No. 414/2023 has been registered on the basis of said report for the offenses punishable under Section 195-A, 214, 507 r/w 34 of the I. P. C. Accused No. 1 is absconding and other accused have been arrested. Therefore, according to Harish Shinde, informant Prashant Patil and the Prosecution, accused No. 1 had violated the bail conditions imposed on him as per order dated 07/10/2023, and therefore, his bail is liable to be cancelled.

09. Vide Exh. 604, 609 and 624 accused No. 1 filed reply to all the applications. It is submitted that as per the contents of applications, the order of bail is passed by Hon'ble Supreme Court and it was directed to decide and impose terms and conditions on accused while releasing him on bail, by this Court. Since the bail order is passed by Hon'ble Supreme Court, this Court has no jurisdiction to cancel the bail. It is further the contention of accused No. 1 that there is no breach of terms and conditions imposed on him. As per the order, it was necessary to leave the boundary of Dhule city immediately. It seems that the difference between District and City is not appreciated. No details have been mentioned as regards the visit of accused No. 1 in four wheeler in Dhule City. The accused No. 1 is old man and has his own physical problems. He is suffering from diabetes. His sugar level keeps fluctuating therefore, he is required to take sugar or items containing sugar when sugar level is low. Accused felt such reduced level of sugar, and therefore, he took fruit juice in front of District Prison. The conditions imposed on accused No. 1 do not prohibit him

to drive two wheeler or to sit in four wheeler. It also does not ask him to avoid any company.

10. It is further submitted that the evidence of informant is completed. He is able to manage particular police men and consequently he keeps on filing reports which are not worth taking cognizance. As the informant is not pleased by the release of accused No. 1 on bail, he has been planning for cancellation of bail of accused No. 1. The informant and his agents are planning to file number of false reports to secure cancellation of bail of accused No. 1. Daughter of accused namely Mansi had given application on 18/09/2023 to District Superintendent of Police, Dhule and complained that there have been several false cases filed against her, her mother Meenabai, uncle Ganpat Pawar and brothers Sanjay Pawar and Vijay Pawar. One of the object was to prejudice claim of accused No. 1 seeking bail. It is also her contention that CCTV cameras were installed in front of their house to watch the activities of Mansi and her family members. She also expressed apprehension that due to these reports, her life including the life of her family members is facing danger. However, no inquiry was made on her application. For all these reasons, it is prayed that the applications may kindly be dismissed with heavy cost of Rs. 1,00,000/-.

11. I have heard learned Public Prosecutor Mr. D. Y. Tavar, and learned advocate for accused No. 1 Mr. P. B. Patil. Learned Public Prosecutor submitted that the first three conditions imposed by this Court while releasing the accused No. 1 on bail, are material. The accused No. 1 had committed breach of the said conditions by remaining in the jurisdiction of Dhule District after conclusion of evidence of prosecution witness on 24/11/2023. As per the recitals of

FIR in CR No. 414/2023, the accused No. 1 tried to contact the material witness Harish Shinde through other accused persons. He handed over Rs. 1,00,000/- to him with assurance to pay total Rs. 20,00,000/- by threatening him to depose before the Court as per his instructions. He further submitted that the accused No. 1 used the Sim Card of one Ankita Chavan who is the friend of his daughter Mansi. CR No. 8/2024 has been registered against Mansi Pawar for committing theft of Sim Card of Ankita Chavan from her purse. The location of the said mobile number is traced out in the vicinity of Chalisgaon and Dhule. Thus, according to learned public prosecutor the accused No. 1 had played hide and seek with the investigation officer.

12. Learned Public Prosecutor further submitted that CCTV footage dated 24/11/2023 obtained by police shows that at 5:04 pm the accused No. 1 was present in the juice center located towards opposite side of Dhule District prison. At present the location of accused No. 1 is not traceable. So, he has committed breach of one more bail condition which certainly result in cancellation of bail. In the phone call details and recordings of the same, the voice of accused No. 1 is heard. So, prima-facie there is breach of conditions imposed by this Court. Learned Public Prosecutor further submitted that witness Hitesh Deore is not traceable. He was in contact till release of accused No. 1 on bail. Normal preposition is that the Court which granted the bail has power to cancel the same. In the present case, though the accused No. 1 is enlarged on bail as per order of Hon'ble Supreme Court, as this Court had imposed conditions, it has right to cancel the bail. Almost all the conditions imposed by this Court are violated by the accused No. 1. He is the habitual offender and various crimes are registered against him in various police stations.

13. Learned Public Prosecutor relied on following judgments :-

(i) P. K. Shaji @ Thammanam Shaji V/s. State of Kerala, AIR 2006 Supreme Court 100. *“The superior court can always give directions of this nature and authorise the subordinate court to pass appropriate orders and the trial Magistrate would be the competent authority to decide whether any condition had been violated by the person who had been released on bail. When there is a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the learned Magistrate himself, the impugned Order is legal and valid.”*

(ii) Bhushan Vasudeo Sonawane V/s. State of Maharashtra, AIR Online 2019 Bom. 1771. *“Criminal P. C. (2 OF 1974), S. 439 (2) – Cancellation of bail – Challenge as to – Material on record showing breach of terms and conditions by accused which were imposed at time of grant of bail – Cancellation of bail, proper.”*

(iii) Naresh Kumar Alias Dinesh Kumar Kasinwar V/s. State of Uttar Pradesh, AIR Online 2023 SC 979. *“Criminal P. C. (2 of 1974) S. 439 – Bail – Grant of – Consideration – There was no acid injury on complainant but only two drops of acid were found on her mobile phone and this was second incident of which complaint had been made – All witnesses had been examined – Appellant had been in custody for more than a year – In view of same, appellant was granted bail subject to terms and conditions imposed by Trial Court – In addition to same, appellant was directed not to enter Agra where complainant resided till Court proceedings were over except for attending same and appellant was barred to come within vicinity of complainant – In case of breach of any conditions, Trial Court would be within its right to cancel bail.”*

14. In the matter of **P. K. Shaji (Supra)**, the accused was granted bail by the sessions Court and was further directed that he shall not enter the Sessions Division of Ernaculam until further orders without prior permission of the learned Magistrate. It was further directed that the investigating officer shall scrupulously ensure that the accused complied with all the conditions imposed therein and shall report to the Magistrate in case of any breach of conditions and the Magistrate shall take appropriate action as if the conditions have been

imposed by the Magistrate himself. Therefore, in view of the specific direction of the Sessions Court to the Magistrate Court in respect of breach of condition, the order of cancellation of bail passed by the Magistrate Court was held to be proper, though the bail was granted by the Sessions Court.

15. In the matter of **Bhushan Vasudeo (Supra)**, the accused withdraw the application for anticipatory bail before the Hon'ble High Court, but he did not surrender before the investigation officer though it was imperative for him to appear before the investigating officer once his application for anticipatory bail was withdrawn. In the matter of **Naresh Kumar @ Dinesh Kumar (Supra)**, specific directions were given by the Hon'ble Supreme Court by imposing the conditions on the accused while releasing him on bail that in case any endeavor is made to breach the conditions or any other condition imposed by the trial Court, trial Court is within its rights to cancel the bail granted to the appellant / accused.

16. Per contra, learned advocate for accused No. 1 submitted that all the applications are belatedly filed and those are afterthought. Considerations for grant of bail and cancellation of bail are different aspects. Hon'ble Supreme Court enlarged the accused No. 1 on bail, and this Court has only imposed conditions as per directions of Hon'ble Supreme Court. If there were no directions issued by the Hon'ble Supreme Court, this court would not have imposed any conditions on accused No. 1 while releasing him on bail. Therefore, according to learned advocate of accused No. 1 this Court has no power to cancel the bail which has been granted by the Hon'ble Supreme Court. According to learned advocate registration of offense punishable under Section

195-A of the IPC is itself illegal as the police has no power to take cognizance of the said offense and private complaint needs to be filed by the complainant. The place where the alleged offense is committed does not come within the jurisdiction of West Deopur Police Station. There is nothing on record to show that the photographs relied by the prosecution are of a particular date. The CCTV footage is not supplied to accused No. 1. He is old aged person and had suffered six years incarceration. Therefore, he would not dare to infringe any of the conditions imposed by this Court. Recording of evidence of witness Harish Shinde is already over and during evidence the said witness nowhere deposed that he was threatened by accused No. 1 to depose in his favour.

17. Prosecution relied on the list of crime numbers and offenses registered against accused No. 1 in different police stations, as under :-

Sr. No.	CR No.	Police Station	Offenses punishable under Sections
01)	75/2018	West-Deopur	302, 307, 341, 120-B of the IPC
02)	135/2019	Azadnagar	307, 143, 353 of the IPC
03)	167/2011	Azadnagar	147, 148 of the IPC & SC ST (Prevention of Atrocities) Act
04)	132/2012	Azadnagar	353, 143 of the IPC
05)	135/2013	Azadnagar	307, 143 of the IPC
06)	136/2013	Azadnagar	353, 143 of the IPC
07)	261/2011	Dhule City	392 r/w 34 of the IPC
08)	7/2014	Dhule City	4, 5 of Bombay Prohibition Act
09)	184/2011	Dhule City	147, 148, 149 of IPC and Atrocity Act.

18. Prosecution has further relied on the NCR details filed against accused No. 1. Various documents have been relied by the

prosecution including the copy of FIR in CR No. 414/2023 registered with West-Deopur Police Station, copies of orders passed below Exh. 563 & 585 in the present case. The report of West-Deopur Police Station dated 07/12/2023 along with the relevant documents in respect of complaint application of Prashant Patil are also tendered on record. It includes the complaint application dated 27/11/2023 filed by the informant Prashant Patil along with copies of photographs of accused No. 1, application for getting CCTV camera footage near Dhule District Prison dated 24/11/2023 from 3:00 pm to 5:00 pm, panchnama of verification of pen drive containing the said CCTV footage, certificate issued under Section 65-B of the Indian Evidence Act issued by API West Deopur Police Station in respect of the said CCTV footage, certificate issued by PC Amit Lalsing Pawara attached to West-Deopur Police Station in respect of hash value of the pen drive containing the said CCTV footage along with properties of device and software details, notice issued to Sajid Ansari, the owner of the juice center where accused No. 1 alleged to have consumed juice on 24/11/2023, copy of statement dated 01/12/2023 of Mohammad Sajid Ansari recorded by the investigation officer about the presence of accused No. 1 in the juice center owned by the said witness.

19. Learned advocate for accused No. 1 cited following judgments :-

(i) Ms. X V/s. State of Telangana and Anr., 2018 Cri. L. J., 3070 (Hon'ble Supreme Court). *“Criminal P. C. (2 OF 1974), s. 439 – Cancellation of bail – Bail once granted cannot be cancelled unless cogent case, based on supervening event made out.”*

(ii) Intelligence Officer, Narcotic Control Bureau, Sub Zone, Kakkanad, Kochi V/s. Lijo K. Jose, 2016 Cri. L. J. 594. *“ (B) Criminal P. C. (2 OF 1974), S. 437 (5), S. 439 (2), S. 446A – Cancellation of bail – powers*

granted to sessions court under s. 437 (5) and high court under s. 439 (2) – are not for cancellation of bail in all circumstances”

(iii) Shivam @ Shyamsunder Sharma and Others V/s. The State of Madhya Pradesh and Others, 2023 (2) M. P. W. N. 187 (Hon’ble Madhya-Pradesh High Court, Gwalior).

(iv) Suni @ Sunil V/s. State of Kerala, Bail Appl. No. 556 of 2023 decided on 04/04/2023 (Hon’ble Kerala High Court). *Private complaint necessary for taking cognizance of offence under Section 195-A of Indian Penal Code.*

(v) Deepak Yadav V/s. State of U. P, AIRONLINE 2022 SC 768. *“(D) Criminal P. C. (2 of 1974), S. 439 (2) – Cancellation of bail – Bail once granted, should not be cancelled in mechanical manner – In case of cancellation of bail, very cogent and overwhelming circumstances are necessary – Cancellation of bail cannot be limited to occurrence of supervening circumstances.”*

(vi) Ali Ahammed V/s. State of Kerala, 1985 GoJuris (KER) 294. *“(b) While considering the provisions of section 439 (i) (a) it could be seen that in granting bail the magistrate is not having any exclusive powers. being courts of superior jurisdiction, bail granted by the sessions judge or the high court cannot be cancelled by the magistrate. the magistrate can cancel the bail granted by himself only for proper reason under the provisions of section 437 (5).”*

20. In the matter of **Ms. X V/s. State of Telangana (Supra)**, there was no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty. In the matter of **Intelligence Officer NCB (Supra)**, the bail application of the accused was allowed by the Sessions Court without giving an opportunity of being heard to the Special Public Prosecutor for the NCB. In that circumstances, the above observations were made by the Hon’ble Kerala High Court. In the matter of **Shivam @ Shyamsunder (Supra)**, and **Suni @ Sunil (Supra)**, the issue was as regards taking cognizance of the offense under Section 195-A of the IPC. In the matter of **Deepak**

Yadav V/s. State of U. P. (Supra), the main issue arising in the said appeal was whether the High Court was justified in exercising jurisdiction under Section 439 (1) of the Code of Criminal Procedure for grant of Regular Bail in the facts of the said case. In the matter of **Ali Ahammed (Supra)**, it is held that bail granted by the Sessions Court or the High Court cannot be cancelled by the Magistrate. The Magistrate can cancel the bail granted by himself only for proper reason under the provisions of Section 437 (5) of the Cr. P. C. Automatic cancellation of bail and remain to custody at the time of committal is not contemplated under Section 209 of Cr. P. C.

21. Having gone through the citations relied by both the learned advocates, the law is well settled that 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. There is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted.

22. Hon'ble Supreme Court in Miscellaneous Application No. 1530/2023 in SLP (Crl.) No. 4893/2021 dated 15/09/2023 had made it clear that "At the end of three weeks the trial Court shall issue a release order since through this order we direct that applicant (accused No. 1 Bajirao Pawar) be released on bail at the end of three weeks. Appropriate conditions be imposed by the trial Court". In view of the said directions, vide Order below **Exh. 563** this Court imposed the conditions for release of accused No. 1 on bail. As a general proposition

if the Sessions Court had granted bail, the order of cancellation of such bail should also have been passed by the Sessions Court or by any superior Court. In the case in hand, as the bail is granted to accused No. 1 by the Hon'ble Supreme Court, I am of the view that this Court has no power to cancel the said bail in view of Section 439 (2) of the Cr. P. C., though this Court imposed conditions on accused No. 1 while passing order below Exh. 563. Therefore, considering the entire material tendered on record by the prosecution and the defense, and considering the fact that the CCTV footage contained in the pen drive as per the copy of report submitted by West Deopur Police Station, is not provided to accused No. 1, the bail granted to the accused No. 1 by the Hon'ble Supreme Court cannot be canceled by this Court. Resultantly, I pass following order.

ORDER

Applications at Exhs. 591, 599 and 615 are hereby rejected.

Dhule
Date: 01/02/2024

(Jayshri R. Pulate)
Additional Sessions Judge,
Dhule,

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I certify that the contents of this PDF File are word to word as per original Judgment/Order.

Name of the Steno : Pravin R. Pande,
Name of the Court : Jayshri R. Pulate,
Court of District Judge-4 and Addl. Sessions Judge, Dhule
Judgment delivered on : 01/02/2024
Judgment signed by P.O. : 01/02/2024
PDF Uploading Date : 01/02/2024

Sd/-xx
Stenographer