

**COMMON ORDER BELOW EXHS. 781 & 853 IN SESSIONS CASE NO.
103/2018**

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

Application Exh. 781 is filed by API Tushar Deore attached to West Deopur Police Station for permission to receive the CDR's and location of the mobile phone number of accused No. 1 Bajirao Pawar during the period between 01/03/2024 to 07/08/2024 and for permission to submit the said report in the Court. Application Exh. 853 is filed by the original informant Prashant Dagajirao Patil, 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 released the accused No. 1 Bajirao 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 applicant 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. Earlier application Exh. 591, 599 and 615 filed by the informant, P. W. 28 Harish Shinde and by the prosecution for cancellation of bail granted to accused No. 1 have been rejected by this Court on 01/02/2024 on the ground that accused No. 1 was enlarged on bail by the order of Hon'ble Supreme Court. Therefore, the informant filed Miscellaneous Application No. 610/2024 in M. A. No 1530/2023 in SLP (CrI) No. 4893/2021 before the Hon'ble Supreme Court and it is specifically mentioned in the said order that “ *it is also clarified that if there is any allegation with regard to breach of the conditions imposed upon the respondent / accused while granting him the bail, is made, the Trial Court shall be at liberty to pass appropriate orders on the application that may be filed by the applicant / complainant in accordance with law. In view of the above, we are not inclined to entertain the present application and the M. A. is accordingly dismissed*”.

06. It is the contention of informant that on 17/10/2024 accused No. 1 was present while the recording of evidence of investigation officer Police Inspector Sarita Bhand and after completion

of the said evidence matter was fixed on 19/10/2024. In view of the order passed below Exh. 585, the accused No. 1 had to immediately leave the jurisdiction of the Dhule District and he shall not influence any witnesses. Still after completion of the recording of evidence of the investigation officer, the accused No. 1 went near Yogesh Raosaheb Patil / the son of deceased Raosaheb on the ground floor of the new building of the District Court near the washroom and threatened him तुझ्या काकाला (फिर्यादीला) सांगुन दे माझ्या व माझ्या मुलाच्या जामीनसाठी खुप विरोध करत आहे, तरी त्याला समजावुन दे, नाहीतर तुला व त्याला जिवंत सोडणार नाही, दोन लोकांना मारण्याची शिक्षा पण तीच आहे व चार लोकांना मारण्याची शिक्षा पण तीच आहे". Accordingly, Yogesh Raosaheb Patil lodged report in Dhule City Police Station and NCR No. 529/2024 under Section 352 of BNS was registered against accused No. 1. Therefore, according to the informant, as the accused No. 1 has infringed the condition No. 2 (i) in the bail order, the bail granted to the accused No. 1 is liable to be cancelled.

07. To this application learned advocate of accused No. 1 filed reply vide Exh. 871 and submitted that on the day of completion of cross-examination of investigation officer advocate of accused No. 1 along with another advocate came outside the Court hall and were proceeding to the corridor towards car parking near advocates chambers and old building. The accused No. 1 and his advocate were proceeding and thereafter on request of the investigation officer to change the date, they were again called. It is further submitted that again accused No. 1 & his advocate proceeded towards car parking and the accused was discussing about the case with his advocate. According to learned advocate of accused No 1 Yogesh Raosaheb @ Sudarshan Patil is nephew of informant and son of deceased. He is not examined as witness and the police are affectionate with the informant and with

his group. All the allegations in the application have been denied and it is submitted that accused No. 1 has his own physical problems. His son is in custody and therefore, in order to pressurize him, and to put him behind bars, the present application is filed.

08. I heard learned Public Prosecutor and gone through the short notes of argument on behalf of accused No. 1 filed at Exh. 874. Learned advocate of accused No. 1 raised objection that application for cancellation of bail is not filed by the prosecution and it is filed by the informant, and therefore, it does not require any consideration. In **R. Rathinam V/s. State by DSP (2002) 2 SCC 391**, **Puran V/s. Rambilas (2001) 6 SCC 368** and **Jetha Bhaya V/s. Ganga Maldebhai AIR 2012 SC 775**, it is observed that “*Under the Code, the discretion to cancel bail can be exercised at the instance of either the accused, Public Prosecutor, the complainant or any other aggrieved party*”. Therefore, the objection raised by learned advocate of accused No. 1 needs to be turned down.

09. I have also gone through the judgment in the matter of **Ramayan Singh V/s. The State of Uttar Pradesh and another, reported in 2024 ALL SCR (Cri.) 1089** relied upon by learned advocate of informant wherein Hon’ble Apex Court ruled that “*Accused persons allegedly attempted to intimidate complainant and witnesses. Considering seriousness of crime, conduct of accused and over all impact of crime on society, order granting bail set aside*”. In that case, the order granting bail to the accused by Hon’ble High Court is set aside considering the conduct of accused and it is not canceled. Therefore, with due respect to the observations laid down in the cited judgment, those are not applicable to the case in hand.

10. In **Ajwar V/s. Waseem and another**, reported in **2024 ALL SCR (Cri.) 1153**, it is observed by Hon'ble Supreme Court that “ *While on bail accused allegedly threatened key eye witness in open Court, thrashed him and threatened to kill him in Court premises. Thus, attempt to delay trial on part of accused resulted in setting aside the bail granted to the accused*”. The question involved in the said proceeding was whether the High Court was justified in exercising jurisdiction U/s, 439 (1) of the Cr. P. C. for granting regular bail in favour of the respondents in the facts and circumstances of the case. In that case the accused / respondents threatened one of the key eye witnesses in open Court and threatened him to kill in the Court premises. Eventually, FIR was registered and though police filed closure report, the Magistrate directed further investigation. The attempt to delay the trial on the part of the respondents had also surfaced from the records. In the case in hand, the evidence of all the prosecution witnesses is over and the matter is posted for recording statements of accused persons U/s. 313 of Cr. P. C. Therefore, the cited judgment is not applicable to the case in hand.

11. In **Dolat Ram and others V/s. State of Haryana (1995) 1 SCC 349** the Hon'ble Supreme Court has observed as follows :-

“ *Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Bail once granted should not be canceled 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". In Dataram Singh V/s. State of U. P. (2018) 3 SCC 22, it is observed by Hon'ble Supreme Court that "There is difference between yardstick for cancellation of bail and appeal against the order granting bail. The grounds for cancellation of bail 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 concessions granted to the accused in any manner. The satisfaction of the Court on the basis of the materials placed on record or the possibility of the accused absconding is another reason justifying the cancellation of bail".

12. Considering the aforesaid observations, it needs to be considered whether the alleged violation amounts to an attempt to interfere with the administration of justice and the prayer of cancellation of bail affects the trial of the case in which the accused No. 1 is implicated. Mere violation of the condition alone is not sufficient to cancel the bail granted by the Court. While applying the above principles to the present case, one of the aspect relevant for consideration is whether the allegation made against the accused No. 1 interferes with the conduct of a fair trial of the case in which he is involved. Such a situation is not there in the present case. Already the evidence of all the prosecution witnesses is recorded and Yogesh Raosaheb Patil is not the witness examined on behalf of prosecution. Though on the basis of the report lodged by him in Dhule City Police Station NCR has been registered against accused No. 1, mere calling of CDR's of accused No. 1 of the relevant date would not substantiate the allegation as regards threats given to Yogesh Patil by accused No. 1. Mere presence of accused No. 1 on the ground floor of new building of District Court, Dhule on the basis of CDR's and location of his mobile,

would not substantiate the contention that he threatened Yogesh Patil on the relevant day. In the application Exh. 781 it is the allegation of the informant that since last 5 to 6 months the accused No. 1 used to wander in the area where the informant resides, even on the dates not fixed for his evidence by this Court. Therefore, it appears that the informant intends to club the allegations of wandering accused No. 1 near his residential locality as well as the incident occurred in the Court premises as alleged by Yogesh Raosaheb Patil. The allegations are not relating to an act which is allegedly committed by the accused No 1 with the intention to intimidate or influence any witness whose evidence is to be recorded by the side of prosecution. The trial of the case is not affected as the stage of the case is now for recording statements of accused persons under Section 313 of the Cr. P. C. Eventually, as the evidence of all the prosecution witnesses is over, the allegations made against the accused No. 1 would not interfere with the conduct of a fair trial of the case in which he is involved. Therefore, no purpose will be served by calling the CDRs and location of the mobile phone of accused No. 1 for the purpose of cancellation of bail. Resultantly, I pass following order.

ORDER

- i) Applications at Exhs. 781 & 853 are hereby rejected.
- ii) Accused No. 1 shall strictly follow the conditions mentioned in order passed below Exh. 585.

Dhule
Date: 20/01/2025

(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 : Addl. Sessions Judge, Dhule
Judgment delivered on : 20/01/2025
Judgment signed by P.O. : 21/01/2025
PDF Uploading Date : 21/01/2025

Sd/-xx
Stenographer