

ORDER BELOW EXH. 79 IN SESSIONS CASE NO. 179/2024
(State of Maharashtra Vs. Ajay Vaijinath Bhange & Ors.)
(MHAH300006572020)

The application Exh. 79 is in the form of police requisition dated 06/04/2023 filed on record through the then APP, seeking cancellation of bail of accused Ravi Rajendra Bansode. The cancellation of bail is sought on the grounds that accused Ravi Rajendra Bansode upon arrested in the present matter, he preferred application Exh. 45, then he was released on bail as per order on the said application dated 01/10/2022, subject to condition interalia, as follows -

“2. (a) The applicant shall not threat or induce the informant or any of the prosecution witnesses to dissuade from stating the truth in respect of the incident herein either to Investigating Officer or to the Court in any manner whatsoever.”

2. It is further contended that, after passing of the said order accused Ravi Bansode has been arrested in CR no. 226/2023 registered on 01/04/2023, at Shirdi police station for the commission of offences under section 3/25 of the Arms Act, 1959 and also on the ground that this accused Ravi Bansode had threatened the wife of the deceased in the present matter and in that respect a N.C. complaint no. 201/2023 has registered at Shirdi police station, under section 506 of the Indian Penal Code, 1860, at the instance of the complainant Bhagyashree Mali. The Ld. APP argues that even after accused Ravi Bansode seeking bail in the present serious offence had involved himself in various other crimes, registered under various sections of Indian Penal Code and Arms Act. Further accused Ravi had also threatened the deceased's wife and son for which a separate complaint has been lodged.

3. Ld. APP further submitted that one more offence is

registered against this accused Ravi Bansode vide CR no. 573/2023 at Shirdi Police Station for commission of offence under section 506 of the IPC alongwith section 3/25 of the Arms Act for threatening the victim in the present offence. Ld. APP also submits that the accused upon having bail in the present matter, committed another offence, for which he is arrested under the Arms Act and the complaint registered being CR no. 422/2024 Kopargaon and he is languishing in the jail. Ld. APP further contended that the bail granted to the accused requires to be cancelled for above said reasons. Accordingly, prays for allowing the application. Ld. advocate for the informant has also argued in the tune of Ld. APP.

4. The said application resisted at the instance of said accused Ravi Bansode by filing say at Exh. 84, therein denying and disputing the allegations made against this accused by the police machinery. Ld. advocate for the accused further argued that the N.C. complaint no. 201/2023, registered by Bhagyashree Mali is false and frivolous out of annoyance, as this accused had been released on bail. It is submitted that in the present sessions matter, wherein Rohit's father has been allegedly murdered in that respect it is the same Rohit who had lodged complaint for commission of offence u/s. 302 of the Indian Penal Code, 1860 alongwith other sections. It is argued that if at all Rohit could lodge FIR for serious offence, then nothing could prevent him from lodging said NC no. 201/2023, also. It is also accordingly argued that the FIR no. 201/2023 and or even subsequent FIR no. 573/2023 lodged at the instance of Bhagyashree Mali or her son against this accused are nothing more, but creating false record of evidence, merely to arrest the accused and to get his bail cancelled in any manner.

5. It is further argued that Ravi Bansode is not alone accused in

this matter, therefore if at all the accused would have thought of threatening the victim or the witness, then other accused could have do so; however, only Ravi is targeted, that itself would imply false lodging of complaint, out of malafide intention. It is further submitted that Rohit Mali is already examined in this matter, his cross-examination is also completed. So also, examination-in-chief of Bhagyashree Mali being the deceased's wife is also completed and her cross-examination has already initiated. It is argued that the present application was filed way back on 06/04/2023, but now pressed merely to protract the proceeding once the trial had initiated. Accordingly, submitted that application for cancellation of bail is neither maintainable and is now pressed merely to protract the trial. Also submitted that the application for cancellation of bail cannot be maintainable before the Sessions Court granting bail to the accused and it ought to have been preferred before the Hon'ble High court. Accordingly, submitted that application be rejected.

6. Upon hearing all the Ld. advocates, perusing the bail order dated 01-10-2023 passed on the application Exh. 45, the present application Exh. 79 and the say filed at the instance of accused at Exh. 84, it appears that accused Ravi was enlarged on bail interalia subject to conditions as aforementioned. The allegations now against this accused are of involved himself in 2 different offences registered under the Arms Act and NC complaint no. 201/2023. So also, CR no. 573/2023 lodged at Shirdi Police Station for threatening Rohit Mali being the son of the deceased in this matter. It would be pertinent that the said application Exh. 79, seeking cancellation of bail presented on 06/04/2023, on which say at the instance of accused filed on 29/05/2023. However, nothing comes forth as to why the said application was not insisted upon, hereto before at the instance of

State. No doubt, the Ld. APP pursuing the instant sessions case presently is another advocate, whereas the Ld. APP conducting the matter at the time of filing this application has changed. Be that so, it is undisputed that as of now accused Ravi Bansode has been subsequently arrested in CR no. 226/2023, was enlarged in that matter. Further it is another fact that accused Ravi Bansode is presently in jail in respect of CR no. 422/2024, registered at Kopargaon police station.

7. It appears that the accused is in jail in respect of offence committed under Arms Act, as submitted by the Ld. APP, to which the Ld. defence advocate has not disputed. Further nothing is brought on record as to the subsequent offence registered under CR no. 573/2023, at Shirdi police station, u/s. 504 and 506 of the Indian Penal Code, 1860, alongwith sections 3/25 of the Arms Act, which was filed at the instance of Bhagyashree Mali. As far as the contention of Ld. advocate about application seeking cancellation of bail would not maintainable before Sessions Court granting bail and rather ought to have preferred before the Hon'ble High Court again cannot acceptable much for the reason that present application is not disputing or challenging the said bail order dated 01/10/2022 passed below Exh. 45; rather is seeking cancellation for bail on the ground of breach of condition imposed therein. At the same time, it is settled position that refusing bail and cancelling bail, already granted, are absolutely two different things and which cannot be mixed-up. It appears that the police machinery has already initiated action against Ravi Bansode in respect of CR no. 226/2023 and 422/2024 and the said offences altogether different and has already initiated actions in respect thereof and insisting of cancellation of bail on those grounds at such a later stage, after lapse of considerable time, would be improper.

8. As far as seeking for cancellation of bail on account of threatening the witnesses in present case, is concerned, it is a matter of record the evidence of Rohit Mali being deceased's son has already concluded on 23/08/2024 and as far as the complainant in both the complaints being NC no. 201/2023 and CR no. 573/2023, being Bhagyashree Mali is concerned, her examination-in-chief is already concluded and the cross-examination is already initiated and subsequent cross-examination has also been done.

9. It would be pertinent that the CR no. 226/2023 filed against this accused Ravi Bansode, under the Arms Act is dated 01/04/2023 and the NC no. 201/2023 is dated 03/04/2023, just after 2 days of a complaint being lodged against this accused under the Arms Act. Surprisingly, upon perusal of CR no. 226/2023 it reveals of accused Ravi Bansode been arrested under the said CR no. 226/2023 on 03/04/2023, whereas the NC no. 201/2023, alleges the threat extended by him to the complainant, are dated 30/03/2023, just a day before he being arrested under the Arms Act. Be that so. Even the CR no. 573/2023 registered on 03/07/2023 which is subsequent to the lodging of this application Exh. 79 before the Court. If at all the police machinery was really keen to seek cancellation of bail granted to Ravi Bansode, then immediately upon lodging CR no. 573/2023, the police machinery through the Ld. APP conducting the matter at the relevant time, could have pressed for consideration of the present application. However, records does not reveal of lodging of CR no. 573/2023 being brought on record of this file any time, before today. Thus, it appears that the police machinery were not much keen on their side to insist upon this application, therefore, it appears that police machinery filed simplicitor application which has been now pressed in the midst of recording evidence.

10. It would be pertinent that accused no. 1 Ajay Bhange is facing trial as an under-trial prisoner. In such circumstances, it would be necessary for all the stake-holders to ensure that the trial is not delayed unnecessarily. It is not that the present application is pressed merely for the sake of avoiding recording of further evidence in the matter. However, such application ought to have been pursued without any delay and in case police machinery would indeed be eager to have the bail cancelled on above ground of breach of condition, then it would be equally necessary for the police machinery to pursue the said application in proper spirit and in timely manner, which does not appear to have been done in the present matter.

11. In view of the fact the complainant in CR no. 201/2023 has already undergone substantial cross-examination and her son Rohit's evidence has already been recorded, therefore, there is no substance in the application Exh. 79 for cancellation of bail of the accused Ravi Rajendra Bansode. However, it is a matter of record that accused Ravi Bansode is in jail in another CR no. 422/2024, registered at Kopargaon police station. Hence, for the reasons recorded above, no case is made out for cancellation of bail granted to the accused Ravi Rajendra Bansode vide order dated 01/10/2022, under application Exh. 45, now at this stage. Hence, the following order -

: ORDER :

The application (Exh. 79) is rejected.

Date : 11/10/2024.

(**Y. H. Ameta**)
Additional Sessions Judge,
Rahata.