IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 2540 of 2011

Arun s/o. Sudhakar Jain,
Aged about 48 years,
Occupation : Business,
R/o. N-9-F, In front of Rural Police
Commissioner Office, Aurangabad. .. Applicant.

versus

1. Vivek s/o. Padamrajendra Mahajan,
   Aged about 26 years,
   Occupation : Mechanic,
   R/o. Paranda, Taluka : Paranda,
   District : Osmanabad.

2. The State of Maharashtra, .. Respondents
   Through Paranda Police Station, (No.1 - Original
   District : Osmanabad. accused)

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Mr. N.S. Tekale, Advocate, holding for
Mr. V.I. Thole, Advocate, for the applicant.

Mr. A.S. More, Advocate, for respondent no.1.

Smt. R.K. Ladda, Additional Public Prosecutor,
for respondent no.2.

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CORAM : SHRIHARI P. DAVARE, J.

DATE : 30TH AUGUST 2011

ORAL JUDGMENT :

1. Perused the investigation papers which were made available for inspection purpose, as well as, heard learned respective Counsel for the parties, finally.

2. This is an application preferred by the applicant i.e. original complainant, for setting aside the order dated 10th May 2011, passed by the learned Additional Sessions Judge, Osmanabad, in Criminal Bail Application No. 294/2011, granting bail to respondent no.1 herein, and also requesting to issue directions to arrest the respondent no.1.

FACTUAL MATRIX

3. The applicant, namely, Arun s/o. Sudhakar Jain, is the original complainant who filed the FIR on 30th March 2011, under Crime No. 45/2011, with Police Station, Paranda (District : Osmanabad), against respondent no.1 herein, namely, Vivek s/o. Padamrajendra Mahajan, and the other co-accused persons for the offences punishable under Sections 498-A, 323, 504, 306,

read with Section 34 of Indian Penal Code. The applicant had a daughter, namely, Vijaya who married with the respondent no.1, namely, Vivek, on 17-5-2009, and the said couple was blessed with one son who is of 11 months old. It is alleged that deceased Vijaya was treated well for about six months after the marriage, but thereafter she was subjected to mental and physical illtreatment by the respondent no.1 i.e. her husband and her parents in law. It is also alleged that unlawful demand of Rs. 20,000/- was made to the victim Vijaya by the respondent no.1 and co-accused for the purpose of installation of garage, and also, they were asking Vijay to bring one golden ring of 1 Tola from her parents in law, and she was subjected to mental and physical illtreatment due to non-fulfillment of the said demands.

4. It is also alleged in the FIR, that there was ring ceremony of younger son of the applicant, namely, Swapnil on 2nd February 2011, and the applicant invited respondent no.1 and his parents for the said ceremony. However, there are allegations that the respondent no.1 and parents in law of the victim Vijaya quarreled with the applicant during the said function, on the count that they were not given respect, and they were not presented with the ring, and therefore, they left the said function along with deceased Vijaya. Thereafter, respondent no.1 and other co-accused continued the mental and physical torture upon

victim Vijaya. Ultimately, deceased Vijaya, was fade up with mental and physical cruelty, and therefore, she committed suicide at about 18.30 hours on 29-3-2011 by hanging herself in the matrimonial home i.e. house of respondent no.1.

5. After the death of victim Vijaya, father of the victim, namely, Arun s/o. Sudhakar Jain, lodged FIR at Paranda Police Station, on 30-3-2011, against respondent no.1 and other co-accused persons and offence was registered against respondent no.1 and co-accused under Crime No. 45/2011, for the offences punishable under Sections 498-A, 323, 504, 306, read with Section 34 of Indian Penal Code. Respondent no.1 came to be arrested on 31st March 2011, and he was remanded to the Police custody and subsequently to the magisterial custody.

6. On 7-4-2011, respondent no.1 moved an application for bail i.e. Criminal Bail Application No. 222/2011 before learned Additional Sessions Judge, Osmanabad. However, the said application was rejected by the learned Judge on 27th April 2011, observing that the investigation was in progress and no bail can be granted to the respondent no.1 at that stage, and copy of the said bail application and order passed thereon are produced at Exhibit "C".

7. Subsequently, respondent no.1 moved another bail application i.e. Criminal Bail Application No. 294/2011 on 6-5-2011 before the same learned Additional Sessions Judge, Osmanabad, and copy thereof is annexed at Exhibit "E". However, learned Additional Sessions Judge, Osmanabad, passed an order thereon, on 10th May 2011, and released the respondent no.1 on bail, although investigation was not completed. Hence, the applicant has preferred the present application requesting to set aside the order dated 10th May 2011, passed by the learned Additional Sessions Judge, Osmanabad, granting bail to respondent no.1, and also requesting to issue directions to arrest respondent no.1.

SUBMISSIONS

8. It is canvassed by the learned Counsel for the applicant, that although the first bail application preferred by the applicant on 7th April 2011 was rejected by the learned Additional Sessions Judge, Osmanabad, on 27th April 2011, since the investigation was in progress, respondent no.1 preferred subsequent bail application within a short spon i.e. on 6th May 2011, and the same came to be allowed by the same learned Additional Sessions Judge, Osmanabad, on 10th May 2011, inspite of the position that the investigation was not completed,

and therefore, it is submitted that the order granting bail to the respondent no.1, dated 10th May 2011, is arbitrary and mala fide, and hence, deserves to be quashed and set aside. Learned Counsel for the applicant also canvassed that pertinently, considering the contents in the subsequent bail application dated 6th May 2011, preferred by the respondent no.1, it is apparent that there is no averment therein in respect of any change in circumstances, but curiously enough, learned Additional Sessions Judge observed in the order dated 10th May 2011, granting bail to respondent no.1, that there is change in circumstances of the case, and the said observation and finding given by the learned Additional Sessions Judge, while granting bail to respondent no. 1, is unwarranted. It is further canvassed by the learned Counsel for the applicant, that there are threats to the applicant after release on bail, on the part of the respondednt no.1, although applicant has not filed any complaint in that respect. The apprehension is posed that the respondent no.1 may abscond. It is also submitted that the charge sheet has not been filed so far, and hence, order dated 10th May 2011, granting bail to the respondent no.1 deserves to be quashed and set aside.

9. Learned Counsel for respondent no.1 has opposed the present application vehemently, and submitted that after grant of bail, the respondent no.1 has adhered with the conditions

imposed upon him, and reported to the Police Station, and there is no grievance of the respondent no.2, that the respondent no.1 misused the liberty granted to respondent no.1. It is also submitted by the learned Counsel for respondent no.1, that now the investigation has been completed and substantial period has been elapsed after grant of bail to respondent no.1 i.e. on 10th May 2011, and hence, at the most, trial can be expedited and there is no necessity to cancel bail granted to respondent no.1. It is further submitted that the parameters envisaged for cancellation of bail are stringent and the said parameters are not in existence in the present case, and hence, bail granted to respondent no.1 is not required to be cancelled, as prayed by the applicant herein. Moreover, learned Counsel for respondent no.1 has placed reliance on the judicial pronouncements, as mentioned herein below :

(a) In the case of *Mr. Khalid Yunus Patel vs Mr. Aslam Abdul Rahim Patel and others*, reported at *2010 ALL MR (Cri) 3525*, following observations are made :

> "13 Considering the rival arguments in totality and considering the above mentioned factual position as to litigation taking place from the Sessions Court, Alibag till the Hon'ble Apex Court and again reaching back to the Sessions

Court and coming to this Court for cancellation of regular bail, and still considering certain observations made by the Additional Sessions Judge, Raigad while passing the impugned order dated 8.6.2009, it cannot be said that the said order of granting bail is of such perverse nature so as to be undone. Still it can be said that the reasoning given in para-13 of the impugned order might be not properly worded still only on such observation, it cannot be said that the order of Additional Sessions Judge is per se pervert. Much emphasis was placed by the learned Advocate for the applicant on such observations made by the Sessions Court to the following effect that-the injuries sustained by the injured persons have already been healed. Apart from such observation, there are also observations by the said Additional Sessions Judge that by rejecting the application of bail nothing fruitful would be served and that is because of the lapse of time. Considering these averments and considering observations of the learned Additional Sessions Judge and still considering that admittedly there is a rivalry between the two groups, now it would not be in the fitness of the situation to quash the said order of bail & to take them in custody. On the contrary, certain directions can be given to the concerned Court for expeditious hearing of the matter so as to put an end to the allegations. In the result, both the present applications are disposed of with following order. "

(b) In the case of *Devender Kumar & Anr. Vs State of Haryana & Ors.*, reported at *2010 ALL MR (Cri) 1965 (S.C.)*, following

observations are made :

> "9 Bail had been granted to the Appellants by the learned Magistrate, Palwal, on 10th October, 2008, and as indicated hereinbefore, there is no allegation that the same had been misused or that any attempt had been made after the Appellants were granted bail to recover the articles alleged to have been given to the Appellant No.1 at the time of marriage with the complainant. The reason given by the High Court for cancellation of the orders granting bail and directing the arrest of the Appellants on the ground that disclosures have been made by the Appellants and that their police custody was necessary for recovery of the same, is, in our view, not sufficient for the purpose of cancellation of bail granted earlier."

(c) In the case of *Ashok Kumar vs State of U.P. & Anr.*, reported at *2009 ALL MR (Cri) 900 (S.C.)*, following observations are made :

> "7 As rightly contended by learned counsel for the appellant, the High Court appears to have arrived at a definite conclusion about non possibility of the injuries having been sustained in the manner indicated by the prosecution. While considering the bail application such a finding should not have been recorded. Apart from that, the specific stand of the prosecuting agency as quoted above does not appear to have been noticed by the High Court. It has also been

submitted by learned counsel for the appellant that the complainant and independent eye-witnesses are being subjected to threats by respondent No.2 and his supporters and there is hardly any progress in the case which is being tried by the Additional Sessions Judge, Fast Track Court-4, Gautam Budh Nagar. From the order sheet is is revealed that adjournments have been liberally granted on the application filed by the accused. Trial is to be conducted on continuous basis in view of what has been provided in Section 209 of the Code of Criminal Procedure, 1973 (in short the 'Code').

8 Since the accused is on bail for considerable length of time, we do not think it appropriate to cancel the bail, though there appears to be some substance in the plea that the impugned order granting bail suffers from various infirmities. Let the trial be completed within three months. If the complainant or any witness seeks protection for appearance before the Court during trial, the same shall be provided by the concerned police officials. The trial Court would take up the matter on continuous basis to complete the trial within the period indicated above. "

(d) In the case of *Raj Kumar Jain & Anr. Vs Kundan Jain & Anr.*, reported at *2004 ALL MR (Cri) 2498 (S.C.)*, following observations are made :

"10 Having heard learned counsel for the parties and perused the records, we are convinced that the impugned order of the High Court

cancelling the anticipatory bail granted to the appellants cannot be sustained in law. It is an admitted fact that within 14 days of the marriage of the first appellant to Dimple Jain daughter of the first respondent herein, disputes had arisen between them and they had started living separately. There were complaints and counter-complaints between the parties which had compelled the appellants herein and 2 others to obtain anticipatory bail from the High Court. It is also an admitted fact that pursuant to the directions issued by the High Court in the said bail order, the persons who sought bail from the High Court including these 2 appellants, had surrendered before the court and offered bail bonds which was accepted by the court concerned and in furtherance of the directions issued by the High Court though appellant No.2 was not required to attend the Police Station without being summoned, he along with appellant No.1, was attending the Police Station everyday. In this background, if really a threat as alleged by Harish Bhuva was administered to him on 15.2.2003 a complaint in this regard would have certainly been lodged either on that day itself or on the next day. On the contrary, as could be seen from the records, a complaint was posted only on 17.2.2003 at about 1956 hours through speed post. Of course, there is an allegation that on 16th evening, an oral complaint was lodged but there is no record substantiating the same, except the ipse dixit of Harish Bhuva. Then again, if we read the affidavit filed by the Inspector of Police, which was 8 months after the alleged threat, it is seen that this Officer makes a complaint for the first

time that the second appellant has not complied with the conditions imposed by the High Court while granting bail of appearing before the Police. This is a fact, in our opinion, far from truth. As a matter of fact, as per the order granting anticipatory bail to the appellants and two others, there was a direction only with regard to the first appellant herein to stay in Chennai for a week, others were not even required to be in Chennai but they had to report to the Police as and when required by the Police. If really the second appellant had disobeyed this direction, we would not have expected the Police Officer to condone this default and wait for nearly 10 months before making an issue of it in an application filed for cancellation of bail by the first respondent. It is further seen from the said affidavit of the Police Inspector that Harish Bhuva lodged the complaint as to the threat administered to him only on 17.2.2003. She has not stated anything about the oral complaint that is allegedly lodged by said Harish Bhuva on 16.2.2003. If we notice the allegation made in the affidavit filed by Harish Bhuva in this regard, it could be seen that he informed the first respondent about the visit of the appellant to his house and the first respondent promised him that his interest would be protected in a manner known to law but he does not state in that affidavit that he tried to lodge an oral complaint on 16.2.2003. As notice above, in the background of the facts of this case, we find it difficult to believe that this witness would have failed to inform the first respondent of the visit of the appellants on 15.2.2003 itself and first respondent or said Harish Bhuva would have

> failed to lodge a complaint with the concerned Police immediately thereafter either on 15.2.2003 or 16.2.2003. The actual complaint lodged as stated above, was only on 17.2.2003 and that too was only posted at 1956 hours. This delay in lodging a complaint itself creates a doubt in our mind as to the authenticity of this complaint. In this factual background, we are of the opinion that the High Court was not justified in cancelling the bail granted."

Accordingly, learned Counsel for respondent no.1 submitted that the present application bears no substance, and the same is devoid of any merits, and therefore, urged that it be rejected.

10. Learned APP for respondent no.2 submitted that marriage of the victim Vijaya took place with respondent no.1 on 17th May 2009 and the victim Vijaya committed suicide by hanging hereself on 29th March 2011 i.e. within span of two years which is a custodial death, and hence, presumption under Section 113A of the Indian Evidence Act deserves to be invoked. Moreover, it is also submitted that the investigation has been completed, but the charge sheet has not been filed so far. Learned APP has further asserted that there was no change in circumstances after rejection of the first bail application by the learned Additional Sessions Judge, Osmanabad, on 27th April

2011, but still subsequent bail application came to be allowed by the same learned Additional Sessions Judge, Osmanabad, on 10th May 2011 i.e. within short span which speaks volumes for itself. It is also submitted that while passing the order by the learned Additional Sessions Judge on subsequent bail application, the learned Judge did not consider the say filed by the respondent no. 2 and grounds raised therein. Accordingly, learned APP supported the present application.

CONSIDERATION

11. I have perused the contents of the present Application, contents of the FIR dated 30th March 2011, contents of the bail application i.e. Criminal Bail Application No. 222/2011 preferred by the respondent no.1 on 7th April 2011, and order passed by the learned Additional Sessions Judge, Osmanabad, thereon, on 27th April 2011, rejecting the said application, and also perused the contents of the subsequent bail application i.e. Criminal Bail Application No. 294/2011, dated 6th May 2011, and say filed by the respondent no.2 on 10th May 2011 to the said application, and order passed thereon by the learned Additional Sessions Judge on 10th May 2011, granting said application of the respondent no.1, as well as, perused the affidavit in reply filed by respondent no.1 herein to the present application, and heard

arguments advanced by the learned respective Counsel for the parties, anxiously, as well as, considered the observations made in the judicial pronouncements cited by the learned Counsel for respondent no.1, carefully, and at the outset, it is material to note that the victim Vijaya was married with respondent no.1 Vivek on 17th May 2009, and she committed suicide by hanging herself in her matrimonial home i.e. husband of respondent no.1 on 29th March 2011 i.e. within span of two years, and it is a custodial death, and there is apparently substance in the submission advanced by the learned APP for respondent no.2, that presumption under Section 113A of the Evidence Act could be invoked. Moreover, considering the contents of the FIR lodged by the applicant and father of the victim, there are serious allegations against the respondent no.1 herein, and he was arrested on 31st March 2011, under Crime No. 45/2011.

12. On the said background, respondent no.1 preferred the first bail application i.e. Criminal Bail Application No. 222/2011 on 7th April 2011, before learned Additional Sessions Judge, Osmanabad. However, the said bail application was rejected by the learned Additional Sessions Judge, Osmanabad, on 27th April 2011, specifically observing that the investigation was in progress and at that stage, it was not desirable to grant bail to the respondent no.1. Thereafter, within span of 10 days, the

respondent no.1 preferred another bail application i.e. Criminal Bail Application No. 294/2011 before same learned Additional Sessions Judge, Osmanabad, on 6th May 2011. On perusal of contents of Criminal Bail Application No. 294/2011, it is significant to note that there is no averment and/or ground raised therein, that there was any change in the circumstances. However, inspite of the said position, the same learned Additional Sessions Judge, Osmanabad, who earlier rejected bail application of respondent no.1 on 27th April 2011, granted the subsequent bail application of the respondent no.1 by order dated 10th May 2011, observing that "now there is change in the circumstances of the case", which speaks volumes for itself.

13. Thus, it is crystal clear that the first bail application of respondent no.1 was rejected on 27th April 2011, observing that the investigation was in progress, and it was not desirable to grant the bail application of respondent no.1 at that stage, but within span of 15 days i.e. on 10th May 2011, the same learned Additional Sessions Judge, Osmanabad, granted the subsequent bail application of the respondent no.1, observing that 'there is change in the circumstances of the case', although there was no averment or ground raised in the said bail application preferred by the respondent no.1 in respect of any change in the circumstances, which certainly speaks volumes for itself and

smells otherwise. At this juncture, it is necessary to note that the learned APP opposed the subsequent bail application by filing say on 10th May 2011, and pointed out that the applicant therein (respondent no.1 herein) was involved in a serious crime, and the investigation was in progress, as well as, the Medical Officer opined the cause of death as Asphyxia due to hanging, and the investigation papers show, soon before the death of Vijaya she was caused mental and physical torture constantly, and therefore, there was no alternative except to commit suicide, as well as, statements of adjoining witnesses were to be recorded. Moreover, it was also pointed out by the learned APP, that considering strong prima facie case and direct involvement of respondent no.1, it was urged that the subsequent bail application preferred by respondent no.1 be rejected. The apprehension was also posed in the said say, that if the respondent no.1 is released on bail, he could tamper with the prosecution evidence and may abscond from jurisdiction of the court. However, contents of the said say dated 10th May 2011, filed by the learned APP were not taken into consideration by the learned Additional Sessions Judge, Osmanabad, and even the said grounds have not been dealt with in the order passed by the learned Additional Sessions Judge, Osmanabad, on 10th May 2011, granting bail to the respondent no.1, which is a serious matter.

14. It is important to note that the investigation was in progress on 10th May 2011, when the subsequent bail application of respondent no.1 was allowed and he was granted bail therein, and therefore, it is amply clear that there was no change in circumstances at all, as observed by the learned Additional Sessions Judge, Osmanabad, in the order dated 10th May 2011, and grant of bail to the respondent no.1 by the said order, was apparently unwarranted considering the grounds raised by the learned APP in the say opposing the bail application, as mentioned herein above.

15. Apart from that, coming to the arguments canvassed by the learned Counsel for respondent no.1, that substantial period has been elapsed from 10th May 2011 i.e. the date on which respondent no.1 was granted bail, and trial be expedited, it is apparent that bail was granted to respondent no.1 by order dated 10th May 2011, when investigation was incomplete. Moreover, it is the matter of record, that even today also, charge sheet has not been filed, and therefore, there cannot be any dispute that the investigation was crippled due to grant of bail to respondent no.1, and hence, there is no substance in the argument canvassed by the learned Counsel for respondent no.1. As regards the other argument canvassed by the learned Counsel for respondent no.1, that the respondent no.1 has reported to Police

personnel, as directed by the learned Additional Sessions Judge, Osmanabad, and he has not misused the liberty granted to him, I am not impressed by the said argument since the very grant of bail itself, to respondent no.1, was unwarranted at the inception itself, and hence, the subsequent conduct of the respondent no.1 i.e. reporting to the Police and not misusing the liberty is, apparently, immaterial.

16. As regards the judicial pronouncements cited by the learned Counsel for respondent no.1, the facts and circumstances in the present case, and the facts and circumstances in the aforesaid judicial pronouncements differ from each other since the facts and circumstances in the present case are peculiar, as in the instant case, first bail application preferred by respondent no. 1 herein, on 7th April 2011, was rejected on 27th April 2011, specifically observing that the investigation was in progress and it was not desirable to enlarge the applicant (respondent no.1 herein) on bail at that stage, but subsequently, respondent no.1 preferred another bail application within span of 10 days i.e. on 6th May 2011, which came to be allowed on 10th May 2011, observing by the learned Additional Sessions Judge, Osmanabad, that "now, there is change in circumstances", without considering the say and objection raised by the learned APP and without dealing with the said say, and although the investigation was in

progress at that time, but so is not the position in the aforesaid judicial pronouncements cited by the learned Counsel for respondent no.1, and hence, observations made in the aforesaid judicial pronouncements will be of no aid or assistance to the respondent no.1 herein.

17. In the circumstances, having comprehensive view of the matter, and considering the accusations made against respondent no.1, and nature, gravity and seriousness of the offence, and the apprehension posed by the learned APP, for respondent no.2, I am not inclined to accept the submissions advanced by the learned Counsel for respondent no.1, but the argument canvassed by learned Advocate for applicant bears substance and same deserves to be accepted, and accordingly, present application deserves to be allowed.

18. In the result, present Criminal Application is allowed in terms of prayer clause "B" thereof, and the order passedby the learned Additional Sessions Judge, Osmanabad, in Criminal Bail Application No. 294/2011 on 10th May 2011, stands set aside, and respondent no.1 is directed to surrender before the learned Additional Sessions Judge, Osmanabad, within a period of one week from today, failing which learned Additional Sessions Judge, Osmanabad, to take suitable and appropriate steps in that

respect, and the present Criminal Application stands disposed of finally.

19. However, it is made clear that the above observations are prima facie in nature, and same shall be restricted to this order only and shall not be used in any other matter while deciding it on merits.

20. Authenticated copy of this judgment, duly certified by Court Shirastedar, be supplied to the parties requesting therefor.

21. Office to send copy of this order to the concerned Additional Sessions Judge, Osmanabad, forthwith.

(SHRIHARI P. DAVARE **)**
JUDGE

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