The State Of Maharashtra vs Tukaram Shiva Patil on 18 August, 1975

Equivalent citations: (1976)78BOMLR411

JUDGMENT

Vaidya, J.

1. The State of Maharashtra has filed the above application under Article 227 of the Constitution and Section 439(2) of Code of Criminal Procedure, 1973, praying for cancellation of the bail granted to the opponents, who are accused Nos. 1 to 7, in a murder case, in respect of which Karvir police station has filed a charge-sheet in the Court of the Judicial Magistrate, First Class, at Kolhapur, on December 30, 1974, numbered as C.R. No. 178 of 1974.

2. The offence is alleged to have taken place on October 31, 1974, at about 8-00 p.m., in the village Koge. One Marutr Avaba Patil, was murdered as a result of continuous blows given by axes and sticks. The prosecution alleges that the accused gave those blows. The prosecution relied on dying declarations alleged to have been made by deceased Maruti.

3. Opponents Nos. 1 to 6 (accused Nos. 1 to 6) were arrested on November 1, 1974. Opponent No. 7 was arrested on November 8, 1974; They applied for being released on bail in the Court of Session, Kolhapur, by filing Miscellaneous Criminal Application No. 205 of 1974. It was opposed by the prosecution. The learned Sessions Judge, Kolhapur, found that charge-sheet was not filed; the papers produced before him by the police did not show any evidence against opponent No. 6; and the condition of opponent No. 7, who was bleeding with piles, was serious. The learned Sessions Judge by his order, dated December 16, 1974, therefore, released only accused Nos. 6 and 7, on their executing each a bond for Rs. 5,000 and furnishing security for Rs. 5,000, pending the decision of the criminal case against them, overruling the contention of the police that if the accused were released on bail, they were likely to tamper with the prosecution evidence by winning over the witnesses.

4. A further application was made on behalf of the remaining accused, viz. Miscellaneous Criminal Application No. 219 of 1974. It was opposed by the police on the same ground, as was done previously. The learned Sessions Judge found that charge-sheet was filed on December 30, 1974, without the accompaniments of documents or relevant extracts, as contemplated by Section 173(5)(a); and, therefore, he was of the view that the accused were entitled to be released on bail, as a matter of right, under Section 167(2) of the Criminal Procedure Code, 1973. He held that the documents and extracts were supplied on the date on which he passed the order, observing:

> Technically considered, the investigation should be deemed to have been completed today.
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> In other words, the learned Sessions Judge was of the view that, having regard to the provisions of Section 167(2), notwithstanding the filing of the charge-sheet under Section 173, in the absence of the documents and extracts referred to in the charge-sheet, the investigation was not completed within sixty days, and, therefore, he released the remaining accused Nos. 1 to 5 also on bail, upon each executing a bond for Rs. 5,000 and furnishing security for Rs. 5,000.

5. The prosecution then filed another application, which is numbered as Miscellaneous Criminal Application No. 24 of 1975, in the Court of the learned Additional Sessions Judge, on January 27, 1975, under Section 439 of the Code of Criminal Procedure, 1973, for cancelling the bail granted to the accused, on the following grounds:

> (i) The prosecution has bona fide information and reasonable belief that the accused after their release on bail, are threatening the eye witnesses of beating and murdering them.
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> (ii) By the conduct of the accused and after their release on bail, the prosecution reasonably suspects that the conduct of the accused will destroy the prosecution case because, due to the fear of the accused to their lives and property, the witnesses may not state the truth before the Court.
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> (iii) By the conduct of the accused there is a tension in the village, which shall affect the prosecution case.
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> (iv) If the bail is not cancelled the applicant reasonably believes that the accused may commit a. cognizable offence.
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> (v) If the bail is not cancelled, the prosecution reasonably suspects that there will be a danger to the lives and property of the eye witnesses in this case.
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> (vi) Accused Nos. 1 to 7 were real brothers and with a criminal nature and due to their abovementioned acts of threatening the prosecution witnesses, the prosecution reasonably suspects that it would affect the prosecution case.

The application was filed by Mr. M.N. Naranjakar, Additional Public Prosecutor, Kolhapur. In support of the application and along with the application, an affidavit dated January 27, 1975, was also filed by P.S.I. Patil of Karvir police station.

6. In that affidavit, P.S.I. Patil stated, on solemn affirmation, that it was reliably learnt that the accused in the case, being on bail, were threatening the eye-witnesses, who were to be examined in the case; that there was great tension in the village and the proseeuton reasonably fear that due to

fear and threats of the accused to the witnesses, the witnesses may not support the prosecution case; that there was a direct threat and danger to the property of the eye-witnesses from the accused since their arrival in village on bail; that it was reasonably suspected that the accused were trying to tamper with the prosecution evidence; that there was likelihood of breach of public peace; and that the accused being big agriculturists in the village and influential persons, it was likely that they would try to tamper with the evidence of the prosecution. Another affidavit was filed on February 3, 1975, by a witness by name Ganapati Tukaram Nikam, supporting the allegations made in the affidavit of sub-inspector Patil. Accused No. 7 filed an affidavit and denied the allegations made against him by the sub-inspector and the witness.

7. The learned Additional Sessions Judge, who heard the said application, by his judgment and order, dated February 13, 1975, dismissed the same, firstly, on the ground that the learned Sessions Judge had earlier considered the grounds urged on behalf of the State, while releasing the opponents on bail; and although the powers under Section 439 of the Criminal Procedure Code, 1973, "were wide, their scope was limited;" secondly, on the ground that so far as the sub-inspector's affidavit was concerned, it was clearly 'a case of hearsay evidence' and, therefore, no evidence; thirdly, &s there was no statement in Ganapati's evidence stating that there was tension in the village, the allegations made in the sub-inspector's affidavit cannot be relied upon; and fourthly, that although Ganapati was described as an eye-witness, he was not an eyewitness to the entire incident; and hence, his affidavit should not be relied upon, particularly because opponent No. 7 had filed an affidavit: denying the allegations made on behalf of the State. According to the learned Additional Sessions Judge, the earlier order granting- the bail was not made by the Sessions Judge, merely on the ground that more than sixty days had expired pending investigation; and no charge-sheet was submitted to the Court.

8. The said order passed by the learned Additional Sessions Judge, Kolhapur, was challenged by the State by filing a Criminal Revision Application No. 485 of 1975, On June 20, 1975, the said Revision Application came up before Apte J. and a prayer appears to have been made before the Court for allowing the State to convert the application into one under Section 439(2) of the Criminal Procedure Code and Article 227 of the Constitution of India. This permission was granted. Henee, the State has filed the above Criminal Application under Article 227 of the Constitution and under Section 439 of the Code of Criminal Procedure, 1973, for cancellation of the bail granted to the opponents, as stated above.

9. It is urged on behalf of the State that the learned Sessions Judge, who granted the bail to accused Nos. 6 and 7, on December 16, 1974, and to accused Nos. 1 to 5 on January 2, 1975, did so contrary to the well-established practice of refusing bail to persons accused of offences of murder or attempt to murder. In support of this contention, reliance is placed on Halsbury's Laws of England, third edn., vol. 10, para. 677 dealing with "Bail Pending trial". On page 374, the law is stated as follows; "It is not usual to grant bail in eases of murder, or in cases of attempted murder, unless the prosecution consents." Reliance is also placed on Archbold's Criminal Evidence and Practice, 38th edn., 1973, which states the law in para. 292 at p. 87 as under: "It is not usual to grant bail on charges of murder." It is relevant in this connection to note also the decision of this Court in Emperor v. Nensi Hansraj (1906) 8 Bom. L.R. 420, decided by Jenkins C.J. and Aston J. where it is observed (p. 420) :

> It has been laid down by a full Bench of the Madras High Court in Kamaraja Pandia Naick Weir, 3rd Edn. P. 111a, that the rule in respect of non-bailable offences is that bail is not to be taken except in special circumstances; and so the application being opposed, the Court has to see in this case whether at this stage of the proceeding there are these special circumstances.

10. It is further contended on behalf of the State that the learned Additional Sessions Judge, who refused to cancel the bail, did so arbitrarily and without following the well-established judicial principles with regard to cancellation of bail. In this connection, reference was made to the decision in Emperor v. Rautmal Kmumal (1939) 41 Bom. L.R. 1232, in which Beaumont C.J. and Sen J. observed as follows (p. 1234) :

> ...In my opinion every Judge or Magistrate trying a criminal case has inherent power to see that the trial is properly conducted and that the ends of justice are not defeated, and if facts are brought to its attention, which suggest that unless the person who is being tried is placed under arrest the ends of justice will be defeated, the Court has inherent power to direct his arrest. In the present case the learned Magistrate was satisfied that the accused person had been tampering with a prosecution witness, and in order to prevent a repetition of the offence I think that the learned Magistrate was entitled to direct that the accused be arrested notwithstanding the order for his release on bail. It is no answer to say, as the learned Sessions Judge does, that an application could be made to the Sessions Court or the High Court, because those Courts might not be available in an emergency to make an immediate order.

> It was further urged that the learned Additional Sessions Judge erred in ignoring the affidavit of the sub-inspector as hearsay evidence and in considering the allegations of tamperfngs and tensioh prevailing in the village on account of the influential position of the accused, as not reliable, merely because Ganapati's affidavit did not mention the tension in the village. It was argued that the learned Additional Sessions Judge ought to have followed the usual practice with regard to granting of bail in murder cases; and cancelled the bail which was earlier granted by the Sessions Judge on account of misconception of the provisions, with regard to bail and powers of the Sessions Court in this behalf, contained in the new Criminal Procedure Code.

11. These contentions are all well-founded and must be upheld. It is a well settled rule of construction that when a statute is repealed and re-enacted and the words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the Court as correctly reflecting the legislative mind. See Bengal Immunity Co. v. State of Bihar. .

12. The provisions of the new Criminal Procedure Code are substantially similar to the provisions contained in the old Criminal Procedure Code but for some important changes. In the present case, we are only concerned with the powers conferred on the High Court and the Court of Session under Section 439 of the new Criminal Procedure Code, Sub-section (2) of which lays down: "A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody." It should be noted that Sub-section (1) of Section 439 corresponds to the provisions contained in Section 498(1) of the old Criminal Procedure Code the second part of it being redrafted with the addition of Clauses (a) and (b). Clause (a) confers powers to impose conditions while granting bail if the offence is of the nature specified in Section 437(3). Clause (b) provides for modifying or setting aside the conditions so imposed under Section 439(1)(a) ; and the proviso to Section 439(1) makes it more difficult for a person to get himself released on bail by an ex-parte order.

13. Sub-section (2) of Section 439 of the Code of Criminal Procedure, 1973, which corresponds to Section 498(2) of the Code of Criminal Procedure, 1898, is re-drafted with the substitution of the words "this Chapter" for "Sub-section (1)", in order to give expressly the powers not only to the High Court, which has in addition its inherent powers, but also to the Court of Session to cancel bail even in the ease of a bailable offence, as held in T.H. Hussain v. 'M.P. Mondkar. . In that case, Gajendragadkar J. (as he then was), speaking for the Supreme Court, upheld the decision of this Court by Chagla C.J. and Datar J., and observed (p. 380):

> ...As we have already observed, if a fair trial is the main objective of the criminal procedure, any threat to the continuance of a fair trial must be immediately arrested and the smooth progress of a fair trial must be ensured; and this can be done, if necessary, by the exercise of inherent power. The classification of offences into bailable and non-bailable on which are based the different provisions as to the grant of bail would not, in our opinion, have any material bearing in dealing with the effect of the subsequent conduct of accused persons on the eontinuance of a fair trial itself. If an accused person, by his conduct, puts the fair trial into jeopardy, it would be the primary and paramount duty of criminal Courts to ensure that the risk to the fair trial is removed and criminal Courts are allowed to proceed with the trial smoothly and without any interruption or obstruction; and this would be equally true in cases of both bailable as well as non-bailable offences. We, therefore, feel no difficulty in holding that, if, by his subsequent conduct, a person accused of a bailable offence forfeits his right to be released on bail, that forfeiture must be made effective by invoking the inherent power of the High Court under Section 561-A.

14. We have carefully considered the provisions of the new Criminal Procedure Code; and we think that in exercise of the wide powers conferred on the Court of Session or the High Court, the same principles which guided the Courts in cancelling the bail under the old Code continue to be the principles to be observed even under the new Code under Section 439(2). The principles were not only most clearly and authoritatively stated by the Supreme Court in the aforesaid decision but were further repeated in The State v. Captain Jagjit Svngh , in which while setting aside an order of the High Court granting bail, "Wanchoo J. (as he then was), speaking for the Supreme Court, observed

(p. 624):

> ...This, in our opinion, was the basic error into which the High Court fell in dealing with the application for bail before it, and it should have considered the matter even if it did not consider it proper at that stage to decide the question whether the offence was under Section 3 or Section 5, on the assumption that the case fell under Section 3 of the Act. It should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a Court is asked for bail in a non-bailable offence. It is true that under Section 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence. This the High Court does not seem to have done, for it proceeded as if the offence for which the respondent was being prosecuted might be a bailable one.

15. Again in Ratilal v. Asst. Collector, Customs a larger Bench of the Supreme Court, consiting of Chief Justice Wanchoo and Bachawat, Shelat, Bhargava and Mitter, JJ. laid down the law as follows (p. 856) :

> In the matter of admission to bail, the Code of Criminal Procedure makes a distinction between bailable and non-bailable offences. The grant of bail to a person accused of a non-bailable offence is discretionary under Section 497 of the Code and the person released on bail may again be arrested and committed to custody by an order of the High Court, the Court of Session and the Court granting the bail. Under Section 498 of the Code the High Court and the Court of Session may release any person on bail and by a subsequent order cause any person so admitted to bail to be arrested and committed to custody. A person accused of a bailable offence is treated differently; at any time Shill under detention without a warrant and at any stage of the proceedings before the Court before which he is brought, he has the right under Section 496 of the Code to be released on bail. The Code makes no express provision for the cancellation of a bail granted under Section 496. Nevertheless, if at any subsequent stage of the proceedings, it is found that any person accused of a bailable offence is intimidating, bribing or tampering with the prosecution witnesses or is attempting to abscond, the High Court has the power to cause him to be arrested and to commit him to custody for such period as it thinks fit. This jurisdiction springs from the over-riding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody. For the reasons given in Talab Haji Hussain's case, we hold that this inherent power of the High Court exists and is preserved by Section 561-A of the Code. The person committed to custody under the

orders of the High Court cannot ask for his release on bail under Section 496, but the High Court may by a subsequent order admit him to bail again.

16. In Hazari Lal v. Rameshwar Prasad . Ray (as he then was) and Palekar JJ., laid down that Sections 496, 497 and 498 are not exhaustive of powers of the Court in regard to terms and conditions of bail. It is, therefore, well-settled that the discretion conferred on the Court of Session-and the High Court for cancellation of bail, or for granting bail, though wide, must be exercised not arbitrarily or capriciously but according to well-established judicial principles bearing in mind the practice of Courts in this country for more than two centuries. The practice is not altered by the new Code. It cannot be departed from by the Courts except in very special circumstances which must remain undefined in view of the discretion. The Sessions Judge and the Additional Sessions Judge, in the facts and circumstances of the present case, have unfortunately departed from the usual practice and granted bail notwithstanding that the charge-sheet filed against the accused is under s, 302 read with other sections mentioned therein. There was no special reason whatsoever for the learned Sessions Judge to depart from the usual practice of refusing bail in murder cases.

17. It is urged on behalf of the accused by Mr. Naik that the earlier two orders passed by the Sessions Judge cannot be set aside because they had not been challenged by the State in revision or otherwise under Article 227 of the Constitution, or under Section 482 of the new Criminal Procedure Code or under Section 401 of the Criminal Procedure Code, 1973, or under Section 439(2) of the Criminal Procedure Code, 1973. This argument ignores all the decisions, which are referred to above, and which, in our opinion, are not altered by anything contained in the new Criminal Procedure Code. In fact, a Division Bench of this Court consisting of Beaumont C.J. and Sen J., have in terms laid down in Emperor v. Rautmal Kanumal; "It is no answer to say, that an application could be made to the Sessions Court or the High Court in Revision." With respect, we are bound by that decision; and we must hold that the fact that the two earlier orders were not challenged in revision by the State, does not preclude the State from applying for cancellation of the bail on the ground that the accused were influential persons, who were tampering with the evidence and thereby prejudice the fair trial by threatening the eye-witnesses and other witnesses and their families with dire consequences, as was done in the present case.

18. In view of the said decision, not only could the order be challenged before the higher Court but the very Magistrate or Judge, who granted the bail, could cancel the bail. It is the inherent nature of bail pending trial. It is always liable to be cancelled for good reasons. The contention of Mr. Naik that because there was no revision application filed by the State against the previous two orders of the Sessions Judge, it was not open to the State to apply for cancellation of the bail or to apply in revision against the refusal to cancel, is, therefore, without substance. The High Court and even the Sessions Court has powers to cancel the bail granted earlier pending the trial or investigation under Section 439(2). The High Court can further cancel it in the exercise of its inherent jurisdiction under Section 482, apart from the powers under Article 227 of the Constitution.

19. It was next urged by Mr. Naik, in support of the orders, passed by the learned Sessions Judge, that the learned Sessions Judge was right in discarding the affidavit of the police sub-inspector as

hearsay and treating the affidavit of Ganapati as not reliable. Here again, it is surprising that the learned Sessions Judge ignored the general practice prevailing in the Courts in the State of filing affidavits in support of such applications for grant of bail or cancellation of bail. How the affidavits should be filed by the parties and the witnesses is stated in chap. VI of the Criminal Manual, issued by the High Court-of Bombay, for the guidance of the Criminal Courts. Besides in chap. I, Rule 12, guidelines are laid down regarding the manner in which the lower Courts should deal with the application for bail, as follows:

> The power of admitting a prisoner to Bail is a matter of judicial discretion, and not a ministerial act; and the chief consideration in the exercise of that discretion must be the likelihood of the prisoner failing to appear at the trial. Other considerations to be borne in mind are the seriousness of the offence, previous convictions, if any, of the Accused, ahnormal conditions and necessity to take special precautions in particular cases. Interim Bail is, however, permissible, but in serious cases' the prosecution may, wherever possible, be heard. Bail should not be refused nor prohibitive bail insisted upon, merely on the ground that the Police desire it, for such a decision may lead to grave injustice. A Magistrate may, however, take into consideration the information supplied and the reports made by the Police.
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> In our opinion, the learned Additional Sessions Judge ignored the normal practice and these circulars, when he characterised the affidavit filed by the Police sub-inspector as hearsay evidence and proceeded to treat it as no evidence at all, though it is the well-established practice in criminal matters on bail applications to receive such affidavits and to consider its contents.

20. It was then urged by Mr. Naik that, in the facts and circumstances of the case, the learned Additional Sessions Judge properly exercised the discretion and refused to cancel the bail, which was earlier granted to the accused by the Sessions Judge; and this Court should not interfere with the discretion, so exercised by the learned Additional Sessions Judge. In support of his argument, Mr. Naik relied on a decision of the Supreme Court in State of Maharashtra v. Naiwmal Punjaji. . In that case, the High Court confirmed, with the alteration mentioned hereinafter, the order of bail granted by the Chief Presidency Magistrate in a case filed for being in possession of seventy-one "bars of silver, and for being concerned in illegal transactions: in foreign wrist watches, textiles, Metallic yarn, gold etc.

21. The High Court, in that case, was impressed by the fact that although the respondents had been released on bail in two other cases which were pending they neither escaped nor attempted to tamper with the evidence on the side of the prosecution in those cases. The High Court refused to accept the allegation. of the customs that the accused were tampering with the evidence. The order, which was passed by the High Court, was as follows:

> I would, therefore, direct that this order of confirmation of bail shall operate after the expiry of two months from today. In the meantime, the prosecution would of course have to approach the Magistrate for remand from time to time as required by law.

> Even after the expiry of two months, it would be open to the learned Chief Presidency Magistrate to consider if the exigencies of investigations or any other important circumstances justify the grant of further remand to these respondents.
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> The High Court raised the amount of bail in the case of respondent Nainmal from fifteen lakhs to twenty lakhs and in the case of respondent, Champalal from five lakhs to seven and half lakhs.

22. It is in these circumstances, that the Supreme Court refused to interfere with the order of the High Court, observing as follows (p. 909) :

> ...While we are impressed with the extraordinary nature of the facts of this case and that the investigations should proceed fairly and efficiently, it is impossible to Bay that no bail should be granted to the respondents during the pendency of the whole of the investigations. It was stated on behalf of the Customs before Gatne, J., that the complaint would be filed within six months from that date. We are of the view that the respondents cannot be detained in custody longer than that period. No material has been shown to us to enable us to differ from the finding of the High Court that on the facts placed before us and before the High Court there is any reasonable apprehension that the respondents would try to leave India. In such matters there must be absolute certainty that he was likely to leave the country before a Court would detain an accused indefinitely during the whole period of the investigation. If this consideration is kept aside, the only other consideration would be the reasonable apprehension that evidence would be tampered with. Here again no material has been placed before us to show that we should come to a finding different from that of the High Court. The third consideration is the larger interest of the State, as pointed out by this Court in State v. Jagjlt Singh. We feel that this interest was not adequately kept in view by the High Court and this requires that the respondents should be kept in custody for six months from the date of the order of the High Court, dated August 1, 1969. We may mention that the State undertakes not to ask for remand to custody if it is no longer absolutely essential that the respondents be kept in custody. As already stated, the State will continue to apply for remand and if some facts which we have not taken into consideration or anticipated come to light the Chief Presidency Magistrate would be entitled to forward to us his recommendations that the order we have made should be modified in any respect.
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> That case was an anti-smuggling ease. The present case is a murder case.

23. Mr. Naik was unable to cite before us a single decision of this High Court or of the Supreme Court where an accused in a murder case was released on bail. The practice, as stated in Halsbury and Archbold is the usual practice, which should be normally followed by all the Courts dealing with the murder cases. It is not usual practice to release the accused in a murder case on bail. Moreover, what has been observed by their Lordships in the above decision, in our opinion, is against the contention of Mr. Naik. In that case, there was no material to show that the accused was tampering

with the evidence. In the present case, however, one of the eye-witnesses himself has made an affidavit stating that the threats are being given by the accused, who are influential agriculturists.

24. The sub-inspector, who in the course of discharge of his duty is not bound to disclose to the Court the sources of his information, has stated in the affidavit that there is a tension in the village, on account of the threats being given by the accused to the witnesses in the case. "We are, therefore, of the opinion that nothing that is observed in the said case can be of any assistance to the accused in the present case. We, therefore, in the larger public interest and following the established practice of the Courts, think it necessary not to release the accused in this murder case on bail. There ismaterial for reasonably suspecting that the witnesses are likely to be or being threatened by the accused and fair trial is likely to be jeopardised, if the accused continue to be on bail.

25. It is also necessary to bear in mind that the trial is not yet commenced. "We are informed that the case is not even committed to the Sessions Court. In such circumstances the allegations made by the police against tampering, though serious, must be considered only on the affidavits; and there cannot be a sort of semi-trial or an inquiry at this stage. It is true that accused No, 7 has also filed an affidavit denying the allegations. As already stated above, the Sessions Judge has granted the bail to the accused departing from the usual practice in murder cases. The learned Additional Sessions Judge has observed in the course of his judgment that the Sessions Judge cannot be said to have released accused Nos. 1 to 5, because they were in detention for more than sixty days, pending investigation. What the learned Additional Sessions Judge says is inconsistent with what the Sessions Judge has observed in the course of his judgment dated January 2, 1975. The whole discussion in that judgment is relating to Sections 167 and 173 of the Code of Criminal Procedure, 1973.

26. The learned Sessions Judge, in our opinion, erroneously interpreted those sections and held that although the accused Nos. 1 to 5 were arrested on November 1, 1974, and the charge-sheet was filed on December 30, 1974, investigation cannot be said to have been completed till the filing of all the documents and entries referred to in the charge-sheet; and hence, more than sixty days have expired; and that entitled the accused to be released on bail. The learned Additional Sessions Judge has not relied on this reasoning of the learned Sessions Judge and even went to the extent of saying that the learned Sessions Judge had not decided the matter on his interpretation of Sections 167 and 173 of the new Criminal Procedure Code. In our opinion, the learned Additional Sessions Judge made a patent mistake, contrary to the record, in construing the order of the learned Sessions Judge as not having been based on his interpretation of Sections 167 and 173.

27. It is undisputed that the charge-sheet was filed on December 30, 1974. The investigation must be, therefore, held to have been completed on December 30, 1974, in so far as it was done. The police are not prohibited from continuing the investigation thereafter and file a further supplementary charge-sheet. The learned Sessions Judge, in our opinion, misconceived the law in holding that if the charge-sheet was not filed, with all the documents and papers, the investigation was not completed, because the documents and extracts which ought to have been filed along with the charge-sheet under Section 173(5) are not referred to in Section 167. The words of Section 167(2)(a) of the Criminal Procedure Code, 1973, are as follows:

> ...but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail;....
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> This restriction was placed only on the powers of the Magistrate to detain or remand. It did not affect the power of the High Court and Court of Session to grant bail under Section 439 or to cancel the same under the said section. The power was restricted, so far as the Magistrate was concerned, only with regard to authorisation for the detention by the police for the purpose of investigation. It does not refer to the filing of the charge-sheet, or to the filing of the documents or extracts, which are referred to tinder Section 173.

28. All that the section means is that if the police want the detention of a person for more than sixty days after the Magistrate passes orders every fifteen days, as provided under that section, the police must have completed the investigation. Otherwise they will have to move not the Magistrate but the Court of Session or the High Court under Section 439 or under Section 482. The learned Sessions Judge misconceived the provisions of Sections 167 and 173 and assumed that the moment the police failed to complete the investigation, the accused had a right to be released on bail even at the hands of the Court of Session, ignoring all the principles referred to above with regard to grant of bail in murder cases and the well-established practice in Indian Courts for two centuries and in English Courts for more than seven-centuries. The learned Additional Sessions Judge was no doubt not influenced by what the Sessions Judge has done, hut he appears to have assumed that because the accused were released on bail, there was no fresh material before him entitling the accused to be released on hail; and hence he had no power to cancel the bail though the learned Additional Sessions Judge has not said so in so many words.

29. The reasons given by the learned Additional Sessions Judge in refusing to cancel the bail, in our opinion, are again contrary to the well-established practice in these matters. At the stage, at which the case is at present, it was not for the learned Additional Sessions Judge to decide even tentatively as to Whether Ganapati was an eye-witness for the whole incident, or only for part of the incident, or whether the sub-inspector's statement that there was tension in the village was inconsistent with the absence of such statement in the affidavit of Ganapati. In matters of bail, the Court has to balance the Private interest of the individual against the community's interest in maintaining law and order. The greatest public interest must be in having a fair trial in criminal matters without any interference of the witnesses by anyone. The accused have not made any allegations personally against the police sub-inspector, who has filed an affidavit stating that there was tension in the village; and he had come to know that the accused, who were big agriculturists in the village and influential persons were likely to tamper with the evidence of the prosecution witnesses. The Additional Public Prosecutor had satisfied himself and filed an application, the grounds of which have been quoted above and which clearly indicate that a fair trial was jeopardised by the accused continuing on hail.

30. The allegations contained in the application filed by the Additional Public Prosecutor and the affidavit of the sub-inspector were supported by an eyewitness. The learned Additional Sessions Judge, in our opinion, erred in discarding all this as unreliable and in relying on the affidavit filed by accused No. '7, who was bound to deny the allegations made against him. This case, in a way, illustrates why the Courts have always followed and they ought to follow the usual practice of refusing to grant bail to persons accused of murder or attempt to murder. These are the most serious offences known to law. The accused, their friends and relatives are bound to employ as much money as they can afford and exert all their influence in the society, where they live, to help the accused to escape the trial or conviction. In such cases, the influence may be violent or non-violent. Having regard to the usual course of the human events, therefore, the learned Additional Sessions Judge ought to have regarded the affidavits filed by the sub-inspector and the eye-witness as enough material to hold prima facie or to suspect reasonably that the accused were likely to tamper with the prosecution evidence and jeopardise a fair trial in the case. He ought to have cancelled the bail granted to them illegally by the learned Sessions Judge, as already stated above, departing from the usual practice in such matters.

31. Lastly, it was urged by Mr. Naik that accused No. 7, having been released on bail, on December 16, 1974, and the rest of the accused, having been released on bail on January 2, 1975, more than eight months have passed since then; and it is not desirable that the accused should be taken into custody again after such a lapse of time, particularly having regard to the provisions contained in e. 167 of the new Criminal Procedure Code, which require the police to complete the investigation within sixty days after getting remand from the Magistrate; and Section 437 of which requires even the trial to be concluded by the Magistrate within sixty days.

32. As already stated above, these restrictions do not in any way limit the powers of the Court of Session or the High Court. They are limitations on the powers of the Magistrates with regard to the less serious matters which will be tried before them. Those restrictions cannot govern investigation and trial in respect of murder or the powers of the Court of Session and the High Court to grant or cancel the bail. It is true that more than eight months have passed; and the learned public prosecutor, Mr. Chitnis, is not in a position to say whether the accused are committed for trial under Section 209 of the Criminal Procedure Code, 1973.

33. It seems that the prosecution has not gone to trial because it has been moving the Sessions Court and thereafter this Court for cancelling the bail with a view to secure a fair trial in the case. It is unfortunate that its applications were pending in this Court till now. The fact that eight months have passed since the orders were passed by the Sessions Judge releasing the accused on bail, cannot justify the continuation of the accused on bail in this murder case contrary to well-established practice and rules to be followed by the Courts dealing with such matters.

34. It is true that accused No. 7 was released by the learned Sessions Judge on December 16, 1974, on the ground of his health; and accused No. 6 was released on bail to attend to his brother, accused No. 7. "We are surprised at this extra-ordinary sympathy shown towards these accused, when all that accused No. 7 was suffering from was piles. "We do not expect that the medical officers of the jail, where they would be kept, to be falling short in their knowledge or experience or skill in

handling such piles cases.

35. In the result, we allow the above application, set aside under Section 439(2) of the Criminal Procedure Code, 1973, the order passed by the Additional Sessions Judge, Kolhapur, on February 13, 1975, and cancel the bail granted to accused Nos. 6 and 7 by the Sessions Judge on December 16, 1974, and to Accused Nos. 1 to 5 on January 2, 1975.

36. However, this cancellation will not entitle the police to postpone the commencement of the trial indefinitely or to keep the acctised in custody without any future for them.

37. The learned public prosecutor before us is not in a position to say as to when the State will be able to move the Magistrate to commit the case to the Sessions Court. The prosecution should, therefore, move the Magistrate to pass the necessary order of committal under Section 209 of the Criminal Procedure Code, 1973, within fifteen days from the receipt of the writ of this Court by the Court of Session at Kolhapur.

38. The accused should be thereafter produced before the Court of Session, as if, the present order was an order under Section 309(2) of the Criminal Procedure Code, 1973; and the Court of Session shall be at liberty to pass such orders under that section with regard to custody of the accused, the commencement and adjournment of the case, as it deems proper in accordance with the principles stated hereinabove and in accordance with law.

39. If the prosecution fails to act in accordance with the conditions, as stated above, the accused shall be once again released on each of them executing a bond in the amount in which) they had respectively executed, when they were released by the Sessions Judge. The bonds shall be fresh bonds. "We are imposing these conditions in the ends of justice and in exercise of powers under Section 482 of the Criminal Procedure Code, 1973, as the whole object of the new provisions in the new Criminal Procedure Code is to expedite investigation, inquiry and trial of the criminal cases and indefinite detention of the accused, even in murder cases, would be against those provisions.

40. Nothing that is stated hereinabove shall prejudice the accused in their defence at the inquiry or trial in any manner whatsoever.

41. Subject to what is stated hereinabove, the rule is made absolute. The accused to surrender to their bail forthwith.