

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.20 OF 2014

Ajit Ramawadh Yadav
Aged 20 years, residing at Room
No.506,
Topaz Building, Narmada Paradise,
Shanti Nagar, Opp. Pendse Garden,
Mira Road, Thane.

...Applicant

Versus

1.State of Maharashtra,
2. Pranali Shivsharan Choudhari,
Through guardian Smt. Jayashree
Shivsharan Chaudhari, aged 36
years, resident of Pandit Dindayal
Upadhyay Nagar, Jagtap Chawl,
Room No.C/43, Road No.19,
MIDC, Andheri (East), Mumbai

...Respondents

Mr. Sandeep Pasbola i/b Mr. Bipin Joshi, Advocate, for the Applicant.
Mrs. P.P. Shinde, APP, for the Respondent No.1-State.
Mr. Aniket Wagal, Advocate, for the Respondent No.2

CORAM:-M.L. TAHALIYANI, J.

**DATE ON WHICH THE JUDGMENT IS
RESERVED : 20th August, 2014.**

**DATE ON WHICH THE JUDGMENT IS
PRONOUNCED : 5th March, 2015.**

JUDGMENT :-

This criminal revision application impugns the order

passed by the learned Special Judge of the designated Court appointed under section 28 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'the said Act') dated 7-1-2014 directing cancellation of bail of the Applicant granted to him by the learned Metropolitan Magistrate on 15-6-2013.

2. The Applicant had allegedly committed offences punishable under sections 509 and 506 (part II) of the IPC and section 12 of the said Act. He was arrested on 15-6-2013 and was remanded to judicial custody till 29-6-2013. The bail application was made by the Applicant on 15-6-2013 itself which was granted by the Magistrate and the Applicant was released on bail in the sum of Rs.10,000/- with one solvent surety in the like amount. It appears that after release of the Applicant investigation was completed and charge-sheet was filed in the Court of Special Judge designated under the said Act.

3. An application for cancellation of bail was made by the victim on the ground that the Magistrate had no jurisdiction to grant bail to the Applicant. It was contended before the learned designated special Judge that in view of provisions of section 33 of the said Act, Special Judge of designated Court was the Court of original

jurisdiction and could take cognizance of the offences under the said Act without accused being committed to it for trial. It was further contended that therefore, the remand application and the bail application should have been heard by the Special Judge.

4. Learned Special Judge after hearing the Applicant (complainant) in the said application and the Applicant herein (accused) directed cancellation of bail placing reliance on the judgment of this Court in Criminal Application No.354 of 2013 (Coram: R.S. Dalvi, J). This Court while deciding the said criminal application had come to the conclusion that it was necessary for the Police Officers to produce the accused in such cases before the Special Judge and not before the Magistrate. It was further held that the Special Court under the said Act shall act on every stage of judicial process and that once judicial process commences, special court alone would take cognizance of the offences. Hence it was directed that all pre-cognizance requisites must be performed in that Court. This order was pronounced by the Court on 3-7-2013. The Court however, saved the earlier orders passed by the Magistrates. Para 23 of the said judgment runs as under :-

“23. However it is clarified that any

remand orders passed in Courts of other Magistrates until now shall not be declared invalid in view of the applicability of the Criminal Procedure Code, 1973 to proceedings under the Children Act and the powers of the Magistrate for remand therein.”

5. Order which was questioned before the learned Special Judge was dated 15-6-2013. Therefore, it was obvious that said order was saved by the judgment of this Court and could not have been subject matter of cancellation of bail on the ground of jurisdiction. Though the learned Special Judge has referred to the judgment cited *supra* the learned Special Judge has not taken cognizance of contents of para 23 of the said judgment. It appears that the learned Special Judge could not understand the import of the words 'remand order'. In my view the words 'remand order', include bail orders also.

6. In view thereof, in my opinion order of the learned Special Judge is bad in law and needs to be set aside.

7. Before parting with the judgment I may express myself that it is highly questionable as to whether Special Judge could have heard the application for cancellation of bail against the order of the

Magistrate. It was for the Additional Sessions Judge or Sessions Judge to hear such an application. Special Judge (Additional Sessions Judge) also could have heard the said application. But not in the capacity of Special Judge but in the capacity of Additional Sessions Judge. However, I am not expressing myself in detail on that issue because same is not questioned in the present revision application.

8. In view of what has been stated by me herein above order passed by the Special Judge of the designated Court dated 7-1-2014 in Sessions Case of 1096 of 2013 in Crime No.268 of 2013 is set aside. Order of the learned Magistrate dated 15-6-2013 is maintained.

9. The Criminal revision application stands disposed of.

(JUDGE)