

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6879 OF 2015

Dilip Eknath Mistry .. Applicant

Vs.

The State of Maharashtra and ors. .. Respondents

Mr. P.S. Paranjape, Advocate for the applicant
Smt. R.P. Gour, A.P.P. for the respondent/State
Mr. B.R. Warma, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 20/06/2016

ORAL ORDER :

Heard.

2. The present applicant, on November 1, 2015 lodged a complaint alleging that his daughter Kum. Kajal aged about 10 years, complained about alleged misconduct of accused / respondent no.2 – Vinod Patil. As such, the FIR came to be lodged resulting in registration of crime no. 172 of 2015 for the offence punishable under section 323, 324, 504, 506 of the Indian Penal Code. On the very same day i.e. on 1/11/2015, a crime came to be registered against the complainant vide crime no. 173 of

2015 for the offences punishable under section 143, 147, 148, 324, 323, 504 and 506 of the Indian Penal Code, in which the complainant's family members are also added as an accused. It is claimed in the said crime that the complainant and his family members have assaulted respondent no.2 – Vinod i.e. accused no.1 in crime no.172 of 2015 and other family members.

3. Learned Magistrate vide order dated 4/11/2015, upon surrender of the non-applicants, ordered their release on bail, however, pursuant to the prayer for cancellation of bail moved by the Investigating Officer, as the provisions of section 8 of the Protection of Children from Sexual Offences Act (for short "**POCSO Act**") were invoked, resulting into cancellation of bail of the non-applicants on 7/11/2015 in crime no. 172 of 2015. Non-applicants as such moved Criminal Bail Application No.199 of 2015 before the learned Additional Sessions Judge, Amalner, seeking pre-arrest bail in the said crime, which application came to be allowed by the learned Additional Sessions Judge, Amalner vide order dated December 2, 2015, of which cancellation is sought in the present application.

4. While claiming cancellation of bail, Shri Paranjape, learned counsel for the complainant in crime no. 172 of 2015 i.e. applicant herein, would invite attention of this Court to the very conduct of the accused – Vinod Patil, so as to pin point that the victim girl has subsequently narrated about the incident and the fact that complainant also suffered a grievous injury i.e. fracture. According to him, the learned Magistrate, having noticed that the non-applicants are not present in the Court when they were put to notice in the matter of cancellation of bail, has rightly cancelled the bail of the non-applicants and as such, the said order should have been upheld by the learned Additional Sessions Judge. According to him, the conduct of the non-applicants amounts to non-respecting the Court's order and the process of law. He would then submit that the custodial interrogation of the non-applicants, in view of the offences under the POCSO Act, is warranted.

5. Learned A.P.P., based on the investigation carried, supports the claim of the applicant.

6. Shri Warma, learned counsel for respondent no.2/accused would submit that the learned Additional Sessions Judge has rightly exercised his discretion, particularly when the conduct of the present applicant was noticed, as is reflected in the order of grant of bail to the non-applicants. He would then submit that the non-applicants are very much available and are reporting the learned Additional Sessions Judge in the trial in question and there is full co-operation on their part. He would then urge that there is false implication of the non-applicants, as there are counter offences from the complainant's side and the victim's side.

7. From the record, it is required to be ascertained as to whether case for cancellation of bail is made out or not, on the ground that the non-applicants/accused have not responded and remained present before the Magistrate pursuant to the notice for cancellation of bail issued in crime no.172 of 2015. It is required to be noted that the learned Additional Sessions Judge having noticed the fact that there are

counter offences and that the non-applicants are very much available for the prosecution purpose, being holding immovable property, has proceeded to protect them by exercising discretion. The protection of liberty, as is ordered by the learned Additional Sessions Judge, in my opinion, does not call for interference by this Court, as the learned Additional Sessions Judge, having exercised the discretion in favour of the accused, directing their release, the non-applicants having not mis-used the same and rather non-applicants have respected the Court process. The non-appearance of the accused before the learned Judicial Magistrate First Class at the time of cancellation of bail in the aforesaid background, particularly, in the matter of counter offence i.e. crime no. 173 of 2015 is worth taking note of.

8. In this background, no case for cancellation of bail is made out. The Application, as such is rejected.

[N.W. SAMBRE]
JUDGE

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