

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2931 OF 2017

POOJA D/O. SARJERAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr. A.A. Mukhedkar and Mr. A. A. Kokad
APP for Respondent No.1: Mr. A.A. Jagatkar

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CORAM : V. K. JADHAV, J.
DATED : 20th SEPTEMBER, 2017

PER COURT:-

1. This is an application seeking cancellation of bail granted by the learned Additional Sessions Judge-9, Aurangabad, by order dated 28.04.2017 in bail petition No. 666 of 2017.

2. Learned counsel for the applicant submits that the learned Additional Sessions Judge has not considered the vital materials while granting bail. Learned counsel submits that this Court, while rejecting the application of respondent No.2 original accused seeking pre-arrest bail, has observed that prima facie allegations against the applicant of his involvement in the crime are there and there is substantial material available on record, particularly in the investigation papers, connecting the applicant to the crime in question. This court has also observed that rejecting the application seeking pre-arrest bail, in the case invoking the provisions of POCSO Act, is very much justified.

3. Learned counsel for the applicant in order to substantiate his submissions, placed reliance on the judgment of Supreme Court in the case of ***Kanwar Singh Meena vs. State of Rajasthan and Anr, reported in 2013 AIR (SC) 296.***

4. None present for respondent No.2 original accused.

5. I have also heard learned A.P.P. for the respondent State.

6. In the case of ***Kanwar Singh Meena vs. State of Rajasthan (supra)***, relied upon by learned counsel for the applicant, in para 6 of the judgment, the Supreme Court has observed that cancellation of bail is a serious matter and very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. In para 10 of the judgment, the Supreme Court has observed that the High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. The Supreme Court has further observed that if the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

7. It is well settled that the parameters of consideration of applications seeking pre-arrest bail and seeking regular bail are quite different. On perusal of order passed by the learned Additional Sessions Judge-9, Aurangabad, it appears that the learned Additional Sessions Judge has considered the age of victim as on the date of alleged incident. The learned Additional Sessions Judge has also considered the age of understanding of the applicant victim. The learned Additional Sessions Judge with due regard to the investigation papers has observed that the victim has consented to have physical relations with the accused for such a long time. She has reached the age of discretion, as she was just short of a few months of becoming an adult. She was fully aware of the outcome and the consequences of her act. The learned Sessions Judge has considered the nature of allegations, young age of the respondent-original accused, period of detention and accordingly granted bail to the respondent original accused. I do not find any cogent and overwhelming circumstances directing cancellation of bail in this case. Hence, the following order:-

O R D E R

Criminal application is hereby rejected.

(V. K. JADHAV, J.)