

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL APPLICATION (MAIN) NO.107 OF 2018**

|                     |    |            |
|---------------------|----|------------|
| Bhikhu Kotecha      | .. | Applicant  |
| Versus              |    |            |
| Shyam Raithatha and |    |            |
| 2 Ors               | .. | Respondent |

Shri Carlos Alvares Ferreira, Advocate for the applicant.

Shri Sudesh Usgaonkar, Advocate for the respondent no.1.

Shri S. R. Rivankar, Public Prosecutor for the respondent nos.2 and 3.

**Coram :- C. V. BHADANG, J.**

**Date :- 2<sup>nd</sup> May, 2018**

**ORAL ORDER :**

This is an application for cancellation of bail. The first respondent has been granted bail by Additional Sessions Judge by an order dated 02/04/2018 in Bail Application No.22/2018. The first respondent, who is a UK National of Indian origin, has been accused of committing an offence punishable under Section 376 of Indian Penal Code (IPC).

2. The prosecution case in brief is that the victim girl and the first respondent had come down to Goa to attend a family wedding. The incident is alleged to have happened on 30/03/2018 between 2.00 a.m. and 5.00 a.m. in room No.279 in Zuri White

Sands Hotel, Varca, Salcete, Goa, wherein the first respondent allegedly had sexual intercourse with the victim girl without her consent.

3. The learned Sessions Judge has noticed that substantial part of investigation is over and further the first respondent is ready and willing to co-operate with the Investigating Agency. The learned Sessions Judge has also observed that it appears to be a case where the victim and the first respondent were in a love affair and therefore, possibility of having consensual physical relations cannot be ruled out. In that view of the matter, the learned Sessions Judge has exercised discretion while directing the release of the first respondent on bail on certain conditions as to attendance before the Investigating Officer.

4. I have heard the learned Counsel for the parties and perused record.

5. Shri Ferreira, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of ***Puran Vs. Rambilas and another***; (2001)6 SCC 338 and ***Dolatram and others vs. State of Haryana***; (1995)1 SCC 349, in order to submit that in an appropriate case, the bail can be

cancelled when it is found that it has been wrongly or inappropriately granted. He submits that the applicant happens to be the father of the victim girl. He points out that even in the case of **Puran** (supra), cancellation was sought by the father of the victim. He submits that the offence is serious and the bail ought not to have been granted, where there is medical evidence.

6. Shri Usgaonkar, the learned Counsel supported the impugned order and relied upon the decision in the case of **Hazari Lal Das Vs. State of West Bengal and Anr**; AIR 2010 SC 91.

7. On hearing the learned Counsel for the parties, I do not find that any case for cancellation of bail is made out. There cannot be any manner of dispute with the proposition that in an appropriate case, bail can be cancelled, if the same has been erroneously granted and for the reasons, which are not justifiable. Bail can also be cancelled on account of breach of the conditions, under which the bail is granted and in a case where, the Investigating Officer has discovered certain additional material during the course of investigation, which has a bearing on the grant or otherwise of the bail. The present case does not belong to the later two categories. Cancellation of bail is essentially sought on the ground that it has been erroneously granted. Prima facie on perusal of the case diary, it cannot be said that the

learned Sessions Judge was in error in granting the bail. Prima facie there are circumstances to indicate that both the victim as well as the first respondent had come down to Goa to attend a family wedding and were together during the late hours on 30/03/2018. The learned Sessions Judge, in my considered view, is right in prima facie coming to the conclusion that possibility of having consensual physical relations cannot be ruled out. At this stage, the Investigation is at the fag end and, therefore, there was nothing wrong in the learned Sessions Judge having exercised the discretion in granting bail. Principles apart, the decisions on which the reliance is placed on behalf of the petitioner, turned on their own facts. The *locus standi* of the petitioner as a father of the victim to seek cancellation of bail, is not challenged. However, the question is whether on merits the case for cancellation of bail is made out, which I found to be none.

8. In the result, Criminal Revision Application is dismissed.

**C. V. BHADANG, J.**

SMA