

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 18 OF 2018

Beatrice Fernandes .Applicant

Vs.

Sameer Shailendra Moorti & anr. .Respondents

Mr. V. Hiremath & Mr. Conrad Noronha, Advocate, for the Applicant
Mr. H. Shinde, Advocate, for the Respondent No. 1
Mr. S. S. Hulke, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant (Original Complainant), mother of the victim girl has sought cancellation of the bail granted to the Respondent No. 1 by the Sessions Court vide Order dated 21.12.2017.

3. Learned counsel for the Applicant submits that the learned Sessions Judge whilst enlarging the Respondent No. 1 on bail vide Order dated 21.12.2017 had failed to impose stringent conditions on the Respondent No. 1, considering the peculiar facts of this case. He

submits that the minor victim girl resides in the same society, as the Respondent No. 1, as a result of which the Applicant and the victim girl fear for their safety. He submitted that the Applicant's daughter is taking psychiatric help and in support thereof, relied on the Doctor's report, which shows that the Applicant's daughter is suffering from post traumatic stress disorder and as such, has been prescribed medication for the same. He submits that since the Respondent No. 1 is staying in the same society, the Applicant and her daughter fear the Respondent No. 1 and as such, it is difficult for the Applicant's daughter (who is in Std. 10th) to overcome the incident, due to continued presence of the Respondent No. 1 in the said society. Learned counsel for the Applicant further submitted that the learned Sessions Judge had failed to consider that the police had not seized the Respondent No. 1's Laptop, so as to ensure that there are no backup copies, which could not be further circulated.

4. Learned counsel for the Respondent No. 1 on the instructions of the Respondent No. 1, who is present in Court, states that no photographs which have been stored by the Respondent No. 1 in any device including the Laptop and hence, the question of circulating the same does not arise. Statement accepted. Learned counsel, in fact,

denies the alleged incident. Learned counsel for the Respondent No. 1 further submits that the Respondent No. 1 has been taking tuitions, of the children in the same vicinity for the last ten years and that there is no complaint against the Applicant.

5. Learned APP on instructions states that the Respondent No. 1's Laptop was examined and that no such photographs were seen and hence, the Laptop was not seized

6. Perused the papers. It appears that the investigating officer has checked the laptop and had found nothing incriminating in the same. Learned counsel for the Respondent No. 1 on the instructions of the Respondent No. 1 also states that the Respondent No. 1 has not stored the victim's photographs on any other device including the Laptop, and hence the question of circulating the same would not arise. Statement accepted. Learned counsel, in fact, has denied the alleged incident. As far as the Order dated 21.12.2017 enlarging the Respondent No. 1 on bail is concerned, no interference is warranted in the order enlarging the Applicant on bail. However, the learned Judge, having regard to the facts ought to have imposed certain conditions on the Applicant. Hence, in the facts, it would be appropriate to impose additional conditions, in

addition to the conditions imposed by the trial Court vide Order dated 21.12.2017.

7. Accordingly, the Application is partly allowed to the extent, that the Applicant to abide by the following terms & conditions, in addition the conditions already imposed by the learned Sessions Judge vide Order dated 21.12.2017 :-

ORDER

- (i) The Respondent No. 1 shall not reside in Ratan Nagar area and a radius of 1 Km. from Ratan Nagar, from Monday i. e. 20th March, 2018 till the conclusion of the trial;
- (ii) The Respondent No. 1 shall not attempt to influence or contact the complainant and or prosecutrix, witnesses or any person concerned with the case;
- (iii) The trial in the said case is expedited;
- (iv) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Respondent No. 1's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)