

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

CRIMINAL APPEAL NO. 201 OF 2018

Ganesh Dnyaneshwar Patil ... Appellant.

V/s.

Ratnamala Dattatraya Salve & Anr. ... Respondents.

Mr. Kuldeep U. Nikam, Advocate for the Appellant.

Mr. V. B. Konde-Deshmukh, APP for the State.

**CORAM : S. S. SHINDE And
MRS.MRIDULA BHATKAR, JJ.**

DATE : AUGUST 27, 2018

P.C.

1 This Appeal is moved by the Applicant-accused against the order dated 22.01.2018 of cancellation of the bail order passed by the learned Additional Sessions Judge -3, Nashik, below Exh.-1 in Criminal Misc. Application No. 16 of 2018.

2 The applicant-accused is prosecuted for the offences punishable under sections 324, 354(B), 323, 504, 506, 427 read with section 34 of the Indian Penal Code and under section 3(1)(r)(s)(w) of the Scheduled Caste and Tribes (Prevention of Atrocities) Act, 1989 in C.R. No.I-211 of 2017, registered with Sinnar Police Station, Sinner.

3 The Applicant-accused is running cell-phone repairing shop at Sinner since 18 to 20 years. On the date of the incident i.e. on 13th December 2017, the victim went to his shop alongwith her brother and at that time they had exchange of hot words which resulted in quarrel. The applicant-accused manhandled the victim and, therefore, on 20th December, 2017, she (victim) lodged the FIR at Sinner Police Station and an offence was registered against the applicant-accused.

4 The Applicant-accused earlier moved an application no. 1775 of 2017 for bail under section 439 of the Cr.P.C., which was allowed by order dated 03.01.2018 passed by the Special Judge (S.C.,S.T. Act) Nashik, imposing the condition that the applicant-accused shall not enter the territorial limits of Sinner Taluka till filing of the chargesheet. However, as per the case of the prosecution, the applicant-accused thereafter entered the Sinner taluka on 12.01.2018 and attended his shop and again on 14.01.2018 and 17.01.2018, he followed the victim and parked his motorcycle outside her house. The victim got scared and therefore, she approached Sinnar police station and lodged N.C. No. 58 of 2018 under section 506 of the Indian Penal Code against the applicant-accused. Thereafter the victim moved application Misc. Criminal Application No. 16 of 2018 before the same

Judge and prayed for cancellation of bail of the applicant-accused under section 439(2) of the Cr.P.C..

5 After hearing both the sides and considering the case of the applicant, the learned District Judge and Additional Sessions Judge -3, Nashik by order dated 22.02.2018 allowed the application of the victim and cancelled the bail dated 03.01.2018 granted by the learned Special Judge (SC ST Act) Nashik. The learned Judge directed the applicant-accused to surrender before the court on or before 26.02.2018 and the I.O. was directed to arrest him and produce before the court. The applicant-accused is, therefore, before this court.

6 Learned counsel for the applicant has submitted that the applicant - accused is running cell phone shop in Sinner since long. He pointed out the operative portion of the order, granting bail, and submitted that as earlier the learned Judge has imposed condition no. 5, directing the applicant accused to attend the police station once in a fortnight till filing of the chargesheet and to co-operate in investigation. Learned counsel submits that pursuant to the said clause no. 5 of the operative order, he went to Sinner to attend the police station, as he also wanted to co-operate the police. The learned counsel submits, at that time, the applicant accused had to attend his shop because his bread and butter is completely dependent on the said mobile repairing shop and

he also wanted to hand over his mobile in order to transfer the data of the mobile for the purposes of his business. He however, denied that he had ever harassed the victim and submitted that the allegations are false and he is made victim. He prays that the order of cancellation of bail be set aside.

7 Learned public prosecutor while opposing the application has supported the order passed by the learned District Judge of cancellation of the said bail order. He has submitted that the accused should not have entered Sinner and breached the condition imposed by the learned Judge, while granting bail and, therefore, the order of cancellation of bail is well justified.

8 This court had issued notice dated 28.02.2018 to the respondent, the victim. The report of the District Judge and Additional Sessions Judge, Nasik received on 04.04.2018, disclosing that the necessary note has been taken in the relevant register and writ of summons is fully complied with by the district judge and also notings of the register shows that the notice is duly served on the respondents. However, none present for the victim-respondent no.1.

9 We have perused the copy of the order of granting bail dated 03.01.2018. The operative portion,

paragraph-5 of the order dated 03.01.2018, as argued by the learned counsel for the applicant-accused, reads as follows :

“5. He shall attend the police station once in a fortnight till filing of the chargesheet and co-operate in investigation.”

A certified copy of the order, as per our directions, is called from the learned Special Judge, Nashik for our perusal. The said order discloses that paragraph -5 is scored off and subsequent clauses nos. 6,7,8 though retained are corrected as clauses 5, 6, 7. The learned counsel for the applicant accused has submitted that the certified copy of the order dated 03.01.2018 is received by him alongwith condition no. 5, as it was before the said condition and, therefore, under that impression the applicant-accused had entered Sinner taluka. Thus there may be a possibility that the applicant-accused under the wrong impression of earlier clause no. 5 of the order, had visited Sinner on 12.01.2018 and attended the police station and then he attended his shop. However, the victim girl has made certain allegations against him and NC was registered under section 506 of the Cr.P.C.. However, it is to be noted that the criteria for cancellation of the bail is much higher than the grounds to grant bail.

10 We are also informed that the chargesheet is filed on 31.03.2018 and it is numbered as Sessions Case No. 10 of 2018 at Nasik District.

11 In this view of the matter, we are inclined to quash and set aside the order of learned Special Judge by imposing the following fresh conditions. The order dated 22.02.2018 of cancellation of bail is hereby quashed and set aside. The order dated 03.01.2018 passed by the learned Special Judge is restored with following additional conditions :

- i. The Applicant-accused shall not enter the territorial jurisdiction of Sinner town till 15th October,2018 and shall not, in any manner, contact or approach the victim.
- ii. Any breach of this condition or any other conditions of earlier bail order, if breached, will amount cancellation of the bail forthwith.

12 Appeal is disposed of in the above terms.

(MRS.MRIDULA BHATKAR,J.)

(S. S. SHINDE,J.)

.....