

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

CRIMINAL BAIL APPLICATION NO.2278 OF 2018

Sameer Namdev Patil

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Amol Arunprakash Patankar for the applicant.

Mr.Arfa Sait, APP for the respondent/State.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th SEPTEMBER 2018

P.C. :

1. This is an application for bail in Special POCSO Case No.24 of 2013. The applicant was initially arrested on 9th February, 2018 in connection with CR No.I-53/2013 registered with Kalwa Police Station, Thane for offence punishable under Sections 363, 376, 420 and 506 of the Indian Penal Code and Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). The applicant was subsequently granted bail on 2nd August, 2013 by the Special Judge. Thereafter, the trial has commenced. The applicant had attended the said proceedings.

2. Evidence of the complainant was partly recorded on 24th July, 2018 and the case was adjourned for cross-examination on 17th August, 2018. The Advocate for applicant filed VP on the same day. In the meantime, family of applicant and victim decided to resolve the dispute as it had arisen out of love affair. The advocate representing the applicant preferred an application dated 17th August, 2018 stating that he is not prepared to conduct cross-examination and sought adjournment on behalf of accused Nos.1, 2 and 4. The learned Trial Court rejected the said application by cancelling the bail granted to the applicant vide order dated 17th August, 2018.

3. While passing the aforesaid order, it was observed that the accused was prosecuted for offence under POCSO Act and various other offences and conduct of the accused reveals that he is delaying the matter and helplessness of the Advocate cannot be considered for the deliberate conduct on the part of the accused. There are five accused in this case, the cross examination at the instance of accused nos.3 and 5 is already completed. The

applicant is the main accused against whom there was allegation of sexual assault. The case is more than five years old, he is taking undue advantage of being released on bail and therefore it is necessary to cancel bail bond of the applicant/accused. The trial Court, therefore, cancelled the bail bonds and the applicant was taken into custody on the same day.

4. The learned Additional Public Prosecutor submitted that the trial Court was constrained to pass the said order on account of conduct of the applicant. The case is pending since five years and the applicant was delaying the said case. For the reasons stated in the order, passed by the Special Court, no fault can be found with the said order. It is submitted that the accused was given sufficient opportunity to cross examine the witness and since he was delaying the case, the bail was cancelled.

5. On perusal of the order and the application preferred by the Advocate representing the applicant, it is apparent that the bail was cancelled for the reasons stated therein, more particularly on

the ground of adjournment sought by the applicant. It would be pertinent to note that this is not case that the applicant was not remaining present before the Court. On 17th August, 2018, he was present before the Court. From the order and application, it appears that the accused has initially requested earlier Advocate that he would change his lawyer as the parties are settling the dispute. However, the same Advocate was requested to represent him and hence the application for adjournment was preferred by him. In this circumstance, the trial Court ought not to have proceed to cancel the bail granted to the applicant. The order of bail was passed in 2013 and it is not the case of the prosecution that he has flouted the said order or he has committed breach of the said order and abstained from attending proceedings before the Court. In these circumstances, the applicant is required to be released on bail.

:: ORDER ::

- (i) Bail Application is allowed.
- (ii) The applicant is directed to be released on bail in connection with CR No.I-53/2013 registered with Kalwa

Police Station, Thane and in Special Case POCSO No.24 of 2013 pending before the Additional Sessions Judge, and Special Judge (POCSO Act) Thane, on his furnishing P.R. Bond in the sum of Rs.15,000/- with one or more surety in the like amount.

(iii) The applicant is permitted to furnish cash security in the sum of Rs.15,000/- for a period of four weeks.

(iv) Criminal Bail Application is disposed of.

Vina
Arvind
Khadpe

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Vina Arvind
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(PRAKASH D. NAIK J.)