

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

CRIMINAL APPLICATION NO. 709 OF 2016

Jaspritkaur Harjitsingh Bhatti

....Applicant

V/s.

Harjindar Singh Sahadev & Anr.

....Respondents

Mr. Sachin B. Thorat for the applicant.

Mr. Sumit Kate I/b. Mr. Anand Kumar Nadar for respondent no.1.

Ms. Pallavi N. Dabholkar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 05th OCTOBER, 2018.

P.C.:

. This is an application under section 439(2) of Criminal Procedure Code, filed by the aforesaid applicant seeking cancellation of bail granted to the respondent no.1 by the Additional Sessions Judge, Raigad, Alibag vide order dated 07/10/2016 in Criminal Miscellaneous Application No.909/2016.

2. Heard Mr. Sachin B. Thorat, learned for the applicant, Mr. Sumit Kate, learned counsel for respondent no.1 and Ms. Pallavi N. Dabholkar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the

respective parties.

3. The records prima facie reveal that pursuant to the first information report lodged by the mother of the prosecutrix, C.R.No.180/2016 was registered with Kamothe Police Station for offences punishable under section 376 and 417 of the Indian Penal Code and sections 3, 4, 7, 8 of the Protection of Children from Sexual Offences (POCSO) Act. The first information report prima facie reveals that while the victim was working in E-Zone, she came in contact with the applicant. They were in love with each other and had proposed to marry. This fact was known to their respective families. The respondent used to visit the house and take the prosecutrix out. The first informant did not object since the respondent had promised to marry the prosecutrix. The respondent and prosecutrix visited several places and had sexual relationship. The first informant claims that the prosecutrix had consented to sexual relationship since the respondent had promised to marry her. However, she learnt that the respondent was planning to marry another girl. The respondent refused to marry the prosecutrix and this led to filing of the first information report against the respondent.

4. The records reveal that the learned Judge had heard the victim and her parents before deciding the application under section 438 of the Criminal Procedure Code. The learned Judge has also observed that the relationship was consensual. The learned Judge has held that the provisions of section 376 of the Indian Penal Code and section 3, 4, 7 and 8 of POCSO Act are not attracted as the victim had sexual relationship with the respondent despite knowing that he had proposed to marry another girl.

5. The records reveal that at the relevant time, the prosecutrix was sixteen years. It need not be emphasized that the sexual intercourse with a girl below 18 years, with or without her consent, constitutes offence of rape under section 375 of the Indian Penal Code as well as sexual assault under POCSO Act. Hence, the findings of the learned Additional Sessions Judge that the provisions of section 376 of the Indian Penal Code and sections 3, 4, 7 and 8 of POCSO Act are not attracted, are perverse and cannot be sustained.

6. It is true that the bail can be cancelled when the order is perverse or based on irrelevant material. However, in the instant case, over two years have passed since the date the respondent was released on bail.

During this interregnum period, the charge sheet has been filed. The applicant has also not misused his liberty or interfered with the course of justice during the period he was on bail. Hence, in my considered view, this is not a fit case to exercise powers under section 439(2) of the Criminal Procedure Code and to cancel the bail.

7. It is seen that the learned Judge has directed the applicant to pay Rs.25,000/- to the father of the prosecutrix towards travel expenses. Suffice it to say that such direction is ex-facie illegal and cannot be sustained.

8. Subject to the above, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)