

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.115 OF 2020

Mrs. X ... Applicant

Versus

1. Pralhad s/o Manchak Ambhure
2. The State of Maharashtra ... Respondents

.....

Mr. G. G. Kadam, Advocate for applicant.
Mrs. R. P. Gaur, APP for respondent No.2 – State

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 6th November, 2020

ORDER :

1. Present application has been filed by the original informant – prosecutrix for cancellation of bail granted to present respondent No.1 by learned Additional Sessions Judge, Parbhani on 22-09-2020 in Criminal Miscellaneous Application No.461 of 2020 under Section 439 of the Code of Criminal Procedure. Present respondent No.1 has been booked in Crime No.78 of 2020 registered with Bori Police Station, Dist. Parbhani for the offences punishable under Sections 376(2)(n), 452 and 506 of Indian Penal Code.

2. Heard learned Advocate Mr. G. G. Kadam for applicant and learned APP Mrs. R. P. Gaur for respondent No.2 – State. It is not even necessary to issue

notice to respondent No.1.

3. At the outset, before touching to the submissions, those have been made, it will have to be observed that the bail, which has been granted by the learned Additional Sessions Judge to respondent No.1 is under Section 439 of the Code of Criminal Procedure, which contemplates that every opportunity to investigate the crime was made available to the Investigating Officer. It appears from the submissions on behalf of the learned Advocate for the applicant that the applicant is aggrieved by the observations made by the learned Additional Sessions Judge in his order. Even in respect of that, it will have to be observed that whatever the observations have been made by the learned Additional Sessions Judge are *prima facie* observations and they are not required to be taken into consideration at the time of final disposal of the case. At the time of final disposal of the case, the Court is definitely required to consider the case on merits i.e. on the basis of the evidence that has come on record, the submissions by the parties and the updated ratio in law. Therefore, those observations being *prima facie* observations will not affect the merits of the case. With these initial observations, the submissions are required to be seen.

4. The learned Advocate appearing for the applicant after giving the contents of the FIR submitted that the impugned order is erroneous. The accused has committed serious offence of forceful sexual intercourse. She was

raped by him by putting her into the fear of death. Threats to kill her husband and children was also given. He has captured photographs and then blackmailed her. The report could not be lodged immediately due to the pandemic situation as well as due to the differences in the opinion of the family members. Ultimately, the husband of the applicant has supported her. It becomes a very difficult task for a married lady to survive such situation. Further, it has not been seen that the accused is from the village where the relatives and other neighbours of the prosecutrix are residing and, therefore, possibility of tampering cannot be ruled out. The approach of the Court ought to have been to protect the lady, but the observations that the act appears to be consensual demoralizes her and, therefore, it is necessary to cancel the bail granted to respondent No.1.

5. Learned APP has made available the police papers, so also the Investigating Officer was present. Presence of Investigating Officer was sought taking into consideration the possibility of involvement of the offences under the Information Technology Act, which have not been invoked uptill now. The Investigating Officer has assured that he will give a favourable thought taking into consideration the facts of the case as well as the fact that he has already sent the seized mobile phone to the forensic laboratory and he is awaiting the report. On the said assurance, the presence of the Investigating Officer was discharged.

6. Now, perusal of the contents of the FIR and statements of witnesses would show that they are supporting the prosecution story. The prosecutrix in her FIR states that the first act of alleged rape was committed on 26-04-2020 and she has lodged the report on 08-08-2020. It is her contention that in between also by showing alleged photographs, the accused had committed rape on her. In this context, the learned Additional Sessions Judge has observed that there is delay in lodging the report. Further, taking into consideration the fact that the informant is a married lady, having two children and had not approached the police immediately, it is observed that the case appears *prima facie* to be consensual. At the cost of repetition it can be said that those are the *prima facie* observations and only on the count of those observations, the bail cannot be cancelled. Another fact that the relatives of the informant are residing at Kadsavangi, Tq. Jintur, Dist. Parbhani, it cannot be stated that they would be pressurized. Perusal of their statement would show that whatever they are saying is almost hearsay i.e. when the informant had disclosed the fact to them, then only they came to know. The informant is residing at Aurangabad. The learned Additional Sessions Judge has imposed conditions, while granting bail. Solvent surety has been also taken and, therefore, no case is made out to cancel the bail.

7. In *Myakala Dharmarajam and others etc. Vs. State of Telangana and another*, (2020 CRI. L. J. 1457 : AIROnline 2020 SC 5), it has been observed that,

“the factors are to be considered while granting bail have been considered by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, the certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is any prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.” Therefore, it was not necessary for the learned Judge to go into each and every allegation, consider the evidence that was collected uptill now. Only overview of the evidence collected ought to have been taken.

8. The Hon’ble Supreme Court in ***Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)*** has held that, *“it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out”*. The principles laid down in ***Daulatram Vs. State of Haryana, (1995) 1 SCC 349)*** have been reiterated, those are as follows :-

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The

satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

9. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

10. This Court in *Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)* has observed that, “*when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner.*”

11. Since no error has been committed by the learned Additional Sessions Judge while granting regular bail, care has been taken to impose necessary conditions, so also at the cost of repetition it can be said that the observations are *prima facie* and in view of the abovesaid position of law in respect of cancellation of bail, there is absolutely no need to interfere with the said order. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm