

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.584 OF 2020

Bapusaheb Bhanudas Jadhav = APPELLANT

VERSUS

1. The State of Maharashtra
and others = RESPONDENT/S

Mr.Shaikh Mazhar A.Jahagirdar, Advocate for
Appellant;

Mrs.VS Choudahri,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 10th December, 2020.

PER COURT:-

1. Present appeal has been filed under Section 14A of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act with Section 439(2) of Code of Criminal Procedure, to challenge the order of allowing the bail application filed by the present respondent No.3 – Kailas Sopan Raut, under Section 438 of Code of Criminal Procedure on 01-07-2020 by learned Special Judge / Additional Sessions Judge, Shrirampur, Dist. Ahmednagar in Criminal Misc. App. No.117 of 2020. Present respondent No.3 has been granted bail under Section 439 of Code of Criminal Procedure after he was arrested in connection with Cr. No.1013 of 2020, lodged on the basis of First Information Report by present appellant, with Shrirampur Police Station for the offence punishable under Section 363 of

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Indian Penal Code and Section 3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as SC & ST Act).

2. Heard learned Advocate Shri. M.A. Jahagirdar for appellant – original informant and learned APP Ms. V.S.Choudhary for respondent No. 1-State. After hearing their submissions, this Court is of the opinion that it is not even necessary to issue notice to the respondent No.3 – original accused.

3. It has been submitted on behalf of the appellant that the First Information Report lodged by the appellant was against unknown person. It was alleged that minor daughter of the appellant was kidnapped by unknown person as she went missing around 12.30 p.m. on 08-06-2020. Police arrested respondent No.3, however, shockingly they did not even pray for police custody. Respondent No.3 was therefore taken in judicial custody. Appellant and his family members were not even allowed to meet the daughter nor she was subjected to medical examination. Police are having hands-in-gloves with respondent No.3. Police are alleging that the daughter has lodged a report against the appellant and his brother for forcing her for marriage on 11-06-2020 and, therefore, she had eloped with the accused. It is also contended that she has given it in writing that she had no sexual relations with the accused. These acts are amounting to shielding

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respondent No.3. Without giving any proper opportunity, the learned Special Judge has allowed the application for bail filed by respondent No.3. It amounts to an illegal order, which can not be allowed to sustain. Learned Advocate, therefore, prayed for the cancellation of bail granted to respondent No.3.

4. At the outset, it is to be noted that respondent No.3 was arrested by police in the crime registered on the basis of the report lodged by present appellant. Whether his custody is needed or not would be decided by police and not by the appellant. After the victim was brought to police station, her statement has been recorded. She has categorically stated that there was love affair between her and the accused. She has also stated and lodged the report against present appellant and his brother for compelling her for marriage. It is her statement that since she was being forced, she eloped with respondent No.3. She has also stated that there was no sexual relation between them. She is the best person to say about it. She can not be forced to undergo medical examination on the wish of her father. Her statement under Section 164 of Code of Criminal Procedure is also recorded and she has stated the same things. Now, it appears that the informant, with some motive, as offence under Section 11 of Child Marriage Restraint Act has been registered against him, has filed the present appeal to challenge the order granting bail to respondent No.3. There appears to be no merit in

the present appeal.

5. As regards cancellation of bail is concerned, this Court would like to rely upon certain pronouncements. 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 *Dolat Ram and Ors. 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. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference 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 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."

6. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh and Anr. (2018 (2) SCALE 285)*** are also taken note, which are reflected therein. 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.

7. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, "*When liberty is granted*

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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."

8. No case made out to take away the personal liberty granted to respondent No.3 by cancelling his bail, as contemplated under Section 439(2) of the Code of Criminal Procedure with Section 14A of SC & ST Act. Hence, the appeal stands dismissed.

(SMT. VIBHA KANKANWADI,J.)

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