

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.141 OF 2020

Neha w/o Abhijit Magre

... Applicant

Versus

1. The State of Maharashtra
2. Abhijit s/o Uttam Magre
3. Uttam s/o Budha Magre
4. Sau. Alka w/o Uttam Magre
5. Sau/ Rupali Mahendra Wankhede
6. Mahendra s/o Namdeo Wankhede

... Respondents

.....

Mr. P. B. Patil, Advocate for applicant.

Mr. A. M. Phule, APP for respondent No.1 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-12-2020

ORDER :

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure by the original informant for cancellation of bail granted to respondent No.2 to 6 by learned Additional Sessions Judge, Dhule in Criminal Bail Application No.853 of 2020 on 17-10-2020.

2. Heard learned Advocate Mr. P. B. Patil for applicant and learned APP Mr. A. M. Phule for respondent No.1 – State. It is not even necessary to issue notice to respondent Nos.2 to 6.

3. It has been submitted on behalf of the applicant that the learned Additional Sessions Judge, Dhule has not considered the facts, gravity and the

magnitude of the offence. Marriage of the informant was performed with respondent No.2 on 06-01-2019. Various gold ornaments were given to her as well as respondent No.2 in marriage by her parents. Respondent Nos.3 and 4 are the parents of respondent No.2. Respondent No.5 is the daughter of respondent Nos.3 and 4 and respondent No.6 is the husband of respondent No.5. One more accused, who is the maternal uncle of respondent No.2, was in fact interested in giving his daughter in marriage to respondent No.2, however, that marriage could not take place. With that grudge in mind, he is started instigating respondent Nos.3 and 4. The informant was looked after properly for about 3 to 5 months after the marriage, however, thereafter whenever respondent No.5 used to visit her parents home, she used to instigate her parents and used to harass by using insulting words to the informant. There was demand of Rs.25,00,000/- by the accused persons and on that count, she was harassed. All the details have been given in the FIR and this fact has not been properly considered by the learned Additional Sessions Judge. All the accused persons had assaulted and tried to driven out the informant out of their house on 31-12-2019. For some time, she was in her parental house and tried to resume cohabitation, however, she has not been allowed only on the count that unless amount of Rs.25,00,000/- is given, she will not be taken inside the home. The gold ornaments and other articles have been misappropriated by the accused persons. When the case was made out for the offences under which the FIR has

been registered, each and every fact ought to have been considered by the learned Judge. The remedy of granting anticipatory bail is extraordinary and should be given sparingly, yet, it has been given as routinely. Therefore, it deserves to be rejected. He also submitted that after the bail has been granted, respondent Nos.2 to 6 are giving threats to her.

4. At the outset, it can be seen that while granting anticipatory bail, a detailed order has been passed by the learned Additional Sessions Judge. Apart from taking note of the contents of the FIR and the factual situation, the legal position has also been considered, which has been enumerated by the citations relied on.

5. The facts contended in the FIR would show that she wanted to make case of ill treatment by all the accused persons, misappropriation as well as outraging her modesty by present respondent Nos.3 and 6. Taking into consideration the fact that there is matrimonial dispute, learned Additional Sessions Judge has referred the decision in ***Arnesh Kumar Vs. State of Bihar and Anr. (AIR 2014 SC 2756)***. All the contents have been dealt with and it has observed that those contents are vague under the circumstance that she does not say about snatching of the ornaments. Contrary statements are taken into consideration. Further, as regards offence under Section 354 of Indian Penal Code against respondent No.6 is concerned, it is stated that respondent Nos.5 and 6, being doctors and they are residing at Mumbai, it requires more evidence

to show that on that day respondent No.6 was in Dhule. It has been rightly stated that the custodial interrogation was not necessary for the offence punishable under Section 354 of Indian Penal Code. When the custodial interrogation is not necessary, taking into consideration the contents of the FIR, learned Judge was right in granting anticipatory bail.

6. 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.

7. 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."

8. 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.”

9. 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.*”

10. Since no error has been committed by the learned Additional Sessions Judge while granting anticipatory bail to respondent Nos.2 to 6 and also care has been taken to impose necessary conditions, there is no need to invoke the powers of this Court under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm