

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.151 OF 2020

Ms. X

... Applicant

Versus

1. The State of Maharashtra
2. Vijay s/o Meghraj Khandagale
3. Sanjay s/o Meghraj Khandagale

... Respondents

.....

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicant.
Ms. V. S. Choudhary, APP for respondent No.1 – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14-12-2020

ORDER :

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent Nos.2 and 3.

2. Heard learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for applicant and learned APP Ms. V. S. Choudhary for respondent No.1 – State. It is not even necessary to issue notice to respondent Nos.2 and 3. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

3. Bail has been granted to present respondent Nos.2 and 3 by order dated 25-09-2020 in Bail Petition No.307 of 2020 by learned Additional Sessions

Judge, Newasa, District Ahmednagar. Pre-arrest bail was granted, as they were apprehending their arrest in connection with Crime No.410 of 2020 dated 05-09-2020 registered with Sonai Police Station, Tq. Newasa, Dist. Ahmednagar for the offences punishable under Sections 376(2)(I), 376(2)(j), 354(A), 363, 366 (A), 506 of Indian Penal Code and under Sections 4, 6, 8, 12 and 17 of the Protection of Children from Sexual Ofences Act, 2012 as well as under Section 66(e) of Information Technology Act and under Section 3/25 of Arms Act, which was filed on the basis of the FIR lodged by the present applicant. It has been contended by the applicant that the learned Additional Sessions Judge while granting pre-arrest bail did not consider the facts and allegations in the FIR. Specific role was attributed to respondent Nos.2 and 3 regarding commission of the offence. It has also not considered that the informant – prosecutrix was minor at the time of commission of the crime. Further, respondent No.2 is a journalist and possibility of likely to misuse the liberty has not been considered. The offence was serious and pre-arrest bail ought not to have been granted.

4. Important point to be noted is that the present applicant - prosecutrix had filed application for intervening/assist to APP to the said application. She has put forward all those objections which she is now trying to raise. Perusal of the FIR and the statement under Section 164 of the Code of Criminal Procedure of the present applicant showed that she was making allegations under Section 376 of Indian Penal Code and other acts i.e. especially

the POCSO Act, against main accused Rushikesh. Present respondent No.2 is the father of said Rushikesh and respondent No.2 is his uncle. Taking into consideration the role attributed to the applicant, by giving a reasoned order, the bail application has been granted.

5. 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.

6. 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."

7. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** would show that 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.

8. 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.*”

9. Since no error has been committed by the learned Additional Sessions Judge while granting anticipatory bail to respondent Nos.2 and 3 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