

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.105 OF 2021

Kailash S/o Pandhari Suryawanshi
Age 25 years, Occu:Agriculture,
R/o Dhanorwadi. Tq.Umri
District Nanded

.. APPLICANT

Versus

The State of Maharashtra
Through Police Inspector,
Dharmabad Police Station,
Tq.Dharmabad, Dist.Nanded

.. RESPONDENT

...

Shri S.B.Bhapkar, Advocate for petitioner
Shri P.G.Borade, A.P.P. for respondent State

...

CORAM : MANGESH S. PATIL, J.
DATE : 18.02.2021

ORAL ORDER :-

Heard. With consent of both sides, matter is heard finally.

2] The applicant is facing a charge for the offences punishable under Section 376(2)(i) of I.P.C. and Section 4 of Protection of Children from Sexual Offences Act, 2012. By filing application (Exh.5) in Special Case (POCSO) No.38/2020 he prayed for regular bail under Section 439 of the Cr.P.C. The learned Additional Sessions judge initially allowed the application and granted bail by order dated 11/11/2020. It transpires that soon after passing of the order, he realised that in fact, though it was being tried to be demonstrated that the request for bail was being made afresh after filing of

the charge sheet, the fact that the applicant had already applied for bail before the High Court post filing of the charge sheet but it was rejected was a material fact which was not disclosed while soliciting bail. By the impugned post script order, he concluded that the order of bail was obtained by practising fraud and recalled the order granting bail. It is this order which is under challenge in this application under Section 482 of Cr.P.C.

3] It appears that in the application (Exh.5) *prima facie* though it was not clearly disclosed about the High Court having rejected the application for bail even after filing of the charge sheet, the contents of paragraph no.2 do indicate that the fact was not clearly disclosed but one could have made out that perhaps the applicant was also intending to state that the High Court had rejected his application after the charge sheet.

4] The learned advocate for the applicant would submit that in the teeth of the impugned order the applicant cannot even apply for bail before this Court.

5] Instead of indulging into any scrutiny of the disputed facts, it would be appropriate to allow the applicant to apply for bail afresh before this Court.

6] It is thus ordered that the applicant shall be at liberty to apply for bail afresh before this Court under Section 439 of the Cr.P.C.

7] With this liberty the application is disposed of.

[MANGESH S. PATIL, J.]