

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.70 OF 2021

XYZ w/o Imran Shaikh

Applicant.

Versus

The State of Maharashtra and another.

Respondents

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Mr. Rahul A.Shinde, Advocate for the applicant.

Mr. A.S. Shinde, A.P.P. for respondent No.1.

Mr. R.S.Mubashir Ali Advocate holding for
Mr. V.I. Thole, Advocate for respondent No. 2.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : **24-11-2021**

ORDER :

1. The applicant is original complainant. This application is preferred for cancellation of bail granted to respondent No.2 vide order dated 12.02.2021.

2. Complainant had lodged First Information Report (for short "F.I.R.") vide Crime No. 37/2021 on 27.01.2021 under Sections 376, 509, 452, 323, 504, 506 of the Indian Penal Code (for short, "I.P.C."). It is alleged that the complainant got acquainted with respondent No. 2. They used to talk on cell phone for 5 to 6 months. Accused took her to Paithan. She was taken to lodge and accused had forceful sexual intercourse with her. She was dropped at home.

From 2015 to 2020 she was repeatedly taken to the lodge at Paithan and accused had forceful sexual relationship with her. Whenever complainant refused to join the accused, she was threatened of dire consequences. On several occasions accused had visited her residence and established physical relationship with her. She was assaulted by the accused. On 18.01.2021 accused called her. She refused to join him. On the same day he forcefully entered into the house of complainant. She was abused and assaulted by him. He committed forceful sexual intercourse with the complainant. She was threatened of dire consequences.

3. Respondent No. 2 was arrested on 03.02.2021. He was produced before the Court for remand on 04.02.2021. He preferred application for regular bail before the Sessions Court at Aurangabad. Application was allowed by order dated 12.02.2021 on certain terms and conditions.

4. Learned Advocate for the applicant has submitted that the order granting bail is erroneous. The offence is of serious nature. No reasons were assigned for granting bail. Accused was having criminal background. Accused had subjected the complainant to sexual intercourse under coercion. After bail was granted, accused had threatened complainant for withdrawing complaint.

5. Respondent No.2 filed affidavit and opposed this application. It is submitted that the complainant and accused were in relationship for 7 years. Complainant is married woman having three children. Respondent No. 2 was unmarried till 2019. Thereafter he performed marriage. Both executed affidavits that, both are in relationship. They are residing together by consent. After complainant divorces her husband, they would perform marriage. However, complainant did not obtain divorce from husband. She permitted respondent No. 2 to perform marriage. The incident dated 18.01.2021 is false. Complainant was insisting that he should continue relationship with her. False F.I.R. is lodged.

6. From the tenor of F.I.R. it is apparent that the accused and complainant were in relationship for a long period of time. There were repeated instances of physical relationship. It was a consensual relationship. Learned A.P.P. has submitted that charge-sheet is filed on 20.04.2021. Accused was in custody. Further custody was not necessary. Learned Sessions Judge while allowing the application for bail has observed that, it appears that accused knew victim since 2014. They maintained physical relationship till December 2020. The last incident was of 18.01.2021. It was reported on 27.01.2021. It appears that victim had consented for relations. Custody is not required. No ground is made to cancell

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bail. On completing investigation, charge-sheet is filed. Hence, I pass the following order.

ORDER

ACB No.70 of 2021 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)

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