

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

CRIMINAL APPLICATION NO. 962 OF 2021

Sunil Ramesh Rupwate,
Age : 37 years, Occu. Business,
R/o. Wadekar Galli, Rangar Galli,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

...Applicant

Versus

1. State of Maharashtra
2. Nilima d/o Kailas Thorat,
Age : 27 years, Occu. Service,
R/o. Nagar Palika Hospital, Sinnar,
Tq. Sinner, Dist. Nashik.

...Respondents

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Mr. Joydeep Chatterji, Advocate for the applicant
Mr. S. B. Narwade, APP for respondent / State
Mr. P. P. Dawalkar, Advocate for respondent no. 2

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CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 03rd September, 2021
DATE OF PRONOUNCING THE ORDER : 16th September, 2021

PER COURT : -

1. The applicant (original accused) assails the common order dated 05.04.2021 passed below Exh. 24, 30, 48 and 84 by the learned Additional Sessions Judge, Sangamner in Sessions Case No.54/2018, whereby the bail granted to the applicant has been cancelled at the instance of respondent no. 2 (informant) herein.

2. Shortly stated, the applicant was arrested on 16.09.2018 in connection with Crime bearing FIR No. I-309/2018 registered with Sangamner City Police Station on 16.09.2018 for the offences punishable under Sections 376, 323, 504, 506 of the Indian Penal Code, at the instance of respondent no. 2.

3. On 01.03.2019, the applicant moved an application (Exh.4) in Sessions Case No. 54 of 2018 before the learned Sessions Court and thereby sought regular bail. Respondent No. 2 herein and her mother also filed two affidavits dated 11.03.2019 of their own free will and supported the bail application. Accordingly, the applicant was granted bail subject to conditions that he would not tamper and pressurize respondent no. 2 and the witnesses, that he shall attend each and every date till the end of the trial and that he shall not commit such type of offence.

4. According to learned Counsel for the applicant, the respondent no. 2 herein by moving various applications / affidavits at Exh. 24, 30, 48 and 84 levelled utterly false, baseless, unfounded and absurd allegations against applicant and requested for cancellation of bail. After hearing both the parties, the learned Additional Sessions Judge, allowed the application and thereby cancelled the bail granted to the applicant/accused earlier. Therefore, the present application.

5. Mr. Joydeep Chatterji, learned Counsel for the applicant, took me through all the applications/affidavits i.e. Exh. 24, 30, 48 and 84, one by one and pointed out how the contents of these applications/affidavits are contradictory *vis-a-vis* the FIR and other cases and another FIR filed by the informant u/s 498A, 323, 504, 506 r/w 34 of Indian Penal Code. Even the informant has gone to the extent of accusing her own advocate and also applicant's advocate. According to learned Counsel, the applicant has been on bail since more than two years and the fact that the charge has been framed on 05.07.2019, no purpose would be served by cancelling the bail at this belated stage.

6. Learned Counsel for the applicant lastly submitted that the learned Additional Sessions Judge failed to examine all the applications of the informant in proper perspective and exceeded his jurisdiction while examining the correctness of the order dated 11.03.2019, whereby the applicant was ordered to be released on bail.

7. Mr. S. B. Narwade, learned APP, on the other hand, supports the impugned order and would submit that since the informant was constantly and continuously harassed and pressurized

by the applicant so as to withdraw the criminal case, the learned Additional Sessions Judge was justified in cancelling the bail.

8. Mr. P. P. Dawalkar, learned Counsel for respondent No. 2, also supported the impugned order and would submit that there is sufficient documentary evidence on record in the form of various NC's to show that the accused indeed indulged in criminal intimidation, pressurized informant to withdraw the complaint and thus in a sense jumped the bail conditions. There being no merit in the application, same is liable to be rejected, argued learned Counsel.

9. I would like to discuss all the applications one by one whereby the informant sought cancellation of bail granted to the applicant. It is seen that the first application (Exh.24) was filed on 16.04.2021, second application (Exh. 30) on 21.05.2019, third application (Exh. 48) on 05.08.2019 and fourth and last application on 20.03.2021. I am unable to see any reason as to why the learned trial Court waited till filing of last application and passed order only on 05.04.2021. Be that as it may, let me go through these applications.

10. First application (Exh. 24) first. This application is dated 16.04.2019. Initial part of this application/complaint repeats as to

how she was induced into physical relations which I am not concerned for the purpose of present application. In paragraph 2 thereof, she alleges that under the threat of the life, a consent letter was secured from her which was to be filed in the bail application and accordingly, a bail order dated 11.03.2019 came to be passed and the applicant was released on 13.03.2019. It is quite indigestible that this kind of allegation came to be levelled by her only after more than a month from the date of release of applicant from the Jail. No plausible reasons to that effect are discernible.

11. Paragraph 3 of this application then shows that the applicant and his relatives through the mobile started threatening her for which it appears that she had filed N.C. on 18.03.2019. Then the applicant told her that her naked photographs are still with him and thus pressurized her and without her consent made her to marry him at Alandi on 21.03.2019, which she is not ready to accept. In this context, it is very much relevant to refer here FIR dated 04.07.2020 registered under Sections 498A, 323, 504, 506 r/w 34 IPC. The whole FIR nowhere, *prima facie*, reveals that under the threat of her naked photographs lying with the applicant he compelled her to marry him at Alandi on 21.03.2019. It is, however, alleged in the said paragraph that she was then taken to Flat No. 2, Art Residency, Udyog Bhavan, Sinnar forcibly and under threat from 23.03.2019 to

30.03.2019, exploited her sexually and thereafter from 01.04.2019 after confining her in the said flat, the applicant went away. Somehow she could rescue herself.

12. If the contents of FIR registered u/s 498A, 323,504, 506 are read in proper perspective, then there is no question of sexual exploitation from 23.03.2019 to 30.03.2019 as alleged in the application as also her illegal confinement from 01.04.2019. It is also not made clear how she could free herself from that confinement and when. I say so because this application came to be filed on 16.04.2019. What was she doing upto 16.04.2019 is again nowhere explained nor the application shows that immediately after getting herself released from the confinement she rushed to the police station and lodged the report. Therefore, on the face of it, I do not find merit in the application.

13. Second application (Exh.30) is dated 21.05.2019. It is averred in the said application that while the informant was going to Court to attend the matter, applicant met her in the premises of Sangamner City Police Station and threatened her to withdraw the case. He further allegedly told her that she would not be able to harm him and rather she should withdraw the complaint otherwise she will have to face the dire consequences. He further allegedly told

that all police men are known to him and she should behave as per his dictates otherwise he would kill her.

14. It is interesting to note from the contents of the said application that the applicant / accused indulged in criminal intimation that too in the very premises of Sangamner City Police Station, despite that the informant did not find it apt to straightway approach the police station officer of the concerned Police Station and lodge the complaint. First of all, it is not clear as to why both of them were in the premises of the said Police Station and even if such incident had taken place then she could have very easily informed the conduct of the applicant / accused to the police. No such complaint is forthcoming.

15. Third application (Exh. 48) is dated 05.08.2019. It gives details as to how she came in contact with the applicant / accused, their relations and other things. In para 6, the informant alleges that, on 18.03.2019, she already had lodged the complaint in the form of N.C. dated 18.03.2019 against the applicant and others, which is filed on record, alleging therein that he had rang up on her mobile and also the mobile of her mother and threatened to withdraw the case. The nature of threats are nowhere explained while lodging of that N.C.

16. Coming again to paragraph 6 of the above complaint, she alleges that thereafter the applicant again had come to her village and threatened that he would defame her and also threatened with death. Again no such complaint was lodged. The paragraph further shows that on 21.03.2019 she was forcibly taken to Alandi and was made to perform marriage with the applicant. As far as this part of allegation is concerned, that is already alleged in the application (Exh. 24), which is already discussed by me.

17. In paragraph 7 of the said application, it is alleged that the applicant put his status on his WhatsApp mobile number in an attempt to harass her, however, details for that status are neither forthcoming nor explained by the informant. It is, however, alleged in the said paragraph that the applicant's relatives named therein had threatened her to kill by pouring acid. To this effect, admittedly, NC dated 01.10.2019 was filed with the concerned Police Station against the relatives of the applicant namely, Yogesh Rupwate, Pallavi Rupwate and Mahesh Pawar. The role of applicant is nowhere alleged.

18. The last and fourth application (Exh.84) is dated 20.03.2021 and it is again repetition of earlier application. Before

that, I may note here that the complaint u/s 498A, 323, 504, 506 r/w 34 of the Indian Penal Code dated 04.07.2020 was lodged by the present informant against the applicant and his family members. Surprisingly, in the present application, she alleges that the accused and the police were hand in glove with each other and forcibly got registered from her the said complaint u/s 498A IPC against the present applicant and others. She is not ready to accept this complaint. Not only that, in this application she has accused her advocate as well as the advocate of the applicant and that many a times the applicant had won her advocate. Thus, the contents of the application are not very much encouraging.

19. A disturbing aspect of the informant's case is that all the above noted applications were moved through her personal advocate. These applications, except Exh. 84, bear signature of advocate. Exh.84, which is in the form of affidavit is also, needless to say, is elaborately drafted by Counsel although it does not bear his/her signature. What is, at any rate, pertinent to note is that at no point of time she complained to trial Court that concerned APP is not paying heed or listening to her grievance i.e. alleged threats given by the applicant / accused. It is not her case that as learned APP was reluctant or not interested in filing any application for cancellation of bail, being helpless, she availed the services of private Advocate /

Counsel. Similarly, APP also on his part simply put his signature with remarks “necessary orders” may be passed. All these speak volumes.

20. I am of firm view that the learned trial Court also failed to examine all these applications minutely *vis-à-vis* material on record. Rather, learned trial Court unnecessarily went on to dwell upon how improperly the bail order was secured. This could not have been gone into. All that was necessary was to find out in reality breach of any condition of bail order.

21. For all the aforesaid reasons, having regard to conduct of informant, I do not find merit in the submissions of learned APP and the Counsel for informant. This being so, I am inclined to allow the present application.

22. In view of above, I pass the following order.

ORDER

- i. The application is allowed.
- ii. The impugned order dated 05.04.2021 passed below Exh. 24, 30, 48 and 84 in Sessions Case No. 54/2018 by the learned Additional Sessions Judge, Sangamner, Dist. Ahmednagar, cancelling the bail granted to the applicant is hereby quashed and set aside.

[V. G. BISHT]
JUDGE