

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 133 OF 2021

POURNIMA @ SONI SANTOSH SAVANT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

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Advocate for applicant : Mr. S.B. Ghatol Patil
APP for respondent : Mr. A.V. Deshmukh.
Advocate for respondent No.2 : Mr. N.S. Ghanekar.

CORAM : PRAKASH D. NAIK J.

DATE : 20TH OCTOBER, 2021.

PER COURT:

1] This is an application under Section 439(2) of Cr.PC. preferred by the applicant, who is original complainant in Crime No. 126 of 2021 registered with Pundlik Nagar Police Station, District Aurangabad. The FIR was registered on 26th March, 2021. Subsequently, sections 376, 354B, were added. Subsequently, Sections 3,4,7,8,9(M)(L), 10, 12, 16 and 17 of the POCSO Act were also added.

2] The complainant is the wife of the accused No.1 Santosh Sawant. It is alleged that marriage of the complainant was performed with the accused No.1 on 16th May, 2007. Daughter was born out of the wedlock in 2008 and presently she is aged about 12 years. The complainant's husband had illicit relations with the co-accused Meena.

complainant's husband, Meena and her friend Anna Pan-tapriwala used to visit house of the complainant. She was made to drink liquid and while she was unconscious her husband and Meena used to disrobe her. They used to pour drops of wax of burning candle on her private part. On demand of water, accused applicant used to pass urine in her mouth. She was subjected to harassment. The husband used to put lizard on her person to scare her. The co-accused Anna Pan tapriwala and Meena used to disrobe daughter of the complainant and outrage her modesty by touching her private part. The applicant's husband used to have physical relations with Meena in presence of complainant and daughter. Father-in-law and mother-in-law harassed her. Complainant's husband was suspecting her character and threatening that videos would be made viral.

3] Respondent No.2 was arrested on 28.5.2021. He preferred application for bail before the court of Special Judge at Aurangabad. The said application was allowed and bail was granted to respondent No.2 by order dated 10.6.2021 on certain conditions. The said order is challenged by the complainant/applicant in this proceeding.

4] The learned advocate for the applicant submitted that the offence is of serious nature. The respondent No.2 has been attributed

serious role in the crime. He has committed offences under the POCSO Act. He acted in connivance with accused Nos. 1 and 7 co-accused Meena. He used to visit the house of the complainant and her minor daughter. He was involved in sexual harassment to the complainant as well as her daughter. The respondent No.2 had outraged the modesty of minor daughter. He was involved in bad touch to victim girl. The learned Sessions Judge while granting bail has not taken into consideration seriousness of offences. Bail ought not to have been granted to the respondent No.2. Evidence collected during the investigation was ignored by the Sessions Court. The accused were administering stupefying substance to complainant and sexually assault her.

5] The learned Advocate for the respondent No.2 submitted that the allegations are false. The period of incident has not been mentioned. The allegations made against the respondent are improbable. The complainant was silent for a long period of time. Respondent No.2 was in custody for substantial period of time. FIR has been registered by the complainant in connivance with the police due to the influence of her mother, who is retired Police Officer. The marriage between the complainant and her husband was performed in 2007. No stupefying substance was found in possession of respondent No.2. The

statement of land-lady and the neighbours do not refer to visit of the respondent No.2. Statement of witnesses indicate that complainant had not spoken about harassment by respondent No.2. On completing investigation, charge sheet has been filed. Co-accused Meena was granted anticipatory bail. The statement of complainant and victim daughter are contradictory. They have improved their versions in subsequent statements. Respondent No.2 has been falsely implicated in this case.

6] The learned APP supported the application for cancellation of bail. It is submitted that there is strong evidence against respondent No.2. The offence is serious. The role attributed to respondent No.2 is serious. The respondent No.2 is involved in causing sexual harassment to the minor victim. Bail ought not to have been granted by the court.

7] The learned Sessions Judge, while granting bail to respondent No.2 has observed that from rival submissions, perusal of application, say of police and police papers it appears that the complainant is wife of co-accused Santosh. He was having extra-marital affair with co-accused Meena. It was alleged that Meena and respondent No.2 used to harass the victim and her daughter. However, statements of witnesses show that respondent No.2 had no access to the house of the

victim.

8] I have perused the charge sheet. The respondent No.2 was arrested and granted bail. Investigation was completed against him. Supplementary statement of the complainant was recorded. Statement of minor victim was recorded. Their statements were recorded under section 164 of Cr.P.C. The contention of respondent No.2 is that, he has been falsely implicated because complainant's husband used to visit his pan tapri. The allegations are imaginary. The daughter of complainant was tutored by her.

9] Supplementary statement of the complainant was recorded on 13th May, 2021. There is improvisation in the said statement. The nature of sexual harassment to daughter by the co-accused Meena and Anna (respondent No.2) were made for the first time which were not appearing in the FIR. Statement of the minor victim was recorded on 12th April, 2021 under Section 161 of Cr.Pc. It was stated that four years ago her father brought lady in the house (Meena). She used to visit house in night and assault her mother. Thereafter Anna visited house with her. He used to abuse and assault her mother. This fact is not reflected in statement of complainant. Both had touched her body which was bad touch. She has not specified that co-accused were touching her

chest or private part as stated by complainant. Role attributed to Meena and Anna is not referred by complainant. The period of harassment is not mentioned. Statement of complainant was recorded under section 164 of Cr.P.C. on 26.4.2021. Several allegations are made against husband, father-in-law and mother-in-law. There is improvisation qua role of Meena and Anna. There is no allegation that minor daughter was subjected to sexual harassment by touching her private part by Anna. Statement of minor daughter of complainant was recorded under section 164 of Cr.P.C. In the said statement dated 26.4.2021, there is reference of sexual harassment to her. Those allegations were not reflected in the previous statement. The improvised role is attributed to co-accused Meena.

10] The statement of land-lady and her sons were recorded. Statements of neighbours were also recorded. They have not referred to any quarrel. They have not referred to entry of the co-accused in the premises of the complainant. Statement of Priyanka Chawda dated 8.4.2021 reflects that complainant and her husband were residing on rental basis in her house. She did not hear any quarrels between them. She had not see Meena and Anna entering in house of complainant and quarreling with her. Similar statement of two sons of Priyanka Chawda were recorded. The statements of neighbours Manoj Pokhare and Nalini Shah do not refer to presence/entry of co-accused Meena and Anna in

complainant's house. Nalini Shah has stated that complainant had not disclosed any harassment by Meena and Anna. Complainant had quarrels with husband.

11] From the contents of the statements of witnesses, including land-lady, her sons and friend of the complainant, it can be seen that they have not referred to any harassment caused by the respondent No.2 to the complainant and her daughter. The presence of respondent No.2 was not noted by the witnesses in the premises. The complainant had not disclosed to witness the harassment, if any, caused by respondent No.2 to the complainant and her daughter.

12] Considering these facts, interference in the order granting bail to respondent No.2 is unwarranted. Hence, I pass the following order.

O R D E R

Application for cancellation of bail No. 133 of 2021 is rejected and stands disposed of.

[PRAKASH D. NAIK]
JUDGE

grt/-