

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

931 APPLICATION FOR CANCELLATION OF BAIL NO.148 OF 2020

**PAYAL GHANSHYAM CHAUARIYA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Mr. Mayur Subhedar, holding for Mr. C.V.Dharurkar, Counsel for applicant

Mr. S.B.Narwade, APP for respondent No.1-State

Mr. Chaitanya C.Deshpande, Counsel for respondent No.2

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th OCTOBER, 2021

PER COURT:

1] This is an application for cancellation of bail granted to respondent No.2 vide order dated 14th October, 2020 passed by Special Judge (POCSO Act), Aurangabad.

2] The applicant is the first informant. She has lodged the First Information Report (for short, 'FIR') on 1st October, 2020 with Kranti Chowk Police Station, Dist. Aurangabad City for offences under Sections, 376, 376(2) (n) and 376(2) (j) of Indian Penal Code (for short, 'IPC') and Section 4, 5(j) (2) and 6 of Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

3] The complainant has alleged that she got acquainted with the accused on 15.08.2015. They developed friendship, and fell in of love. On 12.11.2019, she was called by the accused near his house. The accused had established sexual relationship with her. The accused promise that he would perform marriage with her. He had physical relationship with the complainant on several occasions forcefully in his house when the other family members were not in the house. When the complainant insisted for a marriage, he gave false excuses. Subsequently, it was found that the victim had conceived. She informed about it to the accused. She was taken to the house of the sister-in-law of accused. The parents of the accused came to know that, she is pregnant. On 22.09.2020, the relatives of the accused visited the house of sister of victim and she was abused. She was threatened that the pregnancy would be terminated. The accused gave promises of marriage and had forceful sexual relationship with complainant, while she had not completed the age of 18 years.

3] The respondent No.2 preferred an application for bail before the Court of Special Judge, (POCSO ACT), Aurangabad and by order dated 14.10.2020, the said application was allowed on certain terms and conditions.

4] The learned Counsel for the applicant has submitted that the offence is of serious nature. The victim was minor at the time of the

commission of offence. The victim had subjected to sexual relationship under coercion. The accused made false promises of marriage. She was subjected to physical relationship on several occasions. When, it was noticed that the victim was pregnant, the accused has backed out from his promises. The learned Special Judge, did not consider the seriousness of offence and allowed the application for bail. The accused was not entitled for bail under Section 439 of Cr.P.C.

5] Learned APP supported submissions of learned Counsel for the applicant. It is submitted that the accused has subjected the victim for sexual relationship under the pretext of promise of marriage. The consent of the victim is immaterial, since she was minor at the time of offences. Statement of the victim was recorded under Section 164 of Cr.P.C. Statements of other witnesses were recorded. The pregnancy of the victim was terminated and DNA sample was preserved. The accused have committed the offences under Section 376 of IPC as well as POCSO Act. Complaint of threat was filed against the accused under Sections 504 and 506 read with 34 of IPC. On completing investigation, charge-sheet is filed. Report of DNA has been received and the same has been submitted to the concerned Court. The Forensic Report supports the prosecution case.

6] The respondent No.2 was arrested on 1st October, 2020. He preferred an application for bail before the Special Court. The said

application was allowed on certain terms and conditions. While allowing the said application, it was observed that as per prosecution case, there was love affair between the accused and the victim since 15.08.2015. There was physical relationship between them. The offence in question was of 12.11.2019. The FIR was lodged on 01.10.2020. At the time of lodging the FIR, the victim was 18 years old.

7] From the FIR and the other documents, it can be seen that the victim got acquainted with the accused in the year 2015. It is alleged that there was love affair between the victim and the accused. On several occasions, there was physical relationship between them. Although, the victim was minor at the time of the physical relationship, from the factual aspects, it can be seen that she was of the age of understanding. It is also alleged that there was false promise of marriage. Statements of witnesses were recorded. On completing investigation, charge-sheet has been filed. Considering the aforesaid circumstances, no case for cancellation of bail in exercise of powers under Section 439(2) of Cr.P.C. is made out. Hence, I pass the following order.

ORDER

Application for Cancellation of Bail No.148 of 2020 is
rejected and disposed of

(PRAKASH D. NAIK, J.)

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