

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

APPLICATION FOR CANCELLATION OF BAIL NO.150 OF 2020

Prema d/o Shrikant Chavan ... **Applicant**
Age 25 years, Occu: Student,
R/o Swaraj Nagar, Pakhar Sangvi
Tq. & Dist. Latur

VERSUS

1. The State of Maharashtra, ... **Respondentd**
Through Investigating Officer,
in Crime No.291/2020
Ahmedpur Police Station, Dist. Latur
2. Arjun s/o Vaijnath Suryawanshi,
Age 35 years, Occu: Service,
R/o Warwanti, Tq. Ahmedpur,
District Latur.

Mr. P. D. Jarare, Advocate for the applicant,
Mr S. B. Narwade, A.P.P. for the State.
Mr. S.S. Adawale, Advocate for respondent No.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th December, 2021

ORDER:

1. This is an application preferred by applicant (original complainant) invoking section 439(2) of the Code of Criminal Procedure. Respondent No.2 was granted anticipatory bail by the Additional Sessions Judge, Ahmedpur Dist. Court of learned Latur vide order dated 08.10.2020.
2. The case of prosecution is that the informant is aged about 25 years. She had created account on ABP Wedding App. She was acquainted with respondent No.2. Phone call was made by respondent

No. 2 to the applicant stating that he want to marry her. On 14.02.2020, accused took the complainant near Air Port, Barshi Road, Latur and said that he wants to marry her. Accused is serving in Army of Government of India. On 17.03.2020, the complainant received call from accused and she was called at Chakur as he wanted to talk to her about marriage. The informant went to Chakur. She was taken to Lodge. She was assaulted. The accused committed forcible sexual intercourse with her. She was threatened not to disclose the incident to anybody otherwise he would kill her. The informant had insisted for marriage. The accused had suppressed that he was married. The informant came to know that accused is already married having three children. FIR was lodged on 10th September, 2020. Supplementary statement was recorded on 07.10.2020 wherein the informant had explained the delay in lodging the FIR.

3. Respondent No.2 preferred application for anticipatory bail before the Sessions Court, Ahmedpur, Dist. Latur. The application was allowed by order dated 08.10.2020. Learned Judge has referred several judicial pronouncements while allowing the application. It was observed that the informant is 25 years of age. She met the accused near Airport on 14.02.2020. Thereafter, they went to lodge on 17.03.2020. The informant had knowledge about the consequence of the affair. The incident of rape had occurred on 17.03.2020. FIR was lodged on 10.09.2020. There is no explanation of unreasonable delay of five months and 24 days in lodging the FIR. Supplementary statement

of the complainant was recorded on 07.10.2020. In the supplementary statement it was stated that as to avoid defamation and due to Covid pandemic, transport facility was not available and hence there was delay in lodging the FIR. The Court further observed that the accused had preferred application for anticipatory bail on 01.10.2020 and interim relief was granted to him. Thereafter supplementary statement was recorded on 07.10.2020 to give explanation for delay. Whether the prosecutrix is consenting party or not in order to decide the issue trial is required. From the FIR it is seen that the informant had gone to Sayali Lodge in the vehicle of the accused. It was alleged that he was assaulted by the accused and thereafter she was subjected to sexual intercourse. If the accused had used violence and force, the victim would have definitely lodged the FIR immediately. The delay creates doubt about the version of the informant. The accused is serving in Army. His custodial interrogation is not necessary. Nothing would be collected by subjecting him to custody in view of delay of 5 months and 24 days in lodging the FIR.

4. Learned counsel for the applicant submitted that the learned Additional Sessions Judge has primarily granted anticipatory bail to the accused on the ground of delay. Supplementary statement of informant/applicant was recorded in which she has given explanation for delay. Considering the nature of offence, merely on account of the fact that FIR was registered after passage of time, the allegation of rape does not get wiped off. The offence is of serious nature. Accused had

cheated the complainant. In the Wedding profile, the accused has given status that he is unmarried. There is every likelihood that the accused have cheated other victims. The complainant had lodged complaint to the police on 20.08.2020 and 19.10.2020. The complainant was threatened for withdrawing the complaint. The complaint dated 19.10.2020 mentions about the threats issued by the informant for withdrawing the complaint. Profile of the accused discloses that he is unmarried. The accused has deceived the complainant. Sexual intercourse was forcible and not consensual. While allowing the application for anticipatory bail, no conditions were imposed against the accused.

5. Learned Advocate for the applicant relied upon the decision of Supreme Court in the case of Dolat Ram Vs. State of Haryana reported in 1995(1) SCC 349, order passed by this Court in ABA No.474 of 2020 dated 06.03.2020 and order dated 20.02.2020 passed by this Court in ABA No.268 of 2020.

6. Learned APP supported the application for cancellation of bail. It is submitted that the accused had surpressed that he is married person. The intention of cheat was there right from inception. Accused was not entitled for anticipatory bail.

7. Learned Advocate for respondent No.2 submitted that story put up by the informant is false. There is inordinate delay in lodging the FIR. Learned Judge, while allowing the application has passed reasoned

order. The informant was demanding money and since the demand was not fulfilled, FIR was lodged. On completing investigation, charge sheet is filed. Respondent No.2 is serving in Army. Arrest on the basis of false complaint would cause irreparable damage to him.

8. Respondent No.2 has filed affidavit opposing the application for cancellation of bail. In the affidavit, it is stated that in the complaint dated 10.09.2020 it is mentioned that accused met the complainant on 14.02.2020 at Barshi Road near Airport. There is no reference to incident dated 14.02.2020 in letter dated 20.08.2020. In letter dated 20.08.2020, the complainant has projected false story about incident dated 18.02.2020 which is not mentioned in the complaint dated 10.09.2020. Use of criminal force or assault alleged in the complaint dated 10.09.2020 is not mentioned in the letter dated 20.08.2020. Custodial interrogation of respondent No.2 was not necessary.

9. I have perused the impugned order, documents annexed to the application and the charge sheet. From the first information report it can be seen that the applicant and respondent accused came into contact on ABP Wedding App. Respondent No.2 is employed in Army. The complainant met the accused on 14.02.2020. Thereafter she was called by accused on 17.03.2020. The complainant met the accused at Chakur. Thereafter she proceeded with the accused in the vehicle at about 9.30 a.m. and went to lodge situated on the road from Shirustabad to Latur. According to the complainant she was assaulted

and the accused had forceful sexual intercourse with her by removing her garment. Thus, the victim was assaulted and subjected to sexual relationship on 17.03.2021. The FIR has been registered on 10.09.2020 i.e. after a period of more than five months. The FIR does not mention that the accused had suppressed that he was married. The case of complainant is that she was subjected to sexual assault forcefully. The complaint also does not mention that the complainant believing that the accused is unmarried and on his representation she had agreed to perform marriage with him. Learned Additional Sessions Judge, while allowing the application for anticipatory bail by order dated 8th October, 2020 has observed that victim is 25 years of age and she met accused on 14.02.2020. She proceeded to Chakur on 17.03.2020 at 7.30 a.m. and thereafter accompanied the accused to Lodge by vehicle. She has attained sufficient maturity and age of discretion. She had knowledge about the consequence of affair. The court also took note of the fact that the incident of rape had occurred on 17.03.2020 and the FIR was lodged on 10.09.2020. After the accused preferred application for anticipatory bail and interim relief was granted to him on 01.10.2020, supplementary statement of the complainant was recorded on 07.10.2020 and the only explanation which was given is that on account of Covid pandemic and lack of transport she could not lodge the complaint. I do not find any reason to defer with the reasons assigned by the learned Judge while granting anticipatory bail.

10. Learned Counsel for the complainant relied upon the decision as stated herein above. However, the factual aspect of this matter does not warrant custodial interrogation of the applicant. No case is made out for cancellation of bail granted to respondent No.2. Investigation is completed and the charge sheet is filed. Case is pending before the concerned Court. The complainant has alleged that profile of the applicant suggested that he is unmarried person. The complaint, however, does not make reference to the said fact and that she was induced to develop relationship with the accused by suppressing that he is married person or falsely declared that he is unmarried person. Investigation is completed. Medical examination of the victim was conducted. The documents were collected. Spot panchanama was recorded. Supplementary statement of complainant was included in the charge sheet. Statement of the victim was recorded under Section 164 Cr.P.C. No case is made out to set aside the order granting anticipatory bail. Hence, I pass the following order :-

ORDER

Application for Cancellation of Bail No. 150 of 2020 is rejected and disposed of.

(PRAKASH D. NAIK, J.)

JPC