

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 21 OF 2020

Sufiya Maksud Khan	... Applicant
versus	
The State of Maharashtra & Anr.	 Respondents

.....

Mr. Tejas Hilage, for the Applicant.
Smt. A. A. Takalkar, APP for State-Respondent.
Ms. Gargi Joshi h/f. Mr. Kedar J. Patil, for Respondent No.2.

.....

CORAM : SARANG V. KOTWAL, J.
DATE : 08th FEBRUARY, 2021

P.C. :

. This is an application for quashing of the order dated 26th December 2019 passed below Exh.1 in Criminal Bail Application No.321 of 2019 passed by the learned Incharge Additional Judge, Ichalkaranji in the matter pertaining to F.I.R in C.R.No.614/2019 registered with Shivaji Nagar Police Station. The prayer is for taking the applicant in custody. In effect, this is an application for cancellation of bail.

2. Heard Mr. Tejas Hilage, learned Counsel for the

applicant and Smt. A. A. Takalkar, learned APP for the State.

3. Shri Tejas Hilage, the learned Counsel for the applicant-original first informant submitted that on the first occasion learned Sessions Additional Judge, Ichalkaranji vide his Order dated 18th December 2019 passed in Bail Application No.312 of 2019 before him had rejected the applicant's bail application. Thereafter, within a few days another learned Judge who was In-charge Additional Sessions Judge, Ichalkaranji granted bail to him by passing an order dated 26th December 2019 passed in Criminal Bail Application No.321 of 2019.

4. Shri Hilage, submitted that within the period of those two orders, there was no change in circumstance and therefore, the second order granting bail to the applicant should not have been passed by the learned Judge. He submitted that the F.I.R sufficiently makes out a case against the respondent No.2 for denial of bail to him.

5. Learned Counsel for respondent No.2 submitted that the averments made in the F.I.R. themselves show that it was consensual relationship and the order was rightly passed.

6. Learned APP, on instructions, stated that now the chargesheet is already filed on 12th December 2020. The applicant was arrested on 2nd December 2019 and was released on bail pursuant to the order dated 26th December 2019. Subsequently, the chargesheet was filed.

7. I have considered all these submissions. The F.I.R. was lodged by the applicant. She has stated that respondent No.2 was her neighbour. She was knowing him. They were acquainted. On one occasion in May 2018, respondent No.2 called the applicant and told her that he wanted to develop friendship with her. The applicant refused. It is her case that respondent No.2 used to follow her when she used to go to college. It is mentioned in the F.I.R that in July 2018, the applicant asked her to accompany him to a coffee shop. The applicant refused but she was forced to travel with him on his two wheeler. She was taken to a room in the coffee shop. There he expressed his love for her and established physical relations. It is her case that it was against her wish. She has further stated in the F.I.R. that respondent No.2 threatened her that he would cause harm to her family members. The applicant

got scared. Thereafter, subsequently respondent No.2 told the applicant that he had some photographs with him which would cause irreparable harm to her reputation, if made viral. He told her that he would delete them only if she would accompany him. Thereafter, the informant went to different places with the applicant. There again they had their physical relations. This was repeated on another occasion. This time they had gone to a coffee shop. Ultimately, she lodged her F.I.R.

8. The F.I.R. itself shows that on the first occasion when she had accompanied respondent No.2 to a room in a coffee shop, she had not complained to anybody and she had not sought any help from any other person in the coffee shop. This was repeated on two more occasions but even then also she had not made grievance to anybody. The allegations that respondent No.2 had some photographs in his phone will have to be looked into. The chargesheet is already filed. Respondent No.2's handset is already recovered. So far, the Investigation Agency has not found any such photographs. From the chargesheet, it does not show that there were such photographs in the phone of respondent No.2. Thus, it

appears to be a consensual relationship. The Sessions Court, Ichalkaranji while granting bail to the present respondent No.2 had taken into consideration the fact that the prosecutrix was short of 5-6 months of attaining the age of majority. He has observed that it was a consensual relationship and she could know the consequence of her actions. Reasoning given by the learned Judge in granting bail is acceptable.

9. Consideration for cancellation of bail is materially different from consideration for grant of bail. The law is well settled in that behalf. The only submission made before me by the learned Counsel for the applicant is that two different Judges have taken different views and on the second occasion the order was passed within a few days of rejection of first bail applicant. In this context, it can be observed that it was improper on the part of the learned Judge to entertain the second bail application without any change in circumstance. But considering the merits of the case, hardly any fault can be found with his reasoning. By independent consideration of the case also the applicant can be granted bail.

10. In this view of the matter, I am not inclined to cancel

the bail granted to respondent No.2. The chargesheet is already filed. His custody in any case for investigation purposes is not required.

11. The application is therefore, rejected.

(SARANG V. KOTWAL, J.)