

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.193 OF 2021

GANESH SURESHSINGH PARDESHI)...APPLICANT

V/s.

1) THE STATE OF MAHARASHTRA)
)
2) ABC)...RESPONDENT

Mr.Ganesh Gole i/b. Mr.Aarif Ali M. Ali, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Nikhil Pujari, Advocate for the Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 21st OCTOBER 2021
PRONOUNCED ON : 26th OCTOBER 2021

P.C. :

1 The present application has been moved by the
applicant assailing the order cancelling his bail granted in Crime
No.13 of 2020 registered with Police Station Yeola City for

offences punishable under Section 376-D, 107, 212, 506 read with 34 of the Indian Penal Code (IPC).

2 It appears from the record the the present applicant was granted bail on 17th July 2020 by the learned Additional Sessions Judge, Niphad with a direction that the applicant shall not pressurize the victim or any other witness and shall not tamper the evidence. It further appears from record that later on Police Station Yeola City through Dy.S.P, Manmad filed an application against the applicant under Section 439(2) of Code of Criminal Procedure for cancellation of bail granted to him by the learned Additional Sessions Judge, Niphad, on the ground that the present applicant committed breach of the condition of the bail order dated 17th July 2020.

3 It was alleged that the Test Identification Parade of co-accused namely Nana @ Ravindra @ Rajendra Ramdas Diwate was to be conducted on 7th October 2020 and when it came to the knowledge of the applicant-accused, he allegedly

visited the house of the prosecutrix on 6th October 2020, at about 9.00 p.m. and threatened the father of the prosecutrix that if he sent the prosecutrix to Central Jail for Test Identification Parade, he shall suffer serious consequences. Because of the threats, the prosecutrix suffered low blood pressure and was required to be hospitalized. Even N.C.Report bearing No.437 of 2020 came to be registered against the applicant under Section 504 and 506 of the IPC. The learned Additional Sessions Judge after hearing both the parties was pleased to allow the application and cancelled the regular bail granted to the applicant. It is this order which is now assailed in the present bail application.

4 Mr.Ganesh Gole, learned counsel for the applicant, submits that the bail order granted by the learned Additional Sessions Judge has been cancelled arbitrarily and mechanically without applying judicious mind. There was no cogent or overwhelming circumstance or sufficient material to warrant an order of cancellation of bail granted in favour of the applicant. The learned counsel invited my attention to the letter dated 6th

October 2020 addressed by the prosecutrix to the A.P.I., Yeola Police Station, wherein she stated that much time has been passed since the commission of the crime and filing of charge-sheet. Since much time has been passed, she has forgotten the facial features of the accused. She being a woman has no support and also is not keeping well and therefore, she is not in a position to visit the Nashik Central Jail and to participate in the Test Identification Parade. She further pleaded that the Test Identification Parade be not conducted at all. According to the learned counsel the contents of this letter falsifies the whole story of the prosecution including that of the prosecutrix. Further, according to the learned counsel, there is no material on record to show that the applicant was aware of the Test Identification Parade to be carried out on 7th October 2020. The learned counsel even showed his readiness that the applicant will not enter within the jurisdiction of the concerned Police Station till the charge-sheet is filed.

5 Per contra, Mr.H.J.Dedhia, learned APP, on the other hand, opposed the submissions by contending that the applicant visited the house of the prosecutrix a day prior to the Test Identification Parade and extended threats. This led to deterioration of the health of the prosecutrix and she was required to be hospitalized. Since there was breach of condition, the learned Additional Sessions Judge was justified in cancelling the bail granted in favour of the applicant. There being no merit in the application, the same deserves to be rejected.

6 Mr.Nikhil Pujari, learned counsel for the respondent no.2 / prosecutrix, reiterated the same submissions as advanced by the learned APP and would submit that there being no merit in the application, the same is liable to be rejected.

7 First of all, I would like to refer to the letter dated 6th October 2020 written by the prosecutrix to Shri. Yuvraj Aathre, Assistant Police Inspector, Yeola City Police Station. I assume that this letter was forwarded to the said A.P.I. during the day time,

although it does not bear the time of receipt of the said letter. The prosecutrix is very much clear in her mind that because of the passage of time, not only she has fear in her mind about the accused but she also had forgotten their facial features. She was also clear in her mind that as she has no support and is not keeping well, she was not in a position to travel all the way to Nashik Centra Jail and participate in the Test Identification Parade. She, therefore, earnestly requested to cancel the Test Identification Parade. The above letter clearly signifies the state of mind of the prosecutrix that she was not prepared to participate in the Test Identification Parade for a number of reasons assigned in her letter.

8 As against above, it is alleged that on the very day i.e. on 6th October 2020, at about 9 p.m., the applicant visited the house of the prosecutrix and extended threats to her father that if he allowed his daughter to participate in the Test Identification Parade, then he would see them.

9 I have also gone through the N.C.Report No.437 of 2020 filed by the prosecutrix on record. The same appears to have been filed on 7th October 2020 at about 1.20 p.m. Interestingly, the alleged threats were given by the applicant on 6th October 2020 at about 9.00 p.m. Why the N.C.Report came to be lodged so belatedly is nowhere explained by the prosecution. Moreover, there is nothing on record to show that whether the contents of the N.C.Report were indeed verified by the concerned Police Station or not before registering the same.

10 Assuming for the sake of argument that the applicant-accused indulged in extending threats but then there is no cogent or convincing material on record to show that the applicant was knowing that the Test Identification Parade was to be carried out on 7th October 2020 wherein the prosecutrix was to remain present to identify the accused.

11 In my considered opinion, the learned Additional Sessions Judge failed to appreciate all these facts and also the

application in proper perspective leading to the passing of an erroneous order of cancellation of bail. For the aforesaid reasons, I cannot persuade myself to accept the impugned order and rather would like to set aside the same by allowing the present application. Hence the following order :

ORDER

- (i) The application is allowed.
- (ii) The order dated 20th November 2020 passed by the learned Additional Sessions Judge, Niphad, cancelling the bail granted to the applicant Ganesh Sureshsingh Pardeshi qua Crime No.13 of 2020 registered with Police Station Yeola City is set aside.
- (iii) The accused is ordered to be released on bail on his executing PR.Bond in the sum of Rs.30,000/- with one or two solvent sureties in like amount.

(iv) It is further directed that the applicant shall not enter into the village wherein the prosecutrix resides and shall furnish his mobile number and address of residence to the Investigating Officer till the time of filing of charge-sheet.

(v) Bail before the trial Court.

(vi) The application stands disposed off accordingly.

(V. G. BISHT, J.)

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signed by
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