

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

CRIMINAL APPLICATION NO.333 OF 2016

Gayatri Babulal Das

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

.....

Ms.Janaki Ravi i/b. Mr.Subhash Hulyalkar, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent No.1- State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 3, 2021.

P.C. :

This is an application for cancellation of bail granted to respondent no.2, vide order dated 10th February, 2016.

2 Respondent no.2 was arrested in connection with C.R.No.35 of 2016, registered with Oshiwara Police Station, Mumbai, for the offences punishable under Sections 376(2)(N), 354(A) and 420 of Indian Penal Code ("IPC", for short).

3 The case of the complainant is that she was married

RAJESHRI
PRAKASH
AHER
Digitally
signed by
RAJESHRI
PRAKASH
AHER
Date:
2021.08.04
11:21:41
+0530

in 2016, and, on account of differences with her husband, the marriage was dissolved. She got acquainted with the applicant on Facebook, a social networking site. They developed friendship. The accused promised marriage. On 14th September, 2015, the accused met the complainant. There was physical relationship between them from 15th September, 2015 to 16th September, 2015. From 16th October, 2015 to 20th October, 2015, again there was physical relationship. She had conceived. The accused avoided the complainant. Hence, FIR was lodged on 16th January, 2016. Respondent no.2 preferred an application for bail before the Sessions Court at Dindoshi. The said application was allowed vide order dated 10th February, 2016.

4 Learned advocate for the applicant submitted that there has been breach of conditions of bail. Respondent no.2 had intimidated the complainant. Reference is made to the NC complaint filed by the applicant, after respondent no.2 was released on bail. It is submitted that the complaint was forwarded to Senior Inspector of Police against the respondent-accused. Another FIR was registered against respondent no.2, vide C.R.No.142 of 2016, on 14th March, 2016, for the offences punishable under Sections 354, 509 and 323 read with 34 of IPC.

Respondent no.2 was granted bail in the said case vide order dated 2nd May, 2016. Respondent no.2 has not attended the police station, as directed in order dated 2nd May, 2016. Hence, bail granted to him may be cancelled.

5 Learned APP submitted that on completion of investigation, charge-sheet was filed against respondent no.2. The case is pending before the concerned Court. The matter is due for framing of charge on 10th August, 2021.

6 From the tenor of the FIR dated 16th January, 2016, it is apparent that the accused and the complainant were in relationship, which was consensual nature. Bail was granted by order dated 10th February, 2016. Period of about 5 years has lapsed. The charge-sheet is filed against the accused thereafter. For breach of conditions, if any, the applicant did not prefer an application for cancellation of bail before the same Court. In any event those complaints are of 2016. The learned judge has taken into consideration the factual aspects while granting bail. In the impugned order it was observed that the accused was younger in age than the victim. The victim was 39 years old. There was physical relationship between them. In the FIR there is no

utterance that under the misconception of facts or under any promise, the accused has committed rape. The investigation is over. Both had physical relations and were mature enough to know the consequence of that. In the subsequent FIR lodged by the applicant, respondent no.2 was granted bail by the learned Sessions Judge vide order dated 2nd May, 2016. NC complaints lodged in 2016 and 2018. Investigation was over. The case is pending before the concerned Court for framing charge. Considering these aspects, no case is made out to interfere in the impugned order granting bail.

:: ORDER ::

- (i) Criminal Application No.333 of 2016, is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)