

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

CRIMINAL APPLICATION NO.506 OF 2017

'XYZ' minor through her natural
guardian and father-

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Ghansham Jadhav for the Applicant.

Mr. Kuldeep Patil i/b. Mr. Prashant S. Hagare for Respondent No.2.

Mr. P.H. Gaikwad, APP for Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th NOVEMBER, 2021.

P.C.:-

This is an application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail granted vide order dated 19/06/2017 passed by the learned Additional Sessions Judge-I, Baramati in Bail Application No.337 of 2017.

2. Heard Mr. Ghansham Jadhav, learned counsel for the Applicant, Mr. P.H. Gaikwad, learned APP for Respondent-No.1-State and Mr. Kuldeep Patil, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. Pursuant to the FIR lodged by the prosecutrix, crime was registered against Respondent No.2 (hereinafter referred to as accused) at Baramati City Police Station for offences punishable under Sections 376 and 506 r/w. 34 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The prosecutrix, who is 15 years old and a child within the meaning of Section 2(d) of the POCSO Act, had alleged that on 17/06/2016 the accused had forcible sexual intercourse with her and had threatened her not to disclose the incident to anyone. Subsequently, she was having pain in her abdomen and she had missed her periods. When she had told the accused about the same, he disowned any responsibility. The prosecutrix thereafter reported the incident to her parents. She was taken to the Doctor and it was disclosed that she was pregnant. It was only thereafter that the prosecutrix lodged the FIR against the accused.

4. The accused was arrested on 20/04/2017. He filed a bail application being Criminal Bail Application No.241 of 2017, which was dismissed on merits by learned Additional Sessions Judge, Baramati vide order dated 16/05/2017. While dismissing the said application, the learned Judge took note of the fact that the prosecutrix was a minor and that the Applicant had sexual intercourse with her. Learned Judge

also observed that medical evidence corroborates the statement of the prosecutrix. Learned Judge had further observed that the accused had threatened the prosecutrix and under the circumstances there was possibility of the accused pressurising the witnesses.

5. The records reveal that within one month of the dismissal of the previous bail application the accused filed another bail application being Criminal Bail Application No.337 of 2017. A perusal of the said bail application reveals that the accused had not specified any change in circumstances justifying filing of the second bail application. Despite which the same Judge i.e. Additional Sessions Judge, Baramati, allowed the subsequent bail application solely on the ground that the prosecutrix had no objection to release the accused and that it was stated on behalf of the accused that the prosecutrix was residing with his family members and that they were taking care of her.

6. It is well settled that even though there is a room for filing a subsequent bail application, such application can be entertained when there is change in circumstances. In the instant case, as noted earlier the accused has not spelt out any change in circumstance justifying the filing of the second application. It is also pertinent to note that the prosecutrix was not made a party in the said bail application. No notice

was issued to her and she was not heard before passing the said order. The statement made in the bail order that the family members of the prosecutrix have no objection to release the accused on bail is probably based on the affidavit filed by the mother of the prosecutrix during the pendency of the first bail application. The same Judge had not considered the said affidavit and had rejected the first bail application and hence the said affidavit could not have been considered while granting bail in subsequent application.

7. Furthermore, the application does not state that the prosecutrix was residing with the accused and or that family members of the accused were taking care of her. On the contrary, it is specifically stated in the ground 3 that the accused and the family of the prosecutrix are in inimical terms and it was further alleged that false case has been registered against the accused. Hence, it is not known as to on what basis the learned Judge has recorded that the prosecutrix is residing with the family of the accused and that they were taking care of her.

8. Mr. Kuldeep Patil, learned counsel for the accused fairly concedes that the prosecutrix was not residing with the accused and that family members of the accused had not taken care of her. The

statement made on behalf of the accused was apparently a false statement. The order of bail dated 19/06/2017 is totally a perverse order and is based on a false statement made on behalf of the accused. Such an order cannot be sustained. Hence, in my considered view this is a fit case for cancellation bail.

9. Under the circumstances, the application is allowed. Bail granted to Respondent No.2-accused vide order dated 19/06/2017 in Criminal Bail Application No.337 of 2017 is cancelled. Respondent No.2-accused is directed to surrender before the Trial Court within a period of two weeks.

10. At this stage, Mr. Kuldeep Patil, learned counsel for the Applicant, under instructions states that an amount of Rs.5,00,000/- was deposited by Respondent No.2-accused to show his bonafide and that the said amount be refunded to the accused. Amount so deposited by the accused be refunded to him within a period of two weeks after the accused surrenders before the Court.

(SMT. ANUJA PRABHUDESSAI, J.)