

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

CRIMINAL APPLICATION NO. 581 OF 2017

Chhitaraji Dhanaram Nogiya ..Applicant

v/s.

Sagar Sawaram Tungaria & Ors. ..Respondent/s

Mr. Shyamrishi Pathak for the Applicant .

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

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 14th OCTOBER, 2021.**

P.C.

1. This is an application under Section 439 (2) of Cr.P.C. for cancellation of bail granted to the Respondent Nos.1 to 4 vide order dated 10.08.2017 passed by the learned Special Judge in Bail Application No.491 of 2017.

2. Mr. Pathak, learned Counsel for the Applicant states that he has been engaged today and hence is unable to advance arguments. This is an application filed in the year 2017. On 21.6.2021 the Applicant was not present nor represented by any

Advocate, despite which this Court had adjourned the matter to 15.9.2021. On 15.9.2021, the case was adjourned at the request of the learned Counsel for the applicant. The parties were put to notice that since the Application was of the year 2017, no further adjournment would be granted, despite which time is sought by the Counsel for the Applicant on the ground that he was unable to go through the records and make submissions. I am not inclined to adjourn the matter on such ground, particularly when the Applicant was put to notice that no further adjournment would be granted.

3. The records reveal that on 17.3.2017, the victim had left the house and she had not returned. The Complainant was aware that the victim was friendly with Respondent No.1. The phone of the Applicant/Respondent no.1 was switched off and hence the complainant suspected that the Respondent No.1 had kidnapped his daughter. He therefore lodge the FIR, pursuant to which crime was registered against the Respondent No.1 and Respondent Nos.2, 3 and 4 for offences under Section 376 of IPC and Section, 4, 6 and 8 of POCSO Act.

4. The statement of the victim reveals that she was in love with the Respondent No.1 and that she had left the house and stayed with him and that they had physical relationship with each other.

5. The learned Judge while releasing the Respondent No.1 on bail observed that the victim had left the house and gone with Respondent No.1 on her own. The learned Judge further observed that the presence of Respondent No.1 was no longer required for interrogation. The Respondent No.2 was released on bail vide order dated 5.8.2017 in BA/452/2017. Respondent Nos.3 and 4, were released on bail vide order dated 10.8.2017 in BA/491/2017, on the ground that there was no prima facie material to show their involvement in the said crime. The order of bail cannot be termed as perverse order.

6. Learned APP states that the charge sheet in respect of the said crime has been filed on 19.11.2019. The charge has been framed and the witness summons has been issued and the case is pending trial. There is nothing on record to indicate that the

Respondents have misused the liberty and/or thwarted the cause of justice. Hence, in my considered view, no case is made out for cancellation of bail. Hence the Application is dismissed.

PRASANNA P
SALGAONKAR

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(ANUJA PRABHUDESSAI, J.)