

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPLN] NO. 67/2021.

Prachi Siddharth Rangari.

-VERSUS-

1. Munni Maqsood Pathan and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms. N.S. Gill, Advocate for the Applicant.
Shri A.C. Shende, Advocate for Non-applicant
no.1/accused.
Shri I.J. Damle, APP. for Non-applicant No.2 – State.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 15, 2021.

Heard.

2. This is an application seeking cancellation of regular bail in terms of Section 439[2] of the Code of Criminal Procedure. This application is filed by one of the victim of the crime.

3. Non-applicant no.1/accused was arrested in connection with a Crime No. 330/2021 registered with Ajani Police Station for the offence punishable under Sections 370-A, 372, 376[2][j], 376[3] of the Indian Penal Code, Sections 3, 4, 5 and 7 of the

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Immoral Traffic (Prevention) Act and Sections 4, 8 and 17 of the Protection of Children from Sexual Offences Act. After facing custodial interrogation, the accused was sent to jail. In turn she applied for regular bail in Misc. Criminal Application No.2394/2021 before the Sessions Court. After hearing both sides, the learned Sessions Judge has granted bail vide its order dated 05.08.2021, which is impugned herein.

4. The learned Counsel appearing for the applicant has assailed the order on both counts i.e. on merits, as well as on the ground of breach of bail conditions. It is submitted that though the offence was of serious nature, the trial Court in disregard to the seriousness and gravity of the offence, granted bail within 20 days from the date of arrest.

5. According to the applicant, the trial Court has not dealt with the factual aspect while deciding the bail application. Secondly, it is argued that the accused has not attended the police station, as directed by the trial court. Moreover, the accused had tried to contact the prosecution witness in violation of the bail conditions.

6. This application is resisted by the accused

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by filing reply as well as by making oral submissions. It is contended that the learned trial Court after considering the reply filed by the prosecution and hearing both sides, has rightly exercised its judicial discretion in granting bail. The impugned order specifically says that the investigation is complete and custodial interrogation is not necessary. Moreover, there is no possibility of accused fleeing from justice, hence, bail was granted, which needs no interference.

7. It is the prosecution case that on receipt of secret information, the police had raided on a tenament from where the accused was allegedly running a brothel. Two minor victims were rescued from the place of incident, and therefore, the report. No doubt, the trial Court has granted bail before filing of the charge sheet, however, that cannot by itself be a ground for cancellation of bail. Though the bail was granted within 20 days from the arrest, however, it depends upon the facts and circumstances of each case. The impugned order speaks that as per reply filed by the prosecutor, the investigation is almost complete and custodial interrogation is not necessary. It means that the trial Court was mindful of the stage

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of investigation and the aspect of need of custodial interrogation.

8. Though it is stated that the accused has not attended the concerned police station, however, the said fact is denied by submitting that though she attended police station, the police did not took cognizance. It reveals from the impugned order that it was one of the bail condition that the applicant-accused shall attend the concerned police station on specified days till the filing of the charge sheet. Admittedly, investigation is complete and charge sheet has been filed on 14.09.2021. Pertinent to note that the police have not applied to this Court for cancellation of bail on account of non-attendance, meaning thereby, her presence in the process of investigation was not felt necessary as charge sheet is filed.

9. So far as the aspect of tampering is concerned, according to the applicant, the accused is trying to contact one of the rescued girl namely Arviya, who is housed in Child Care Home and is under custody of Child Welfare Committee. In this respect, the State in its reply contended that on 13.08.2021,

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the accused visited the premises of safety home to meet the victim Arviya. Statement of investigating officer discloses that the accused was seen in the vicinity of safety home along with her daughter. It requires to be noted that the rescued girl, minor Arviya, was grand-daughter of accused. It reveals from the statement that the accused went to the concerned place along with her daughter i.e. mother of the victim. Even if it is assumed that the accused went to the said place, however, the fact cannot be ignored that she was accompanied with mother of the victim. Undeniably, the victim was in the custody of Child Welfare Committee, therefore, in absence of any reliable material it cannot be said that the accused met the rescued girl for the purpose of tampering. The applicant is another rescued victim, who had not alleged that the accused tried to contact or pressurize her.

10. It is a settled law that the bail once granted should not be cancelled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial. The parameters for grant of bail and

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cancellation of bail are quite different and distinct. Unless there are special circumstances which would directly relate to or would hamper the smooth process of fair trial, generally bail should not be cancelled. True, the trial Court has not dealt with the factual aspect in detail, however, that cannot be a ground for rejection. It is not the case that the trial Court has granted bail for irrelevant considerations. It reveals from the impugned order that the trial Court has perused the say of the prosecution as well as heard both sides. On the basis of facts, the trial Court has formed an opinion that there is no need for custodial interrogation.

11. The learned Counsel for the applicant has relied on some decisions to impress that in case heinous offence like trafficking, the Court shall seriously deal with bail application. There cannot be any debate on the said proposition, but, again it depends on the facts of each case to decide whether the accused deserves for grant of bail or otherwise.

12. Already investigation is complete and charge sheet has been filed. Though one antecedent was brought to the notice, however, it is quite old i.e.

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of the year 2014. There is no overwhelming material to arrive on a conclusion that the accused has tried to tamper the prosecution witness. No special circumstances are brought to overturn judicial discretion already exercised by the trial Court. In view of that, no case is made out for cancellation of bail, hence application stands rejected.

13. While parting with the order, it is made clear that in case of instance of tampering noted in future, the State is at liberty to apply for cancellation of bail.

JUDGE

Rgd.