

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APPLN) NO. 55 OF 2020

(Lavi Anjuraj vs. State of Maharashtra and another)

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

Court's or Judge's Orders.

Mr. S. V. Sirpurkar, Advocate for applicant.
Mr. A. R. Chutke, APP for respondent No.1.
Mr. D. M. Dixit, Advocate for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 17/08/2021

Heard learned counsel for the applicant.

2. This is an application seeking cancellation of bail under Section 439(2) of the Cr.PC. The contention being that in the facts and circumstances of the present case and in the absence of compliance with the mandate of judgment of this Court in the case of **Arjun Kishanrao Malge vs. State of Maharashtra and others, 2021 SCC On Line Bom 551**, bail could not have been granted by the Sessions Court. Another aspect which is highlighted is that on the 9th day of registration of the FIR, the Sessions Court granted bail in the present matter, on which

day the statement under Section 164 of the Cr.P.C. was being recorded before the Magistrate.

3. This Court has perused the order dated 29/10/2020, passed by the Sessions Court granting bail to the respondent No.2. The Sessions Court has taken into consideration the backdrop of the report lodged against the respondent No.2. It is an admitted position that the allegation against the respondent No.2 is that he indulged in activities leading to offences under the Protection of Children from Sexual Offence Act, 2012. The crucial aspect of the matter is that the alleged victim in the present case is the step daughter of respondent No.2. The sexual assaults allegedly took place between 04/04/2016 and 30/06/2017. Admittedly, the report leading to registration of the FIR was lodged on 20th October, 2020. This aspect was taken into consideration by the Sessions Court while granting bail.

4. The admitted position in the present case appears to be that the mother of the victim and the respondent No.2 got married and it was the second marriage for the mother of the victim. The husband and wife developed matrimonial discord despite the fact that there was a child from the said wedlock. The lady along with two children i.e. victim from her

first marriage and the second child from the marriage with respondent No.2, left the matrimonial house and after a gap of about three years from the dates when the sexual assaults had allegedly taken place, caused lodging of the report leading to registration of the FIR.

5. This Court is of the opinion that the facts in the present case are telling and that they have been taken into consideration by the Sessions Court in a proper manner while granting bail. The delay in lodging the report, in the backdrop of the matrimonial discord between the parties are relevant factors, correctly taken into consideration by the Sessions Court while granting bail. The grievance of the applicant is not that the respondent No.2 in any manner violated the conditions of the bail. Insofar as substantially challenging the order of granting bail to the respondent No.2 is concerned, particularly by relying upon the said judgment in the case of **Arjun Kishanrao Malge vs. State of Maharashtra** (supra), this Court is of the opinion that only because the position of law clarified in the said judgment was allegedly not followed to the hilt in the present case, cannot be a ground to interfere with the order granting bail. The considerations for grant of bail,

rejection of bail and cancellation of bail are obviously distinct and in the opinion of this Court, no case is made out for cancellation of bail. Application is dismissed.

JUDGE