

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL NO.5 OF 2022

**XYZ
VERSUS
AJAY RAJU BHALERAO AND ANOTHER**

Mr.H.P. Jadhav, Advocate for the applicant.

Ms.Vaishali Patil – Jadhav, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 21.03.2022**

PC :-

01. Present application has been filed by the original informant to challenge the bail granted to respondent No.1 by the learned Additional Sessions Judge, Jalgaon in Cri. Bail Application No.731 of 2021 by order dated 24.09.2021, whereby the application under section 439 of the Cr.PC. came to be allowed.

02. Heard Mr.H.P. Patil, learned Advocate for the applicant and Ms.Vaishali Patil – Jadhav, learned APP for the respondent/State.

03. It is to be noted that the informant-applicant is a girl of 19 years of age and she lodged report on 04.08.2021 for the offence punishable under

section 376 of the Indian Penal Code, which later on turned out to be an offence under section 376 (2)(n) of the IPC and section 3,4,5(l) of the Protection of Children from Sexual Offences Act. It is stated that the occurrence of the offence is from 01.04.2017 to 04.08.2021. That means she intended to say that the offence was committed since she was minor. In the FIR itself it is stated that she fell in love with respondent No.1 in 2017, who was residing in her neighbourhood. She states that in rainy season of 2017 they had met in a field adjacent to their house and at that time respondent No.1 had told that he is married, however, he does not like his wife. There are no love as well as physical relations between them. He would get divorce from her and then would marry the informant and at that time they had sexual intercourse. She says that thereafter many times there used to be sexual intercourse between them and each time it is stated that respondent No.1 had given her promise to marry. It is then stated that he became pregnant from him and suddenly started bleeding on 04.08.2021. When she was taken to Civil Hospital, according to her, she gave birth to a son at about 07.00 a.m. on 04.08.2021 and then she lodged report. At the outset it is to be noted that the bail application that was granted under section 439 of the Cr.P.C., after the entire evidence was collected after the arrest of the accused.

From the FIR it can be seen that though when first acts were stated to be when she was minor, yet after year 2020 when she attained majority, still she continued illicit relations or physical relations with the accused, though she was knowing that he is already married and ultimately lodged report on 04.08.2021. Learned Additional Sessions Judge/Special Judge under POCSO Act has taken note of the fact that when the victim had knowledge about marital status of the accused, yet she had given consent for sexual relations with him, then she appears to be a consenting party. The statement was also made before the learned Special Judge on behalf of the accused that the accused is not denying paternity of the child. Therefore, under this circumstance, when she appears to be a consenting party, at this prima facie stage, then there was justifiable ground for the learned Sessions Judge to exercise discretion while granting bail under section 439 of the Cr.P.C. Necessary conditions have been imposed. Therefore, there is no reason to use exceptional powers under sections 439 (2) of the Cr.P.C.

04. The application stands rejected.

[SMT. VIBHA KANKANWADI, J.]