

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 15 OF 2022

X.Y.Z. .. Applicant

Versus

1. Popat s/o. Mhatardeo Funde
Age 50 years, Occu. Agri.,
R/o. Alhanwadi, Taluka Pathardi,
District Ahmednagar
2. The State of Maharashtra
Through Department of Home Affairs .. Respondents

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Mr. Vilas P. Sawant, Advocate holding for Mr. H. T. Gaikwad,
Advocate for Applicant
Mr. R. G. Hange & Mr. A. R. Hange, Advocates for Respondent no.1
Ms. Vaishali Patil Jadhav, A.P.P. for Respondent no. 2 - State

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of Reserving the Order :
04-04-2022**

**Date of Pronouncement the Order :
09-06-2022**

ORDER :-

Present application has been filed by the original informant, who is the mother of the victim, under Section 439(2) of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C.") to challenge the order of grant of bail to respondent no. 1 in Criminal Miscellaneous Application No. 1884 of 2021 passed by learned Additional

Sessions Judge, Ahmednagar, on 14.12.2021, thereby granting the anticipatory bail under Section 438 of the Cr.P.C.

2. Heard Mr. Sawant holding for Mr. H. T. Gaikwad, learned Advocate for the applicant, Mr. Hange, learned Advocate for respondent no.1 and Mrs. Vaishali Patil Jadhav, learned A.P.P. for respondent no. 2 – State.

3. As aforesaid the First Information Report (FIR) was lodged by mother of the victim, the victim was then aged 10 years on the date of the FIR. The FIR vide C.R.No. 892 of 2021 has been lodged in the Pathardi Police Station on 19.11.2021 for the offences punishable under Section 354 of the Indian Penal Code and Sections 12, 7, 8 of the Protection of Children from Sexual Offences Act, 2021. It is in respect of the incident alleged to have taken place on 16.11.2021 at about 2.00 p.m. It has been alleged that the informant alongwith the victim were in their field. The informant was giving water to the onion crop in the field. She asked the victim to see where the she-goat belonging to them has gone. While searching, the victim went towards the field of respondent no.1. The victim returned after about 15 to 20 minutes and behind her, one Ganesh Dilip Gavane and Ashok Ajinath Kardie, cousin brother-in-law of the informant came. Ganesh Gavhane told the informant that when he was standing

nearby the field of Shivnath Funde, by getting down from his tractor, he found respondent no. 1 was trying to do obscene act with the victim. The victim had also told as to what happened with her to the informant and then the offence has been lodged about the said act by the informant. It is tried to be stated that the husband of the informant had gone out of village and had returned only on 19.11.2021, therefore, there is delay in lodging the FIR. Whether the said delay is fatal to the prosecution case or not would be decided by the trial Court. However, when respondent no.1 had filed application under Section 438 of the Cr.P.C., after taking note of the contents of the FIR, it was observed by the learned Special Judge that there is enmity between the two families i.e. informant's family and family of the accused and then taking into consideration the nature of the allegations, delay in lodging the FIR, contradictory statements and the say of Investigating Officer, custodial interrogation is not necessary, therefore, application came to be granted.

4. No doubt, the order passed by the learned Special Judge / Additional Sessions Judge appears to be cryptic, it could have been elaborate. There are parameters set out by the Honourable Apex Court as well as this Court in the catena of Judgments as to how an application under Section 438 of the Cr.P.C. should be

considered, what are the factors those are required to be noted and reflected in the order. It is expected that every order that will be passed by the Court of law, should be a reasoned order. Cryptic orders cannot come in the category of reasoned orders. The Court cannot, when the investigation is still going on, consider the enmity between the two families. The learned Special Judge ought to have avoided the use of word "Admittedly". This word is oftenly misused even by the Judges under the Indian Evidence Act. What amounts to an admission has been elaborated under Sections 17 to 31 of the Indian Evidence Act and in those circumstances only the use of the word "Admittedly" would be justifiable. When the case is at very primary stage, there should not be use of word "Admittedly" and unless another person admits a fact then only such word will have to be used. But, when the order is cryptic, whether this Court should use the powers under Section 439(2) of the Cr.P.C. is a question ? It can be seen that the investigation is now complete and chargesheet has been filed on 01.02.2022. That means, investigation could be completed even without taking the accused-respondent no.1 in custody. Further, the facts of the case disclose that it was an attempt by respondent no.1 to commit rape on the victim. Under such circumstances, when the custodial interrogation was not required, learned Additional Sessions Judge / Special Judge was justified in

using discretion in favour of the accused. He has imposed necessary conditions. Therefore, this is not a fit case where the bail granted to respondent no.1 should be cancelled. Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

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