

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

APPLICATION FOR CANCELLATION OF BAIL NO.21 OF 2022

Manisha Balasaheb Ballal

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Govind Janardhan Ghode

...RESPONDENTS

...
Mr.Yogesh H. Jadhav Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent No.1 - State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 8th MARCH, 2022

ORDER :

1. Present Application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of pre-arrest bail granted by the learned Additional Sessions Judge, Aurangabad in Criminal Bail Application No.2321 of 2021 on 5th January 2022 in favour of respondent No.2.

2. It is not even necessary to issue notice to respondent No.2 taking into consideration the contents and grounds mentioned in the application.

3. Present applicant – original informant lodged the First Information Report on 23rd December 2021 vide Crime No.485 of 2021 for the offence punishable under Sections 406, 420 of the Indian Penal Code against respondent No.2. It has been contended by her that respondent No.2 is related to her cousin aunt and they had met each other in 2016. Thereafter her parents and family members had put proposal of marriage of informant with respondent No.2, but then it was decided that they should complete their education and then they should think about marriage. In 2017 informant had taken admission for M.A. and was residing in hostel. Since there was consent for the marriage proposal, she was on talking terms with respondent No.2. Thereafter, due to Corona the hostel got closed, she along with her mother and respondent No.2 started residing at Parvati Nagar in a rented premises. She herself states that as there were talks about marriage, she and respondent No.2 were staying as husband and wife and she has stated that it was live-in-relationship. They stayed there till June 2020 and thereafter

from July 2020 to January 2021 they were residing at another premises in Sion Nagar on rent. Thereafter, when there were talks about fixing marriage date, then respondent No.2 told that his sister is yet to marry and also that the house is yet to be fully constructed and therefore they should wait for some days. Thereafter respondent No.2 also told that since he has no job, informant's family members should give him dowry of Rs.20,00,000/-. Informant's relatives refused and then respondent No.2 started avoiding the marriage. Thereafter, the informant came to know that when respondent No.2 was living in relationship with her, he has already performed marriage with another girl on 28th May 2021 and therefore, she states that she has been cheated.

4. Respondent No.2 had filed application for anticipatory bail and the learned Additional Sessions Judge, Aurangabad allowed the same on 5th January 2022, by imposing certain conditions. Now, the informant wants to get this order cancelled on the ground that the facts have not been considered properly, so also when respondent No.2 was staying with her, he has committed forcible sexual intercourse with her by making false promise to marry and therefore, even offence under Section 376 (2) (f) of

the Indian Penal Code is attracted. She was threatened to kill, so also was abused and therefore, non-cognizable offence vide N.C.R. No.47 of 2022 has been lodged under Section 504, 506 of the Indian Penal Code. That threat was given on behalf of respondent No.2 for taking back the offence which has been registered at her behest. Respondent No.2 is using pressurizing tactics and therefore, he has committed breach of the terms of the bail.

5. At the outset it is to be noted that when the contents of the First Information Report are considered, in the said contents itself it has been stated by the informant that she and respondent No.1 were living as husband and wife in live-in-relationship, then it has to be presumed that with her own consent she would have had the sexual intercourse with respondent No.2. From the contents of the First Information as they are, the same are not disclosing the offence under Section 376 (2) (f) of the Indian Penal Code. It appears to be an after thought attempt. Further, it is also to be noted that how the mother of the informant would have allowed her daughter to stay with respondent No.2 when the marriage was not performed. Therefore, everything would have been with consent

and now when the relationship has been broken, the informant wants to see that the accused is arrested. The facts are in fact, not disclosing prima facie offence under Section 406 of the Indian Penal Code. For those allegations which are at present forming part of the First Information Report, custodial interrogation was not necessary and therefore, the learned Additional Sessions Judge was justified in allowing the application. The liberty so granted to respondent No.2, need not be taken away for some flimsy grounds. Necessary conditions have also been imposed on respondent No.2 by the concerned Court and therefore, if there is any kind of breach of terms then she should approach the concerned Court first and not directly to the High Court.

6. There is no merit in the present application and it deserves to be rejected. Accordingly the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]