

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

CRIMINAL WRIT PETITION NO.314 OF 2022

Swapnil @ Komal Jagannath Patil ... Petitioner

Versus

The State of Maharashtra
and another ... Respondents

....
Mr. M.V. Salunke, Advocate for the Applicants
Mr. S.P. Deshmukh, APP for Respondent No.1/State
Mr. M.M. Subhedar, Advocate for Respondent No.2
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 JULY, 2022

PER COURT:-

. Heard finally with consent of both the sides.

2. The petitioner has challenged the order of cancellation of his bail passed by the Additional Sessions Judge, Jalgaon in Criminal M.A. No. 190 of 2021.

3. It is necessary to have a brief survey on the facts, which may help to decide this petition.

4. Respondent No.2 - XYZ (victim) lodged the F.I.R. with Bhadgaon Police Station making various allegations against

the present petitioner including sexual assault. On that basis crime no.115 of 2021 came to be registered at Bhadgaon Police Station for the offences punishable under Sections 376, 376(2)(i)(n), 354(D)(1), 506 of the Indian Penal Code and Sections 3 and 4 of The Protection of Children from Sexual Offences (POCSO) Act, 2012. The petitioner came to be arrested in above said crime on 27.05.2021. The petitioner had applied for bail. The learned Additional Sessions Judge, Jalgaon was pleased to grant bail to the present petitioner, however, on certain conditions vide order dated 12.08.2021 in criminal bail application No.616 of 2021. Accordingly, the petitioner furnished the bail and he was released from the jail on 14.08.2021. The investigating officer has completed the investigation of the above said crime and on 12.07.2021 the charge sheet came to be filed.

5. The victim/respondent No.2 moved an application before the Sessions Judge at Jalgaon for cancellation of bail of the petitioner by taking aid under Section 439(2) of the Code of Criminal Procedure in view of breach of the certain conditions imposed by the Sessions Court. The learned Additional Sessions Judge, after hearing the learned counsel for the victim and the learned counsel for the present

petitioner/accused, was pleased to cancel the bail granted earlier in favour of the petitioner on account of breach of conditions. The petitioner was directed to surrender before the Sessions Court on or before 05.03.2022.

6. Feeling aggrieved by the above said order of cancellation of bail passed by the learned Additional Sessions Judge at Jalgaon, the petitioner/accused has approached this Court. This court has protected the petitioner, by granting interim relief.

7. Heard Mr. M.V. Salunke, learned counsel for the petitioner, Mr. M.M. Subhedar, learned counsel for respondent No.2 and Mr. S.P. Deshmukh, learned APP for the respondent No.1/State.

8. The factual matrix described above is not in dispute. The whole controversy is centred around with the order of cancellation of bail passed by the learned Additional Sessions Judge, Jalgaon.

9. Mr. M.V. Salunke, learned counsel for the petitioner invited my attention to the NC report filed by the victim with Bhadgaon Police Station, which is the foundation for

cancellation of bail. He pointed out that the alleged incident of giving threats to the victim, breaking the glass of window etc had taken place on 15.08.2021 about 21.00 hours and NC report came to be registered with Bhadgaon Police Station on 27.08.2021. He submitted that there is inordinate delay of 13 days in filing the NC report, which speaks that the foundation of the victim's case for cancellation of bail is itself seriously under the clouds. He further invited my attention to the various NC reports filed against the father and brother of the petitioner. He submitted that at the relevant point of time, the petitioner was not at Bhadgaon but he was at his working place Surat. It is a concocted story put up by the victim with an oblique motive for cancellation of the bail of the petitioner and keep him behind the bars. He submitted that the bail granted by the Court cannot be cancelled unless there are strong circumstances against the petitioner/accused. He has relied upon the citation in case of *Dolat Ram Vs. State of Haryana* reported in *1994 (3) Crimes (SC) 1013*.

10. By taking help of the above said citation, Mr. Salunke, learned counsel for the petitioner urged that the impugned order of cancellation of bail passed by the Additional Sessions

Judge, Jalgaon may be quashed and set aside and the liberty granted to the petitioner may be restored.

11. Per contra, Mr. Subhedar, learned counsel for respondent No.2 /victim also invited my attention to the various NC reports (5 in numbers) as well as reply filed on behalf of the respondent. He pointed out that it is not a single incident. There are in all five incidents, which indicate that the petitioner, his father and brother are continuously threatening to the victim since lodging of the F.I.R. The victim has been continuously under threats at the hands of the petitioner and his family members. He invited my attention to the reply filed by the victim, more particularly, page No.51, wherein a chart is given regarding NC reports filed with Bhadgaon Police Station (5 in numbers). He submitted that it is not enough, the victim has also filed a private complaint with the Judicial Magistrate, First Class at Bhadgaon vide RCC No.89 of 2021, which has strengthened the case of cancellation of bail. He submitted that the petitioner has breached the terms and conditions imposed by the Sessions Court while releasing him on bail and misused his liberty, and therefore, the learned

Additional Sessions Judge has rightly cancelled the bail. No interference is called for.

12. Mr. Deshmukh, learned APP for respondent No.1/State also supported the impugned order passed by the Additional Sessions Judge at Jalgaon.

13. Section 439 (2) of the Code of Criminal Procedure empowers the Court to cancel the bail. There cannot be any debate about the authority of the court to cancel the bail. The Apex Court has laid down various guidelines under what circumstances the bail granted to the accused can be cancelled. The cancellation of bail relates to the liberty of the accused and his liberty can be taken away only under such compelling circumstances.

14. Mr. Salunke, learned counsel for the petitioner has invited my attention to the citation in case of ***Dolat Ram Vs. State of Haryana*** (supra), wherein the Hon'ble Supreme Court has held as under:

“Rejection of bail in a non bailable case and cancellation of bail already granted, must be considered on different basis. For cancellation of bail already granted, there must be very

cogent and overwhelming circumstances, specially when there is interference or attempt to interfere with the due course of administration of justice or abuse of the concession granted to the accused. However, bail once granted should not be conceited mechanically. The High Court overlooked the principles necessary for consideration before ordering cancellation of bail already granted. Judgment of the High Court set aside.”

15. As pointed out earlier, one NC report is registered against the petitioner vide NC No.776 of 2021 dated 27.08.2021, which is the foundation for cancellation of bail. It is true that there are four NC reports, which have been filed against the father and brother of the petitioner as shown in the reply affidavit referred above.

16. It is pointed out that the alleged incident of threatening the victim, breaking the glass of window etc. alleged to have taken place on 15.08.2021 and the NC report seems to have been filed by the victim with Bhadgaon Police Station 27.08.2021, after causing delay of about 13 days. This delay of 13 days plays a crucial role. If such alleged incident had taken place, which relates to the threatening of the

victim and her family members, why such inordinate delay has occurred.

17. The NC report, item No.5, page 32, nowhere indicates any explanation about the same. It is somehow not acceptable to a common and prudent person. The next point is that the learned Additional Sessions Judge, Jalgaon was pleased to grant bail to the petitioner on 12.08.2021 and after completing all the formalities for furnishing bail, the petitioner came to be released from the jail on 14.08.2021 and very next day, the alleged incident was taken place, which again appears to be somehow not acceptable to a common and prudent man. It is difficult to digest that on the very next day after coming out from jail after furnishing bail, such act on the part of the petitioner to tamper with the prosecution witness, more particularly, prosecutrix/victim.

18. True, it is that there are other NC reports (4 in numbers) and the victim has already taken the resort by filing a private complaint to that effect. Except one NC report as referred above, there is no material against the petitioner for cancellation of bail. That NC report, as discussed above, appears to be somehow seriously under the clouds. Under

these circumstances, it is difficult to accept that NC report which is a foundation for cancellation of bail.

18. It is true that various conditions have been imposed by the Additional Sessions Judge while enlarging the petitioner on bail and certainly, the petitioner/accused is required to obey those conditions in a letter and spirit. It is interesting to note that there is no report from the investigating officer focusing light that the present petitioner/accused is involved in the act of tampering with the prosecution witness and evidence and the police officers have received information to that effect. Under these circumstances, only one NC report lodged against the petitioner is not sufficient material to cancel his bail. I am not in agreement with the reasons assigned by the Additional Sessions Judge, Jalgaon while passing the impugned order. The bail granted earlier can not be cancelled in a mechanical manner without considering supervening circumstances. There are no cogent and overwhelming circumstances. The impugned order of cancellation of bail passed by the Additional Sessions Judge is liable to be quashed and set aside, and the liberty granted in favour of the petitioner must be restored. Hence the following order.

ORDER

- (i) The petition is hereby allowed.
- (ii) The impugned order passed in Cri.M.A. No. 190 of 2021 by the learned Additional Sessions Judge, Jalgaon dated 21.02.2022 is hereby quashed and set aside.
- (iii) The liberty of the petitioner is hereby restored.
- (iv) Inform to concerned court accordingly.
- (v) The petition is disposed of accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane