

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.74 OF 2021

Tayyab Qureshi s/o Jainul Aabedin Qureshi ... Applicant

Versus

1. Taslim Begum Qureshi w/o Tayyab Qureshi

2. The State of Maharashtra ... Respondent

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Mr. G. B. Kadlag, Advocate for applicant.

Mr. A. P. Nikam and Mr. N. Z. Siddiqui, Advocate for applicant No.1.

Mr. V. M. Kagne, APP for the respondent No.2 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26.02.2022

ORDER :-

. Present applicant is the original informant who is seeking cancellation of bail granted to respondent No.1, who is first wife. The applicant had filed FIR vide Crime No.377 of 2020 registered with City Chowk Police Station, Dist. Aurangabad for the offences punishable under Sections 380, 406 of Indian Penal Code. This Court finally granted her bail application under Section 438 of the Code of Criminal Procedure on 18.12.2020. Prior to that on 04.03.2020, interim protection was granted to her and the conditions were imposed that she should attend the concerned Police Station as and when called by the Investigating Officer and cooperate with the investigation and the

second condition was that she shall not tamper with the evidence or influence the witnesses. On the same conditions, the interim order was confirmed by this Court on 18.12.2020.

2. Heard learned Advocate Mr. G. B. Kadlag for the applicant, learned Advocate Mr. A. P. Nikam and Mr. N. Z. Siddiqui for respondent No.1 and learned APP Mr. V. M. Kagne for the respondent – State. In order to cut short, it can be seen that all of them have made submissions in support of their respective contentions.

3. At the outset, it can be said that there are many cases between the informant and respondent No.1. As aforesaid, the respondent No.1 is the wife of applicant. In the FIR itself, he has disclosed that he has second wife, who is residing at different place. He had also filed Crime No.345 of 2019 with the same Police Station for the offences punishable under Sections 328, 323, 504 read with Section 34 of Indian Penal Code against respondent No.1 and others. Thereafter, it appears that respondent No.1 had filed Crime No.347 of 2019 against the applicant for the offences punishable under Sections 328, 506 of Indian Penal Code. The respondent No.1 filed Crime No.1018 of 2019 for the offences punishable under Sections 323, 498-A, 506, 328 of Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the applicant,

brother-in-law, second wife etc. Now, the applicant submits that respondent No.1 and her family members have not stopped, but one Wasim Akhtar had lodged Crime No.2508 of 2019 with Sahibabad Police Station at Gaziabad, (Uttar Pradesh) for the offences punishable under Sections 342, 324, 325, 504 of Indian Penal Code. In spite of all these things when respondent No.1 has been released on anticipatory bail, she and her father and brother are still threatening the applicant and he has, therefore, lodged non-cognizable complaint. Since no cognizance was taken by the police, he filed application before the learned Judicial Magistrate First Class, Aurangabad for exercising powers under Section 156(3) of the Code of Criminal Procedure. According to the applicant, respondent No.1 is continuously torturing him and misusing the liberty and, therefore, her bail deserves to be cancelled.

4. The respondent No.1 has filed affidavit-in-reply and denied all the allegations regarding threat and torture. It is then stated that the police, after making due investigation, have filed report under Section 169 of the Code of Criminal Procedure in respect of Crime No.345 of 2019. Therefore, whatever reason has been given for cancellation of bail is false.

5. Since the history of the litigation has been taken, we can say that the husband and wife have reached to such a relations that nobody want

to take up the path of settlement. Now, we are concerned only with Crime No.377 of 2019 which was filed under Sections 380, 406 of Indian Penal Code. In this FIR, it was contended by the applicant – informant that he was released from Harsul Jail on 19.10.2019 and, thereafter, he went to the house of his second wife. Thereafter, on 29.10.2019, he went to his own house situated at Lotakaranja. It was learned by him that respondent No.1 and his son has left the house and nobody was knowing where they have gone. According to him, he took search of the key of the flat and it was given by his son Shahid. After opening the flat, he came to know that his golden chain, watch, mobile handset and cash has been stolen. He has stated that son Shahid had told him that respondent No.1 had taken certain articles and amount and had handed over the keys of the flat and cupboard to him. Taking into consideration the contents of the FIR as well as the statement of witnesses, this Court had opined that the allegations in the FIR show that the applicant in the bail application i.e. present respondent No.1 was in possession of the flat which was lawful and the ornaments were also in her possession. Informant had not stated that those ornaments and articles were belonging to him and, therefore, rather question mark was raised as to whether ingredients of offence under Sections 380 and 406 of Indian Penal Code can be said to have been made out from the

contents of the FIR. One cannot commit theft of his own article, nor he can then misappropriate the said article which belongs to him. The respondent No.1, being wife, was in possession of the said flat and from 30.09.2019 to 19.10.2019, the applicant-informant was either in custody of police or custody of Magistrate. He was released on 19.10.2019. That means even till that date, when he went to the house i.e. on 19.10.2019, the respondent No.1 can be said to be the lawful possessor of the property. What has been stated is that 2½ Tola gold chain, Titan company watch and sim card as well as mobile handset, blank cheques were stolen. This Court has also noted that the police had not come with the case and had not made investigation in respect of those cheques. The applicant is not coming with the case that respondent No.1 has misused those cheques and she has withdrawn the amount. Therefore, if she was in lawful possession of the articles, it cannot be said to be completing the ingredients of Section 380 or 406 of Indian Penal Code. Therefore, by exercising discretion this Court had granted the bail.

6. It has been alleged that still the respondent No.1 is harassing the applicant and he had filed non-cognizable report. He also states that he had filed application under Section 156(3) of the Code of Criminal Procedure, however, he has not produced on record whether any further

action has been taken on the basis of the complaint application filed by him by the learned Magistrate. As on today, therefore, no proceedings are pending against respondent No.1 which are required to be investigated as such. Liberty when granted cannot be taken away merely by asking and, therefore, the case is not made out for cancellation of bail as contemplated under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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