

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

**APPLICATION FOR CANCELLATION OF BAIL
NO.78 OF 2021
IN
BAIL APPLICATION NO.310 OF 2018**

The State of Maharashtra

...APPLICANT

VERSUS

Harshal Deepak Kalbhor

...RESPONDENT

...
Mr.B.V. Virdhe, APP for Applicant.
Mr.S.P. Salgar Advocate h/f. Mr. N.V. Gaware Advocate
for Respondent.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 4th MARCH, 2022

ORDER :

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure by the prosecution for cancellation of the bail granted to respondent by this Court in Bail Application No.310 of 2018 on 19th April 2018, when he was arrested for the offence punishable under Sections 354-D, 327, 504, 506 read with Section 34 of the Indian Penal Code as also

for the offence punishable under Section 12 read with Section 11 of the Prevention of Children from Sexual Offences Act by Kotwali Police Station, District-Ahmednagar in connection with Crime No.505 of 2017.

2. Heard learned APP Mr. Virdhe for the applicant – State and learned Advocate Mr. Salgar holding for learned Advocate Mr. Gaware for the respondent.

3. It has been vehemently submitted by learned APP Mr. Virdhe that this Court had imposed following conditions while granting regular bail to the present respondent in Bail Application No.310 of 2018:-

“A] He shall leave Ahmednagar city immediately and shall not enter into the limits of Municipal Corporation of Ahmednagar till conclusion of the trial except for attending dates during trial.

B] He shall not try to contact the prosecutrix or witnesses.

C] He shall not tamper the evidence and shall not repeat the crime.”

4. Learned APP submits that the respondent has violated the aforesaid conditions. In view of the order passed by this Court on 11th February 2022, affidavit has been filed along with the copies of the First Information Reports those are registered against the present respondent. Learned APP further submits that those documents would show that after the order was passed by this Court on 19th April 2018 in Bail Application No.310 of 2018, in all four cognizable offences were registered against the respondent with same Police Station i.e. Kotwali Police Station, Ahmednagar and three non-cognizable complaints were also registered and therefore the bail granted by this Court deserves to be cancelled for the violation of the terms.

5. Learned Advocate Mr. Salgar holding for learned Advocate Mr. Gaware submits that the Special Case, on the basis of the First Information Report bearing Crime No.505 of 2017, is on the verge of the completion as regards the recording of evidence is concerned. Testimony of the Investigating Officer is also recorded on the last date and next date is 7th March 2022 for recording evidence of witness. All the merits of the case were considered by this Court and the bail was granted. The allegations were not requiring the physical custody of the respondent and now also his physical custody is not required.

Learned counsel further submits that as regards one of the offence i.e. Crime No.362 of 2018 registered with Kotwali Police Station, Ahmednagar for the offence punishable under Sections 354-A, 452, 504, 506 of the Indian Penal Code, dated 28th May 2018, the respondent has been acquitted by the competent Court. Learned Advocate for the respondent prayed for rejection of the application.

6. As aforesaid, the conditions those were imposed by this Court while releasing the respondent on bail are reproduced earlier and therefore, it can be said that the protection of the witnesses was the factor that was considered by this Court while imposing those conditions. Though as per the submissions on behalf of the respondent, in Crime No.362 of 2018 dated 28th May 2018 respondent has been now acquitted, but the fact stands that in view of condition No. C] that, respondent shall not tamper with the evidence and shall not repeat the crime, yet the crime that was alleged in that First Information Report under Section 354-A of the Indian Penal Code, which is similar to the crime in the present matter. It can be said that, the said ground was then available for the prosecution for seeking cancellation of the bail granted to respondent on 19th April 2018 till respondent was acquitted. However, the prosecution has not taken swift

action. But as regards the other offences are concerned, it is to be noted that respondent is involved in Crime No.1655 of 2019 registered with Kotwali Police Station, Ahmednagar for the offence punishable under Sections 323, 353, 504, 506 read with Section 34 of the Indian Penal Code and the contents of the First Information Report would show that the alleged incident had taken place at Chanakya Chowk, which was within the jurisdiction of Kotwali Police Station, Ahmednagar when the respondent's entry on the day of offence was banned within the limits of Municipal Corporation, Ahmednagar.

7. Crime No.6258 of 2020 has been registered with same Police Station on 21st December 2020 for the offence punishable under Section 188 of the Indian Penal Code. Thus, the respondent was found within the jurisdiction of Ahmednagar city on 21st December 2020. Further Crime No.36 of 2021 has been registered with same Police Station on 9th January 2021 for the offence punishable under Sections 324, 341 read with Section 34 of the Indian Penal Code. It is on the basis of the First Information Report lodged by one Matin Ismail Shaikh and the place of occurrence is Ganpati Mandir, Bhosale Akhada, Burudgaon road, but it appears that the said spot does not come within Ahmednagar city municipal corporation limits, but then

still registration of that First Information Report would be covered under Clause C] i.e. respondent shall not repeat the crime.

8. As regards the non-cognizable complaints are concerned, this Court does not want to give much importance to the same taking into consideration the fact that the prosecution has not given any importance to those complaints and also there is no explanation by API Vivek Pawar as to why permission under Section 155(2) of the Code of Criminal Procedure for investigating those allegations was not sought by his own Police Station.

9. Nutshell would be that at-least two crimes have been registered within the jurisdiction of Ahmednagar city municipal corporation limits against the respondent, which indicate that he has violated the terms imposed by this Court while releasing him on bail under Section 439 of the Code of Criminal Procedure. The progress in the Special Case will not give any advantage to the respondent and that cannot be the point for consideration in favour of the respondent while deciding this application when it is purely on the basis of breach of the terms. Under such

circumstances, the Application deserves to be allowed. Hence, the following order:-

ORDER

- i) Application stands allowed.
- ii) The bail granted to the respondent vide order dated 19th April 2018 by this Court in Bail Application No.310 of 2018 stands cancelled.
- iii) Respondent, who was on bail, his bail bonds stand cancelled and he is directed to surrender before the Superintendent of Jail, District Jail, Ahmednagar on or before 5.00 p.m. on 8th March 2022.
- iv) If respondent fails to surrender, the learned Additional Sessions Judge, Ahmednagar to issue non-bailable warrant against the respondent, whose bail is now cancelled.
- v) Registrar (Judicial) to forward a copy of this order to the learned Additional Sessions Judge, Ahmednagar.

[SMT. VIBHA KANKANWADI , J.]