

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

APPLICATION FOR CANCELLATION OF BAIL NO.68 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.69 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.70 OF 2022

XYZ

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Bakal Vishal P

APP for Respondent-State : Mr. S. B. Narwade.

Adv. for Respondent No.2 : Mr. Shaikh M. N. h/f Mr. Kazi S. S.

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CORAM : S. G. MEHARE, J.

DATE : 25.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant and Learned counsel for the respondents/accused.
2. The learned Special Judge (POCSO Act), Aurangabad, granted bail to the respondents in Crime No.31 of 2022, registered with Police Station City Chowk, Aurangabad, under different orders.
3. The caretaker of the applicant/the cousin of the victim has filed these applications for cancellation of bail on similar grounds.

4. The learned counsel for the applicant would vehemently argue that the victim was 12 years old. He went to the office of the Commissioner and narrated the incident. The Commissioner called the caretaker of the victim to his office, and then the report was lodged. The accused were administering the sedatives to the victim and his father. The respondents have grabbed huge immovable property of the father of the victim. The father of the victim never married any woman. But one of the accused, a maidservant, claimed herself as the wife of the victim's father. He has an apprehension of danger at the hands of the respondents. The learned Judge has not given the reasons while granting the bail. There was ample material on record. However, the learned Special Judge has ignored such significant material. The impugned orders are against the law and facts. Hence, the orders granting bail deserve to be cancelled.

5. Per contra, the learned counsel for the respondents has vehemently argued that the learned Judge, while granting the bail, has considered each and every piece of evidence produced before it. The caretaker of the victim was also heard. The impugned order reflects the prosecution case. There was a civil dispute between the applicant and the respondents. The Court

has also discussed the arguments advanced by the respective learned counsels, including the contents of the applications opposing the bail. The grounds raised for cancellation of bail are not legal and appropriate. Once the liberty has been granted, it cannot be called back for the dissatisfaction of the person injured or affected. There is no substance in the applications. Hence, all the applications may be dismissed.

6. In addition to the above, the learned counsel for the respondents has argued that the same Court has rejected the application for cancellation of bail filed against accused Bharti on the ground of breach of terms and conditions of bail.

7. The law is well settled about the principle to be borne in mind while cancelling the bail already granted. The Hon'ble Supreme Court in the case of *Dolat Ram and others Vs. State of Haryana (1995) 1 SCC 349*, has held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of concession granted to the accused in any manner. The satisfaction of the Court, on the

basis of material placed on the record, of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. It has been clarified that these instances are merely illustrative and not exhaustive, and one such ground for cancellation of bail would be where ignoring the material or evidence on record, a perverse order granting bail is passed in a heinous crime, that too without giving any reasons. The interest of justice would also require that such a perverse order be set aside and bail be cancelled. In other words, it may be stated that the order granting bail without considering the material on record, perverse and arbitrary, may be cancelled.

8. The impugned order explicitly reveals that the Court granting bail has discussed the case of the prosecution, the arguments advanced by the respective counsels, including the contents of the application of the victim opposing bail. In the last part of the order, the Court also discussed the dispute between the parties about the property. The Court did not record the findings on that issue as it was a matter to be considered on merit. The apprehension expressed by the applicant of danger has also been taken care of.

9. Perusal of the impugned order also reveals that the Court granting bail did not ignore the material and evidence produced before it. The learned Court, while granting bail, has correctly considered the factum of inordinate delay in lodging the report. The law is also well settled that while granting the bail, Court has to express the *prima facie* opinion and not evaluate the evidence as if it is a trial. The possibility of giving criminal colour to the civil dispute, as happening routinely in society, can also not be ruled out. In short, after going through the impugned orders, the Court is of the view that the orders granting bail have not been passed, ignoring the material and evidence, or it is perverse or arbitrary. There were no overwhelming circumstances to cancel the bail. The Court is not satisfied with the grounds raised by the applicant to claim the cancellation of bail.

10. As far as the right to seek the cancellation of bail for breach of condition is concerned, the applicant approached the competent Court. The said Court was pleased to decline the cancellation of bails on the said grounds.

11. For the above reasons, the Court does not find a substance in the applications. Hence, all the applications stand dismissed.

(S. G. MEHARE, J.)

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