

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 APPLICATION FOR CANCELLATION OF BAIL NO.146 OF 2021

MANJUSHA PRAMOD SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Shah Mohit S.
APP for Respondent No.1-State : Mr. N. T. Bhagat
Advocate for Respondent No.2 : Mr. Harshal Prakash Randhir

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 15-02-2022.

ORDER :

1. Present application has been filed under Section 439 (2) of Cr.P.C. for cancellation of the bail granted by learned Additional Sessions Judge, Amalner, District Jalgaon, to respondent No.2 in Criminal Bail Application No.101 of 2021 filed under Section 438 of Cr.P.C.
2. On the basis of the FIR lodged by present applicant, offence vide Crime No.154 of 2021 was registered with Parola Police Station, District Jalgaon, for the offences punishable under section 498A, 313, 323, 406, 504, 506 r.w. 34 of IPC. It appears to be the outcome of the private complaint filed by the present applicant vide Criminal Application No.57 of 2021 and order dated 03-04-2021 by learned Judicial Magistrate, Parola to investigate the case under Section 156 (3) of Cr.P.C.

3. Heard learned Advocate Mr. Shah Mohit S. for applicant, learned APP Mr. N. T. Bhagat for respondent No.1-State, and learned Advocate Mr. Harshal Prakash Randhir for respondent No.2. In order to cut short, it is stated that all of them have made submissions in support of their respective contentions.

4. Perusal of the FIR would show that the applicant got married to respondent No.2 on 01-02-2019, respondents No.2 and 3 are the parents-in-law and respondents No.4 to 18 are the near relatives of the husband. The applicant/informant has made allegations about cruelty, misappropriation, intentional insult and intentional intimidation by the accused persons with their common intention. Apart from that, she has also made allegations that there was causing of abortion due to the acts of respondent No.2. As regards the offence under Section 498A, 504, 506, 406 of IPC are concerned, the case could have been governed under the directions of Hon'ble Apex Court under *Arnesh Kumar vs State Of Bihar reported in 2014 (8) SCC 273*. The only question was in respect of offence under Section 313 of IPC. In respect of that section, the contents of the FIR show that she was pressurised by the accused No.1 to 5 when she was at Tamaswadi and insisted that she should

sign on divorce papers, to accompany them to Pune for abortion, and while going, they gave threat to kill. She further states that respondent No.2 gave kicks on her stomach, as a result of which, she was feeling pains and the said incident had taken place on 28-02-2021 around 11.00 p.m. She sustained pains till 03-03-2021. But thereafter due to bleeding, she went to Dr. Sheetal Misar. She after examining her, asked her to go to the Manshanti Hospital run by Dr. U. M. Patil at Jalgaon. It was diagnosed there that due to the kicks, there is abortion.

5. Thereafter, respondent No.2 and co-accused had filed said criminal bail application for anticipatory bail and it came to be allowed on 17-05-2021. It has been observed that the police papers those were produced before the learned Court, was in the form of photocopies from the case diary and there was nothing to suggest that the abortion was due to violence. It was also not reported immediately to the police, and therefore, it prompted the learned Judge to grant anticipatory bail to respondent No.2. Now the applicant is objecting to the said reasons stating that the seriousness of the offence, and the manner in which it has been committed, was not considered. The applicant has produced a

reference letter which appears to have been written by Dr. Sheetal Misar to Dr. U. M. Patil that does not show the history of assault. Applicant was examined by Dr. Misar on 03-03-2021. Another document is in the form of prescription by Dr. Udaysing M. Patil of Manshanti Prasuti Gruha, wherein the history appears to have been given of assault with bleeding P/V, but no date has been mentioned. As aforesaid, as per the FIR the alleged incident of violence had taken place at about 11.00 p.m. on 28-02-2022 and the diagnosed that it has led to abortion, though not in clear terms, may be stated to have been given on 03-03-2021. That means, there is substance in what the learned Additional Sessions Judge had stated that there is immediate lodging of report by the applicant. When the prosecution had not produced proper documents before the learned Judge in order to connect the alleged act to the allegations for the offence punishable under Section 313 of IPC, the concerned Judge was justified in granting anticipatory bail. No fault can be found in the same. It cannot be the ground to curtail the liberty that has been granted to respondent No.2. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-