

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

CRIMINAL WRIT PETITION NO. 1069 OF 2022

Shaikh Habib Shaikh Maheboob

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. Mahesh Kalidas Bhosale, Advocate for the Petitioner.

Mr. Y. G. Gujarathi, APP for Respondent No. 1.

Mr. Pawan A. Salve, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 05th DECEMBER, 2022.

P C. :-

1. This is the writ petition challenging an order passed by the learned Additional Sessions Judge, Aurangabad dated 17.02.2022 in Criminal Misc. Application No. 241/2021 cancelling bail granted to the present petitioner for breach of condition.

2. The petitioner was granted bail by order dated 21.06.2021 by the learned Additional Sessions Judge, Aurangabad. The present petitioner is being prosecuted for the offence punishable under Section 376 (2) (n) of the Indian Penal Code (for short "I.P.C.") on the basis of the report lodged by the victim in Washi Police Station dated 13.05.2021 which was transferred to Mukundwadi Police Station, Aurangabad and

the offence was registered there as C.R. No. 243/2021. There are various allegations that he has committed forcible intercourse upon the victim and he has also clicked up photographs under the pretext of marriage and under that pretext again he has committed sexual intercourse against the wish of the victim. He continued the same even after the victim got married and settled down in life. In connection with that, the petitioner had filed an application. He was granted anticipatory bail with conditions which are as under.

“1. Application is allowed.

2. In the event of arrest of applicant Shaikh Habib Shaikh Maheboob, age 30 years, Occu. Business, R/o near Ganpati Netralaya, Behind Janta College, Jalna, PSO of Mukundwadi police station shall release him on bail in C.R. No. 243/2021 for the offence punishable U/sec. 376 (2) (n) of I.P.C. registered against him on furnishing P. R. Bond of Rs. 25,000/- (Rs. Twenty Five Thousand only), along with one solvent surety in the like amount.

3. The applicant shall not try to tamper the evidence in any manner.

4. Applicant is directed not to leave Jalna District without prior permission of Court except for the dates of appearance before Court and concerned police station.

5. Applicant is further directed to attend concerned police station as and when required by the investigating officer.

6. He shall submit his latest postcard size photograph, Aadhar Card, Voter I.D., mobile number and residential proof to concerned P.S. and also submit the above documents in respect of his surety.

7. If the applicant commits breach of any of the above conditions, the bail granted to him shall be liable to be cancelled.”

3. A condition No. 4 was specific that the applicant was directed not to leave Jalna District without prior permission of the Court except for the dates for appearance before the Court and concerned police station.

4. In spite of these conditions, he continued to visit the victim at Nalasopara against her wish. The victim was therefore forced and constrained to file an application seeking cancellation of bail and she filed Criminal Misc. Application No. 241/2021 narrating all the instances. The victim had also lodged a report with police on 27.09.2021. It is submitted that, on 27.09.2021 the accused came to the house of victim and abused her and threatened the complainant to withdraw the complaint and marry him. He further threatened her that he will disfigure her face by throwing acid on her face. N.C.R. also came to be registered with Nalasopara Police Station under Sections 504 and 506 of the I.P.C. as N.C.R. No. 1543/2021. It is specific case of the victim that the petitioner is still torturing and threatening her by calling her from various mobile numbers. She produced on record even call details and stated that there is threat to her life.

5. The learned Additional Sessions Judge, Aurangabad passed an order dated 17.02.2022 thereby cancelling the bail granted to the petitioner by observing all above things.

6. Learned advocate for the petitioner submitted that only N.C.R. is registered and no further action is taken pursuant to the N.C.R. The allegations are only made with a view to obtain an order of cancellation of bail. If the bail order is cancelled he undertakes not to contact the victim further.

7. Learned A.P.P. produced on record the communication from Nalasopara Police Station to Mukundwadi Police Station. It is seen from the said communication that the petitioner has sent a video to complainant on her mobile. On the mobile number of the victim various messages are also sent through Whats-app by the petitioner those are thereafter deleted. The victim is contacted through various mobile numbers. There are repeated calls made which are rejected by the victim. Thus, it appears that there is clearly a deliberate breach of condition. The conditions are always put upon a person to see that he does not indulge into any such practices of tampering with the evidence or to pressurize the witnesses. It is seen in this case that he has done exactly the acts which were not to be done for what the conditions were imposed. It is not a case that the victim is staying in the same

village or in the same locality, but she is residing 400 Km. away from the place of incident. Thus, he has gone there all the way to reach to the victim.

8. Learned advocate for respondent No. 2 submits that after cancellation of bail, in fact there are orders issued by the Trial Court issuing nonailable warrants, however, the petitioner has not appeared before the Court. This shows that he does not deserve any leniency from the Court. His conduct also shows that he is not paying any heed even to the warrants issued by the Court.

9. Considering all above aspects, this Court feels that this is a fit case where bail granted to the petitioner has been rightly cancelled. Thus, bail granted to the petitioner is cancelled. No ground is made out to call for interference with the impugned order. Hence, the writ petition is dismissed.

(KISHORE C. SANT, J.)

PS.B.