

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 CRIMINAL APPLICATION NO.2152 OF 2021

VISHAL EKNATH JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. V.N. Rathod, Advocate for applicants
Mrs. V.N. Patil-Jadhav, APP for the respondent No.1
Mr. S.S. Khoche, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17th JANUARY, 2022

ORDER :

1 Present application has been filed to challenge the order dated 28.07.2021 passed by learned Additional Sessions Judge, Jalgaon below Exh.7 in Special (POCSO) Case No.77/2021 to the extent of denying relaxation of condition No.7 about not to enter the village.

2 Heard learned Advocate Mr. V.N. Rathod for applicants, learned APP Mrs. V.N. Patil-Jadhav for the respondent No.1 and learned Advocate Mr. S.S. Khoche for the respondent No.2. In order to cut short it can be said that they have argued in support of their respective contentions.

3 All the applicants had filed Criminal Bail Application No.386/2021 before learned Additional Sessions Judge, Jalgaon for release under Section 439 of the Code of Criminal Procedure, 1973. They were the accused persons in Crime No.257/2021 registered with Chalisgaon Rural Police Station, for the offence punishable under Section 305 read with Section 34 of the Indian Penal Code, 1860 and under Section 12 of the Protection of Children from Sexual Offences Act, 2012. The said application came to be allowed with conditions. Condition No.7 provided that the accused persons prevented from entering/residing in village Kherade, Tq. Chalisgaon, Dist. Jalgaon i.e. directed to make arrangement of their residence out of the said village till further orders. Thereafter, at Exh.7 in Special Case No.77/2021 an application was filed for relaxation of condition Nos.7 and 8. Condition No.8 was in respect of attendance to the Police Station. The learned Additional Sessions Judge, Jalgaon by order dated 28.07.2021 relaxed the condition No.8, however, rejected the condition No.7. Hence, this application.

4 At the outset, it is to be noted that the background in which the condition was imposed deserves to be considered. The learned Additional Sessions Judge, Jalgaon has taken into consideration the contents of the charge sheet. The relatives of the accused are stated to have extended

threats to the informant and his family members and asked them not to depose against the accused and, therefore, non cognizable offence has also been registered against those relatives. Further, note was taken that informant and the accused are residing in the same village in the neighbourhood and, therefore, taking into consideration that factual position the possibility was expressed that the accused persons would pressurize the prosecution witnesses and, therefore, there was refusal to relax condition No.7. Taking into consideration those aspects, when in fact, the situation about residence of the applicants and the informant in the neighbourhood was considered, the condition was imposed. Now, merely because the alleged false implication, which is yet to be proved and some other statements on merits of the case, which is still pending, the applicants intended to get the condition No.7 relaxed. It cannot be considered till the completion of the trial. When such situation has arisen in the past i.e. lodging of non cognizable cases and, therefore, the view taken by the learned Additional Sessions Judge in respect of condition No.7 appears to be correct. No need to interfere. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)