

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

APPLICATION FOR CANCELLATION OF BAIL NO.167 OF 2021

XYZ

... Applicant.

Versus

1. The State of Maharashtra
2. Athar Khan S/o Sardar Khan

... Respondents.

. . .

Mr. J. V. Deshpande and Mr. S. N. Dudhate, Advocate for Applicant.

Mr. N. T. Bhagat, APP for Respondent-State.

Mr. M. S. Karad, Advocate for Respondent No.2.

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 2nd FEBRUARY, 2022

PRONOUNCED ON : 17th MARCH, 2022

PER COURT :

1. Present applicant is the original informant, who seeks cancellation of bail granted to respondent No.2 in connection with Crime No.36 of 2020 registered with Vedant Nagar Police Station, Aurangabad City, District Aurangabad for the offence punishable under Section 354-A of Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, “POCSO Act”), by this Court in Bail Application No.696 of 2020, dated 5th October 2020 on the ground that the respondent No.2 has violated the term imposed at the time of grant of bail.

2. Heard learned Advocate Mr. J. V. Deshpande for the applicant, learned APP Mr. N.T. Bhagat for the Respondent-State and learned Advocate Mr. M. S. Karad for Respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the applicant is the informant and daughter of respondent No.2 who had lodged the report against respondent No.2. This Court granted bail under Section 439 of Cr.P.C. to respondent No.2 on 5th October 2020 and imposed condition that he should not make any attempt to meet or communicate with the informant and her mother in any manner till conclusion of the trial and he should not enter within the limit of Aurangabad city till disposal of the trial, except for attending Court dates. However, thereafter on 28th January 2021 it can be seen that the respondent No.1 had come in Aurangabad city and had given a letter to the Encroachment Removal Officer of Municipal Corporation on 28th January 2021. In response to the said letter, notice was issued to respondent No.2 by the Municipal Corporation that he should submit the documents mentioned therein. Further, the applicant has attached photographs showing that the applicant had come in Aurangabad city in violation of the condition. Even the mother of the applicant had lodged N.C. complaint against the respondent No.2 on 9th June 2021 under Sections 504, 506, 427 read with 34 of IPC. The respondent No.2 has disobeyed the condition imposed by this Court and therefore his bail deserves to be

cancelled.

4. Learned Advocate appearing for the respondent No.2 relied on the affidavit-in-reply filed by respondent No.2 and submitted that the mother and daughter i.e. wife and daughter of the respondent No.2 are harassing him and they want to keep him away from the property. After the release of the respondent No.2 from jail in pursuant to the bail granted by this Court, he is residing at Karodi, Post Ghanegaon, Taluka and District Aurangabad on rent, in the house owned by one Shaikh Ayub shaikh Nijam. Copy of the rent agreement dated 13th October 2020 is produced on record. As regards the letter given by him to the Municipal Corporation dated 28th January 2021 is concerned, it was sent by post from the post office, Bajaj Nagar, M.I.D.C. Waluj. He had not entered in the city for that purpose. The reply of the Deputy Engineer of the Town Planning Municipal Council, Aurangabad dated 06th April 2021 is to the addressed of Karodi, Tq. and Dist. Aurangabad and he has received it there. He has not breached the terms and therefore the application deserves to be rejected.

5. After taking into consideration the relationship between the parties, it appears that this Court has imposed the condition that the respondent No.2 shall not enter Aurangabad city till the conclusion of the trial, except for attending the Court dates. We cannot take into consideration the

photographs those have been produced on record because there is no affidavit of the person who had taken it and there is no certificate under Section 65(B) of the Evidence Act, so also it is not clear from the application as to where she found the respondent No.2.

6. Perusal of the photographs would show that there is no date mentioned on the same in order to arrive at the conclusion that he has committed breach of the term (c). It will have to be shown by the applicant that presence of the respondent No.2 at that place was on some other date and not on the Courts date. When all these facts have not been made clear, this Court cannot jump to the conclusion that there is breach of condition (c). Another question i.e. cropping up, is how the applicant got copies of the communication between respondent No.2 and the Municipal Corporation. She has not explained as to how she received these documents. Though, it appears to be addressed to the place of residence, i.e. earlier of the respondent No.2 which is in the Aurangabad city. It cannot be inferred only on the basis of these two documents that, in order to receive these documents he had come to Aurangabad city limits.

7. Cancellation of bail is a serious matter and it cannot be done so mechanically unless those extreme circumstances are shown to take away the liberty. The powers under Section 439(2) of Cr.P.C. cannot be used as it is prayed. The incidents stated in the application are not sufficient to infer that

the respondent No.2 had entered Aurangabad city on a date which was not the date before the Court and therefore it amounts to breach of term (c). Hence the application stands rejected.

(SMT. VIBHA KANKANWADI, J.)