

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

APPLICATION FOR CANCELLATION OF BAIL NO.200 OF 2021

**XYZ
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.V.S. Palsikar, Advocate for the applicant.
Mr.B.V. Virdhe, APP for the respondent/State.
Mr.Joydeep Chatterji, Advocate for respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 31.03.2022**

PC :-

01. Present application has been filed by the original informant for cancellation of bail under section 439(2) of Cr.PC. in order to challenge the order dated 12.10.2021, passed by the learned Additional Sessions Judge, Aurangabad in Cri.Bail Application No.1799 of 2021 thereby releasing respondent No.2 under section 438 of the Cr.PC.

02. Heard Mr.V.S. Palsikar, learned Advocate for the applicant, Mr.B.V. Virdhe, learned APP for respondent/State and Mr. Joydeep Chatterji, learned Advocate for respondent No.2.

03. Perusal of the FIR would show that the informant is 32 years old lady, who has lodged report on 30.09.2021 with Satara Police Station, Dist. Aurangabad for the offences punishable under section 376(2)(n) and section 417 of the Indian Penal Code. The occurrence of the offence that has been stated is from 01.01.2009 till 30.07.2021. She has disclosed that she was knowing respondent No.2 since 2000. They are resident of same village and in the year 2009 respondent No.2 used to come in front of her house at the time of election. They has exchanged mobile numbers and they used to talk on mobile. Thereafter, they developed friendship. The informant says that she was knowing that respondent No.2 was married. According to her, respondent No.2 used to say that her marriage has been performed under pressure from the relatives, but he loves the informant. He promised that he would marry her and with the said love relationship they had indulged in physical relationship. She has also stated that she had gone along with respondent No.2 at Hotel many times and they had sexual intercourse at that place. However, she says that each time the relationship was established by respondent No.2 by giving promise to marry. When she was asking when they would marry, he was avoiding on one or other pretext. The last act is said to be in the month of July, 2021 in the flat she had taken on rent at village

Satara. Thereafter, she says that since last about two months prior to FIR, respondent No.2 is avoiding to meet her and switching his mobile off and then she realized that she has been cheated and by taking her consent under deception, respondent No.2 has established physical relationship with her.

04. From the contents of the FIR itself, it can be seen that possibility of consensual sex cannot be ruled out. Now, the investigation is over and charge-sheet has been filed. No doubt, there appears to be some evidence regarding visits of the informant and respondent No.2 to the Hotel. However, the statements of the witnesses mainly state about love affairs between the informant and respondent No.2.

05. The informant was knowing that respondent No.2 was a married person, still it appears that she gave consent for the acts to be done. How far she should have believed in the statement of respondent No.2 that he would marry her, would be a matter of evidence. We cannot forget that respondent No.2 is a Muslim and informant is Hindu. Whether they could have accepted the marriage is a question. Taking into consideration long standing physical relations that too by voluntarily going to Hotel and at other place, prima facie,

may not disclose offence and therefore the discretion that has been used for releasing the applicant on bail under section 438 of the Cr.P.C. by the learned Additional Sessions Judge, Aurangabad appears to be correct. Further, it has come on record that the informant herself is also a married lady. She has not stated that she had at any point of time promised respondent No.2 that she would take divorce from her husband. When there is question as to whether ingredients of the offences are attracted or not, then definitely the Court was justified in allowing the application. There is no merit in the present application. It deserves to be rejected. Accordingly, it is rejected.

[SMT. VIBHA KANKANWADI, J.]