

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.211 OF 2021

Shivaji s/o Ambadas Khole

... Applicant

Versus

1. The State of Maharashtra
 2. Abhijit s/o Ashok Khole
 3. Amol @ Aditya s/o Vijay Mokashe
- ... Respondents

...

Mr. A. S. Shejwal, Advocate for applicant.

Mr. P. P. Mandlik h/f Mr. Amol Gandhi, Advocate for respondent Nos.2 and 3.

Mr. V. M. Kagne, APP for the respondent No.1 – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30.03.2022

ORDER :-

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure. The applicant is the father of original informant. Respondent Nos. 2 and 3 are the accused No. 1 and 2.

2. Heard learned Advocate Mr. A. S. Shejwal for the applicant, learned Advocate Mr. P. P. Mandlik holding for learned Advocate Mr. A. S. Gandhi for respondent Nos.1 and 2 and learned APP Mr. V. M. Kagne for respondent No.3 – State.

3. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge, who has granted anticipatory bail to the applicants in Criminal Bail Application No.941 of 2021 on 19.11.2021, had not considered the seriousness of the offence. The informant is a 16 year old girl taking education in 12th standard. The accused i.e. respondent No. 2 is residing in her neighbourhood. He used to do the acts of chasing her with ill intention since last about one year prior to the FIR and the accused-respondent No.3 was helping him in doing such acts. Respondent No.2 had given an objectionable message on the mobile of the victim on 04.01.2021. Thereafter, he made objectionable gestures by seeing towards the victim at about 4.00 p.m. on 30.10.2021. If such activities by such boys are not restricted, then they will get strength to commit more serious offences. The mental condition of the girl is required to be considered in such cases. By such activities, her life is made miserable. The application ought to have been rejected.

4. Learned Advocate for respondent Nos.1 and 2 relied on the reasons given by the learned Additional Sessions Judge as well as the affidavit-in-reply filed in this case. He submitted that as per the conditions, father of applicant No.1 had gone to the police station to surrender the mobiles of applicant Nos.1 and 2 when the matter was

before the learned Additional Sessions Judge, however, that surrender of those mobile handsets was not accepted till 18.11.2021. Both the accused persons have attended the police station as directed by the learned Sessions Judge.

5. At the outset, it is to be noted that if the reasoned legal order is passed, then there is no question of interfering with it. Here, the allegations against the accused persons were that accused No.1 - Abhijit used to follow her with ill intention since about a year prior to the FIR. According to her, some message was sent on 04.01.2021 from his mobile to her mobile. If we consider the message which has been made part of the FIR it says "I would call you at 2.00 p.m. you should keep the mobile with you." Whether it can be take as objectionable itself is a question and then she says in the FIR that on 30.10.2021 at about 4.00 p.m. when she was washing utensils in front of her house, accused - Abhijit made gestures indicating that she should come to him and thereafter, he had took out his baniyan, which outraged her modesty. Thus, taking into consideration these allegations, definitely, it can be said that the custodial interrogation of the applicants was not at all necessary. The investigation could have proceeded in their absence also.

6. It appears that thereafter supplementary statement of the victim was recorded on 17.11.2021 and she has given more story that on

30.10.2021 itself when she was proceeding for getting water, accused No.1 had taken photographs of her breasts when she had bent down for getting water. It is to be noted that learned Additional Sessions Judge had given directions at the time of ad-interim order itself that the applicants should cooperate with the investigation and a condition was imposed that the applicants shall produce their mobile phones before the investigating officer and the investigating officer shall seize the same, if required. When similar condition was imposed at the ad-interim stage and it appears from the reply that the father of the accused Abhijit had gone to surrender those mobile handsets they were not accepted by the investigating officer himself. Thus, it can be seen that they were ready to abide by the terms of the bail and they have accordingly abided by. Even they have been asked not to visit the area where the informant is residing. When all the precautions have also been taken and the case is not of such that the custodial interrogation of the applicants is necessary, then the learned Additional Sessions Judge was perfectly justified in using the discretion by granting bail under Section 438 of the Code of Criminal Procedure. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm