

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 204 OF 2015**

Sakshi Santosh Jain

.....Applicant

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Prashant Aher for the Applicant.

Mr. S.S. Hulke APP, for the Respondent Nos.1 and 2-State.

Mr. Aabad Ponda, Senior Advocate a/w Mr. Samsheer Garud i/by Jaykar & Partners for Respondent No.3

CORAM : A. S. GADKARI, J.**DATE : 8th JULY, 2022.****P.C.:-**

This is an Application under Section 439(2) of the Code of Criminal Procedure (for short, "*the Cr.P.C.*") impugning Order dated 4th April, 2015 passed in Bail Application No.907 of 2015 by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, granting bail to the Respondent No.3. *Inter alia* by the present Application, the Applicant/informant is seeking cancellation of bail granted to Respondent No.3 by the learned Trial Court.

2 Heard Mr. Aher, learned Advocate for the Applicant, Mr. Hulke, learned APP for Respondent Nos.1 and 2 and Mr. Ponda, learned senior counsel for the Respondent No.3. Perused entire record produced before me.

3 Respondent No.3 is an accused in CR No. 97 of 2015 dated 22nd March, 2015 registered with Varsova Police Station, Mumbai initially registered under Sections 376, 377, 420 and 506 of the Indian Penal Code (for short, "*the IPC*"). Record indicates that, subsequently on the basis of a supplementary statement given by the Applicant, Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, "*the POCSO Act*"), has also been applied to the present Crime.

 It is the contention of the Applicant that, on the date of commission of the alleged first act as contemplated under section 376 of the IPC i.e. on 25th December, 2014, she was a minor and therefore the provisions of Section 8 of the Act, are applied to the present Crime.

4 Mr. Aher, learned counsel for the Applicant submitted that, while passing the impugned Order, the Trial Court did not take into consideration the fact of application of the provisions of POSCO Act to the present Crime. He submitted that, the Advocate for the Applicant had filed reply below Exh-5 to the Application for bail by the Respondent No.3, wherein these facts were pointed out to the Court. That, the reason for granting bail by the Trial Court to the Respondent No.3 cannot be appreciated on the touch stone of settled position of law. He submitted that, the Trial Court ought to have given notice to the Public Prosecutor as mandated by Section 439(1) of the Cr.P.C. which it did not do.

He submitted that, the Trial Court has taken into consideration irrelevant material while granting bail to the Respondent No.3 and therefore, the impugned Order may be quashed and set aside by canceling the bail granted to the Respondent No.3.

5 Per contra, Mr. Ponda, learned senior counsel for the Respondent No.3 vehemently opposed the Application and submitted that, there is no illegality or perversity committed by the Trial Court while granting bail to the Respondent No.3 and the said Order therefore does not require any interference of this Court while exercising jurisdiction under Section 439(2) of the Cr.P.C..

6 Perusal of record indicates that, the Applicant was having affair with the Respondent No.3 which further blossomed into physical relationship. It is to be noted here that, in her statement dated 19th March, 2015 the Applicant herself has stated that, on 28th October, 2014 she completed 18 years of her age and therefore on 29th October, 2014 she went to Singapore to meet Respondent No.3. That, though she resided in Singapore for 7 days with the Respondent No.3, the Respondent No.3 did not indulge into physical relations with her. It is only in her supplementary statement dated 25th March, 2015 for the first time she had stated that the Respondent No.3 committed an act as contemplated under Section 377 of the IPC. It appears to this Court that, the Applicant tried to improve her version than what was stated in her first information report by recording

supplementary statement.

7 Trial Court in para No.3 of the impugned Order has observed that, *“It is a relationship of few days which dried up soon and victim herself lost faith in him”*. It also appears to this Court that, after the relationship between the Applicant and the Respondent No.3 got sour, she filed present crime against him. As noted earlier, the Applicant has improved her version from time to time to attract stringent provisions of law. The police have interrogated Respondent No.3 in custody and it is not the grievance of the police that, the Respondent No.3 did not co-operate in the process of investigation. The investigation of the present crime has been completed long back and the police have already submitted charge-sheet. Even otherwise, perusal of impugned Order clearly indicates that, the Trial Court has not committed any error either in law or on facts while passing it.

8 As far as the contention of Mr. Aher with respect to the intimation under Section 439(1) of Cr.P.C. to the Public Prosecutor is concerned, the Supreme Court in the case of *Gulabrao Baburao Deokar Vs. State of Maharashtra & Ors., reported in (2013) 16 SCC 190*, has observed that, the notice under the provisio to Section 439(1) implies a proper and full opportunity to the Prosecutor to point out as to why bail should not be granted.

In the present case, at the time of hearing of the Bail Application of the Respondent No.3, the Public Prosecutor had appeared in

the matter. A bare perusal of impugned Order would clearly indicate that, after hearing both the sides only, the Trial Court proceeded to pass the impugned Order. This clearly implies that, the State was given notice of the said Application and therefore, the Public Prosecutor appeared therein.

9 In view of the above, this Court is of the considered opinion that, the Trial Court has not committed any error while passing impugned Order. Even otherwise, there is no need to cancel bail of the Applicant at such a distance of time and who is abiding the conditions imposed by the Trial Court while granting him bail. There are no merits in the Application.

Application is accordingly dismissed.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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MASHALKAR
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