

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.79 OF 2022

Geeta Arunkumar Kokas .Vs. State of Maharashtra, through P.S.O., P.S. Ajani,
Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.V. Mahajan, Advocate for the applicant.

Shri N.R. Rode, A.P.P. for the non-applicant No.1/State.

Shri Y.B. Mandpe, Advocate for the non-applicant No.2.

CORAM : ANIL S. KILOR, J.

DATED : 16/12/2022

1. Heard.
2. This is an application for cancellation of regular bail granted by the learned trial Court vide order dated 02.01.2021, on the ground that despite the fact that while granting bail, a specific condition was imposed vide condition No.3 that accused/non-applicant No.2 shall not contact the informant and other prosecution witnesses in any manner and shall not tamper with the prosecution evidence, the non-applicant No.2 has been sending messages and trying to contact the victim and thereby, he breached the condition No.3.
3. Shri Mahajan, learned counsel for the applicant points out that the said fact of breach of condition was pointed out in the earlier application with the same prayer, vide Criminal Application (APPLN) No.13 of 2022 and in

the said proceedings the non-applicant No.2 filed an undertaking to the effect that, he will strictly comply with the condition. It is pointed out that, the respondent No.2 has been floating even the said undertaking given to this Court.

4. It is further submitted that this Court may take judicial note of the fact that in reply to the present, initially the non-applicant No.2 has denied that the WhatsApp messages received by the victim from a mobile number does not belong to him and now by way of an affidavit, he has tendered apology. It is therefore, submitted that the non-applicant No.2 has tried to mislead this Court, by filing a false affidavit and making incorrect statement.

5. On the other hand, Shri Mandpe, learned counsel for the non-applicant No.2 prays for acceptance of apology and he submits that hereinafter, the non-applicant No.2 will take care and will abide by the condition No.3.

6. The learned APP supports the case of the applicant for cancellation of bail.

7. In the backdrop of the rival submissions, I have perused the documents filed along with the application and the reply affidavit filed by the non-applicant No.2.

8. In this case, in view of the fact that the non-applicant No.2 has admitted the allegation about breach of condition No.3, no question would arise to examine whether the applicant has breached the condition No.3 of the order of grant of bail to the non-applicant No.2. The only question therefore, would be remain whether the apology tendered by the non-applicant No.2 be accepted or not ?

9. In earlier application filed by the applicant, the non-applicant No.2 has filed an undertaking which reads thus:

“That, I undertakes to abide by each and every condition imposed by this Hon’ble Court. I undertakes not to contact with informant Geeta Arunkumar Kokas or any prosecution witness by any mode, personally I undertakes not to call her on mobile or not send any message on WhatsApp nor will try to contract with any third person. I also undertakes not to tamper with prosecution witness except attending the Family Court at Nagpur where petition No.A-227/2021 is pending.”

10. Considering the said undertaking and on believing such undertaking, the earlier application for cancellation of bail was rejected. However, from the documents filed along with the present application, it appears that the non-applicant No.2 has not only breached

the condition No.3 of the order of granting bail to him but, also breached the undertaking given to this Court.

11. This conduct is contemptuous, however, considering the apology, I am not proceeding against the non-applicant No.2 as regards the said conduct of the non-applicant No.2. But, at the same time, this apology will not help the non-applicant No.2 for passing an order against him, allowing the present application for cancellation of bail.

12. As there is clear case of breach of condition and misuse of liberty. Moreover, by not following the undertaking given to this Court, he has aggravated the situation, in the circumstances, I pass the following order :

- a) The criminal application is **allowed**.
- b) The bail granted to the non-applicant No.2 is hereby cancelled.

The criminal application is **disposed of** accordingly.

JUDGE