

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

CRIMINAL APPLICATION (APPLN.) NO.88 OF 2021

(SMT. PUSHPALATA JAGDISH ASHTANKAR...VS.. STATE OF MAH. THR. PSO, P.S. RAMTEKE,
NAGPUR & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.F.Bhagwani, Advocate for Applicant.
Ms Sangeeta Jachak, A.P.P. for Non-applicant No.1/State.
Shri N.A.Vaidhya, Advocate for Non-applicant No.2 (accused)

CORAM : ANIL S. KILOR, J.

DATED : APRIL 12, 2022.

1. Heard.
2. This is an application for cancellation of bail granted by learned District Judge-11 and Additional Sessions Judge, Nagpur in Crime No.408 of 2021 registered with Police Station, Ramtek, Nagpur (Rural) for the offences punishable under Sections 376(3), 377 of the Indian Penal Code read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.
3. The learned counsel for the applicant submits that though there are no supervening circumstance in this case, however, there is perversity which is one of the permissible grounds for cancellation of the bail available. For this purpose, he has drawn attention of this Court to the observations made by the learned Sessions Court while granting bail to the non-applicant No.2.

4. It is submitted that though on the date of the incident the victim was below 15 years of age, the said fact was not considered and the Court has also not considered the fact that the offence is heinous. He, therefore, submits that this is a fit case for cancellation of bail. For this purpose, he has relied upon the judgment of Delhi High Court in the case of *Rihan Khan..vs..State*, dated 28th February 2019 in **Bail Application No. 3045 of 2018**. He further relies upon a judgment of the Karnataka High Court, dated 10th March 2016 in the case of *State ..vs.. N. Shivabasavanna*, passed in **Criminal Petition No. 8922 of 2015**.

5. On the other hand, the learned A.P.P. fairly states that in this case charge-sheet has already been filed and the State has not moved application for cancellation of bail on any ground.

6. The learned counsel for the non-applicant No.2 submits that there is no complaint about the abuse of concession by the respondent No.2. He further submits that as there are no supervening circumstances in the present case, the present application may be rejected.

7. To consider the rival contentions of the parties, I have perused the order passed by the learned Sessions Judge granting Regular Bail to the non-applicant No.2.

8. The learned trial Court, while granting regular bail to the non-applicant No.2, has observed thus:

“5. Perused the application, say and heard advocate for the parties. It is the allegation of prosecution that accused established physical relation with victim by force. From the statement of victim it is seen that first incident of sexual assault occurred prior to 03/09/2021 at the office of accused at Ramtek near Tahsil office. According to victim the second incident of sexual assault occurred on 03/09/2021 at Lotus Hotel. The victim according to prosecution is 15 years old. It is seen that victim did not make any complaint against accused till 13/09/2021. The victim was having opportunity to make complaint against accused immediately after the incident. She did not ask for help to rescue herself from accused at the time of incident. The victim is having age of understanding. From the say filed by APP it is seen that investigation is almost completed and custodial interrogation of accused is not necessary. The accused is ready to abide conditions of bail. There is no possibility of accused fleeing from justice. In such circumstances accused can be enlarged on bail on certain conditions:- ...”

9. Having gone through the above referred paragraph, it is clear that while granting bail, consideration was whether further custody of the non-applicant No.2 was necessary in the alleged offence and on finding that in the say filed by the learned A.P.P. it was mentioned that the investigation was almost completed and custodial interrogation of the accused was not necessary, the bail was granted.

10. The Hon'ble Supreme Court of India, in the case of *Puran Vs. Rambilas and another*¹ has observed thus:

“10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram vs. State of Haryana. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

11. In the teeth of the above referred well settled principles of law, if the reasons recorded by the learned trial Court are considered, I am of the view that the said findings cannot be termed as perverse. It is a settled law that even certain findings are not properly recorded, but ultimate conclusion arrived at is sustainable in the eyes of law, such findings cannot be termed as 'perverse'. Thus, in absence of any perversity, in the present case, I am of the opinion that no permissible ground for cancellation of bail is available to the applicant.

12. There is no doubt that the alleged crime is heinous. However, looking to the fact that there is no perversity in recording the findings, coupled with the fact that there is no supervening circumstances available in the present case, I am of the opinion that the present application needs to be rejected as no ground for cancellation of bail is made out by the applicant.

12. The facts in the judgments cited by the learned counsel for the applicant are distinguishable with the present case. Thus, the judgments of the Delhi High Court and Karnataka High Court are of no help to the applicant. Accordingly, I pass the following order :

The application is **rejected**.