

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.23 OF 2023

XYZ .. Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Parola Police Station,
Taluka Parola, District Jalgaon
2. Dnyaneshwar Mitharam Pawar,
Age 21 years, Occu. Nil,
R/o. Dagdi Sabgavhan,
Taluka Parola, District Jalgaon .. Respondents

...
Mr. Milind B. Sandanshiv, Advocate for Applicant;
Mr. K. S. Patil, APP for Respondent No.1/State;
Mr. Yogesh K. Kanade, Advocate for Respondent No.2
...

CORAM : S. G. MEHARE, J.

DATE : 15-06-2023

PER COURT :-

1. Heard the learned counsel for the applicant/victim, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/accused.
2. A short objection that has been raised by the applicant/victim is that respondent No.1/accused did not arraign her as a party to the bail application before the learned Additional Sessions

Judge, Amalner, while seeking bail in C.R.No.470 of 2022 registered with Parola Police Station, Taluka Parola, District Jalgaon, for the offences punishable under Sections 363, 376, 376(2)(j)(n) and 376(3) of the Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The learned counsel for the applicant/victim would submit that the victim has a right to oppose the bail application in the cases for the offences mentioned above. Since the order granting bail was passed in absence of the victim, it is liable to set aside.

4. In support of arguments, the learned counsel for the applicant relied on the cases of (1) **Arjun Kishanrao Malge Versus State of Maharashtra, 2021 All MR (Cri) 1601** and (2) **Jagjeet Singh and others Versus Ashish Mishra Alias Monu and another, (2022) 9 Supreme Court Cases 321**.

5. The learned counsel for respondent No.2/accused would argue that the learned Additional Sessions Judge granted him bail on merit. Therefore, barely not hearing the victim would make no difference. The respondent/accused is enjoying the bail since January 2023. The chargesheet has been filed. Hence, the application may be dismissed.

6. A Division Bench of this Court, in the case of **Arjun Kishanrao Malge** (supra) in paragraph No.17 has observed that

the presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code. Further, this Court observed that akin to the offences which fall under the Indian Penal Code as set out in sub-section (1A) of Section 439 of Cr.P.C. with respect to applications for bail under the POCSO Act, the presence of the informant or any person authorised by him shall be made obligatory at the time of hearing of the application for bail.

7. Similarly, the Honourable Supreme Court in **Jagjeet Singh's** case (Supra) held that denial of rights of, to participate in criminal proceedings i.e. bail application is a ground to cancel the bail. In the said case, bail granted to the accused was cancelled and matter was remitted back to the High Court for deciding afresh.

8. In a nutshell, it is an obligatory to hear the first informant or the victim in a bail application for the offence punishable under sections mentioned above. Here in the case, it is not in dispute that the victim was neither made a party to the application nor she was served with a notice to oppose the bail application. The mandatory provision of law has not been followed though the judgment of the Honourable Supreme Court in the case of **Arjun** (supra) was circulated to all the District Judges of the State.

9. The applicant/victim has *prima facie* good case. Therefore, the order granting bail dated 03.01.2023 passed by the learned Additional Sessions Judge, Amalner, in Criminal Bail Application No.443 of 2022 is liable to be set aside. Hence, the following order:-

ORDER

- (i) Application for cancellation of bail is allowed.
- (ii) The order of the learned Additional Sessions Judge, Amalner, passed in Criminal Bail Application No.443 of 2022, dated 03.01.2023, is quashed and set aside.
- (iii) Respondent No.2/accused is directed to surrender before the learned Judicial Magistrate First Class, Amalner, on or before 22.06.2023.
- (iv) The learned Additional Sessions Judge, Amalner, is directed to restore Bail Application No.443 of 2022.
- (v) Notice be served upon the victim by adding her party to the bail application.
- (vi) It is clarified that the learned Additional Sessions Judge, Amalner, shall not get influenced by the observations recorded by this Court. The bail application shall be decided on its merit.

**(S. G. MEHARE)
JUDGE**