

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPLICATION FOR CANCELLATION OF BAIL NO.27 OF 2022
IN APEAL/156/2021**

The State of Maharashtra
Through Police Station Officer,
Shrigonda Police Station,
District Ahmednagar.

...Applicant

VERSUS

1. Lakhan @ Vinod s/o Kumar Kakade
Age : 30 years, Occu – Agri.,
R/o Sangvi Dumala, Tq. Shrigonda,
Dist. Ahmednagar.

2. X.Y.Z.

...Respondents

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Mr. P.K. Lakhotiya, APP for Applicant/State.

Mr. D.S. Ingole h/f Mr. Nilesh S. Ghanekar, Advocate for Respondent No.1.

Ms. Sunita G. Sonawane, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

RESERVED ON : JULY 27, 2023

PRONOUNCED ON : AUGUST 19, 2023

ORDER (PER S.G. MEHARE, J.) :-

01. Heard the respective counsels.
02. The State has applied for cancellation of bail under Section 439 (2) of the Criminal Procedure Code granted to the accused by this Court by order dated 20.09.2021 passed in Criminal Appeal No.156 of 2021 for violating the following bail conditions;

(b) The appellant shall reside away from village Sangvi Dumala, Tq. Shrigonda beyond a radius of 100 kms till the completion of the recording of the testimony of material witnesses and when he would be permitted to attend the Court proceeding;

(e) The appellant shall not contact the prosecutrix or her parents or relatives or any witness or any such person through whom he would attempt to influence the prosecutrix or the witnesses, directly or indirectly, by any mode.

03. The applicant would be referred to as 'the prosecution', respondent no.1 would be referred to as 'accused', and respondent no.2 would be referred to as 'the victim' for convenience.

04. After hearing the respective parties, the orders were reserved. However, before pronouncing the orders, the learned APP filed an additional affidavit contending that the accused violated the bail condition again.

05. The brief facts giving rise to the present application were that after granting bail to the accused, on 27.01.2021, the accused entered a 100 km radius of the village Sangvi Dumala, and outraged the modesty of and assaulted the victim. Its FIR was registered. A copy of the said FIR no.0739/2021 has been placed on record. On 28.06.2023 again violating the bail, he entered into the area of a 100 km radius at Jagdamba Hotel. The police arrested him there. The said hotel was 78 km away from the house of the victim. The statements of the witnesses and CDRs of the cell phone of the accused have been placed on record to prove the allegations levelled against the accused.

06. The prosecution has submitted a bunch of documents to prove that on 28.06.2023, the accused was at Shree Jagdamba Family Restaurant, Kesnand, Taluka Haveli, District Pune. The CDRs were also collected to prove that the accused often used to be in the periphery of 100 km from the village Sangvi Dumala, where the victim was residing.

07. In reply, the accused submits that he was in jail for more than two years. Hence after his release, it is highly improbable that he would contact the victim and commit any act of outraging her modesty. The report dated 27.10.2021 is false. She took the disadvantage of the presence of the accused in the Court. That day, the Sessions case was posted for evidence of witnesses. The evidence of the victim was partly recorded. On that day, the trial was not posted for recording her evidence. She had no reason to attend the Court. She had engaged an Advocate to assist the prosecution. Only to harass him and to make a ground for cancellation of bail, she lodged the false report. The accused was arrested in that Crime. All the witnesses were hearsay. There were no visible injuries on her person.

08. He further submitted that a Criminal Appeal No.135 of 2022 for regular bail was before the High Court for hearing; that time, she made a scene in the open Court. The Court observed her demeanor in the order granting bail to him. He was sincerely

observing the bail conditions. When his bail appeal bearing no.135 of 2022 was fixed on 04.5.2022, she had filed a report against his father for which the offence under Section 323, 504 and 506 of the Indian Penal Code, and Sections 3(2) (Va) of SC ST Act under Crime No.374 of 2022 was registered. The learned Additional Sessions Judge granted bail to his father on 27.05.2022. The victim was given 24 hours of police protection. A lady police constable was with her when the said incident happened. Her statement falsified her report. Her conduct indicates that she has a habit of making false allegations

09. It is further submitted that on 15.01.2019, the victim lodged a report against the six accused for the offence punishable under Section 354-A, 343, 147, 149, 354, 323, 504 and 506 of the Indian Penal Code with Police Station Shrigonda under Crime NO.57 of 2019. The accused had faced prosecution under Section 376 of the Indian Penal Code; however, he has been acquitted. During the trial of that case, the victim appeared in that proceeding and alleged that the accused had pressurized the witnesses to give the statements. The learned trial Court enquired with the witnesses and found no substance in her allegation. He has placed a copy of the said judgment. With these submissions, he prayed to dismiss the application.

10. After an additional affidavit filed by the prosecution, he filed his reply to the additional affidavit denying the allegations in the

application. He has submitted that on 28.06.2023, he was told to come to Shree Jagdamba Family Restaurant, near Kasti Nharva Phata, for the purpose of an interview for a job in Pune. However, he did not deny that the said hotel was 78 km away from village Sangvi Dumala. When he reached there, police authorities apprehended him, and he found that a trap was led by the informant along with police authorities. He was not having knowledge of police authorities being present there and already waiting for him. He was shocked and came to know that it was a trap intentionally led for him by the informant to create a ground for the cancellation of his bail. In order to create a ground for cancellation of bail, a photograph was snapped by the police authorities and the informant of which he had no knowledge of the presence of the informant on the said spot. That goes to show that it is the informant who is deliberately creating the ground by applying tactics to cancel his bail.

11. The victim has filed her say. In brief, she submits that she belongs to a poor family. The accused made her and her family leave the village and threw them out of the said village. Hence, she had consumed the poison. She was admitted to the hospital for several days. The accused had criminal antecedents. He threatened and assaulted her within a radius of 100 km and thereby violated the bail condition (b) and (e). She supported the allegations levelled against

the accused by the prosecution and prayed to cancel the bail granted to him.

12. Perused the papers placed on record.

13. The bail may be cancelled where the accused (a) misuses the liberty granted to him and indulges in similar crimes, (b) interferes with the course of the investigation, (c) attempts to tamper with the prosecution witnesses, (d) threatens the witnesses or indulges in similar activities which would hamper the smooth investigation, (e) attempts to flee away from justice, (f) attempts to keep himself beyond the reach of his surety and (g) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, etc.

14. In the case at hand, the specific allegations have been levelled against the accused that on 27.10.2021, he assaulted the victim and outraged her modesty. The Crime for the said assault was registered against the accused. The FIR supports the case of the prosecution. The reply of the accused indicates that on that day, the victim went to the Court for attending the trial. However, the explanation of the accused that she was not required to attend the trial on that date and the trial was not posted for her evidence, is not convincing for the reasons that the victim has a right to attend the trial on each date. The Courts are ever open for the public. A person having no concern may also watch the Court proceeding. Every

citizen has a free access to the Court. His reply is an admission that on 27.10.2021, she was there in the Court. The incident of assaulting and outraging her happened 20 kms away from Shrigonda Police Station at about 02.00 pm in Bhoite Vasti area. The police took the cognizance and registered a Crime bearing No.739 of 2021. It is a prima facie evidence against the accused that he violated the bail conditions (b) and (e) imposed in the order of this Court dated 20.09.2021.

15. The learned counsel for the accused has further vehemently argued that, the victim was habituated to lodging false complaints against the accused and to support his arguments he referred to the observations recorded by this Court in the bail application, granting him a bail on 04.05.2022. In the said order it has been observed in paragraph no.10 that 'the victim/informant contested appellant's prayer for bail. In spite of having been represented by an Advocate appointed, this Court gave her audience. She made a scene in the open Court'. The Court was dealing with the bail application to the accused. However, the Court did not observe about the violation of the bail condition. The offence registered against the accused was cognizable. Hence the Crime was registered against him. Barely saying that she had the habit of lodging false reports against the accused is not sufficient to discard the case for cancellation of bail.

16. The accused was restrained from entering radius of 100 kms till the completion of the recording of the testimony of material witnesses. The accused's say itself indicates that the evidence of the victim who was the material witness was partly recorded. Hence, it cannot be believed that the evidence of material witnesses has been recorded and there was no violation of bail condition.

17. The accused did not stop after registering a crime against him. On 28.06.2023, he again entered a radius of 100 km of village Sangvi Dumala. Admitting his presence at Jagdamba Family Restaurant, his explanation about it as mentioned above is a cogent material against him that he violated the bail condition. His explanation that he had been there to attend the interview, cannot be believed for want of supporting documents.

18. The police had collected a leave and licence agreement between the land owner and the accused for running Shree Jagdamba Family Restaurant. It indicates that he was the owner of the Jagdamba Restaurant. The CDR placed on record indicates that the accused was within a radius of 100 kms of village Sangvi Dumala on many occasions. The offence registered against the accused is serious.

19. It is evident from the facts and documents that he had threatened and outraged the modesty of the victim after he was granted bail. He has misused the liberty granted to him. He tried to tamper with the prosecution witnesses. He appears to have no respect

for the Court orders. The material placed on record is sufficient to believe that the accused has violated the bail conditions (b) and (e) imposed upon him in the bail order of this Court dated 20.09.2021.

20. For the above reasons, we are of the considered view that this is a fit case to exercise the powers to cancel the bail. Hence, the following order:

ORDER

- I) Application for Cancellation of Bail is allowed.
- II) Bail granted to accused in Crime no 0708/2019 registered with Police Station Shrigonda in Criminal Appeal No.156 of 2021 dated 20.09.2021 stands cancelled for violating the bail conditions (b) and (e) of the said order.
- III) Bail bonds and surety bonds of the accused stand cancelled.
- IV) The accused shall surrender before the trial Court on or before 02.09.2023.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)