

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.82 OF 2022

Santosh s/o. Shempa Pawar,
Age 45 years, Occu. Labour,
R/o. Village Burzad, Taluka and
District Dhule

.. Applicant
(Original complainant)

Versus

1. The State of Maharashtra
2. Govinda s/o. Bhatu Bhil
Age 20 years, Occu. Labour,
R/o. Village Burzad, Taluka and
District Dhule

.. Respondents
(R.No.2-original accused)

Mr. Hrishikesh V. Tungar, Advocate for Applicant
Mr. S. B. Narwade, APP for Respondent No.1
Mr. Vikrant P. Raje, Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 13-03-2023

PER COURT :-

1. Heard the learned counsel for the applicant/complainant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/accused.

2. The applicant is seeking cancellation of bail granted to respondent No.2/accused by order of learned Additional Sessions Judge/Special Judge at Dhule, in Regular Bail Application No.348 of 2022, dated 10.05.2022.

3. The learned counsel for the applicant would argue that the order granting bail is against the principles of law. The age of the victim has not been considered in terms of the provisions of the Protection of Children from Sexual Offences (POCSO Act short) Act, 2012. The presumption under Section 29 of the POCSO Act has not been considered. The order granting bail is mechanical and by ignoring the law. There was evidence of sexual intercourse as per the remand report. In the facts and circumstances of the case, the order granting bail is arbitrary and perverse. Hence, it may be cancelled.

4. The learned counsel for respondent No.2/accused would argue that the bail order is well reasoned. Every aspect of the matter has been considered. The non-applicant/respondent No.2 had undergone the custodial interrogation. The applicant's father was not happy with the love affair of the victim. In fact, she was not with her father, who made it his prestige issue. There are no grounds to interfere with the order granting bail.

5. Perused the order passed by the learned Additional Sessions Judge, Dhule.

6. The learned Sessions Judge has observed the facts and circumstances of the case and considered the arguments advanced by the learned A.P.P. and also the learned counsel for the accused. He has assigned the reasons for granting bail. It was a

case of a love affair. The learned Sessions Court granting bail had imposed the conditions that the applicant/accused shall reside out of village Burzad till filing the chargesheet. That appears to have been satisfactorily complied with.

7. The law is well settled that the liberty granted to a person under bail shall not be curtailed unless there are overwhelming circumstances. The applicant failed to point out any such circumstance. Nothing appears from the record that the learned Sessions Judge granting bail has considered inadmissible evidence and avoided the admissible evidence. The order granting bail is neither arbitrary nor perverse. The Court does not find any error or perversity in the impugned order. For the above reasons, the application deserves to be dismissed. Hence, the order:-

i) The application stands dismissed.

(S. G. MEHARE)
JUDGE

rrd