

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

APPLICATION FOR CANCELLATION OF BAIL NO. 133 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 131 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 132 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 134 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 135 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 137 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 138 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 139 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 140 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 141 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 142 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 143 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 146 OF 2022

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 169 OF 2022

XYZ

VERSUS

STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicant : Ms Rashmi S. Kulkarni a/w. Mr.

Sanket S. Kulkarni a/w Mr. Sooraj Kumar

APP for Respondent / State : Ms. V. N. Patil, Jadhav

Advocate for Respondent No. 2 : Mr. Sudarshan J. Salunke

(in ACB Nos. 133/2022, 132/2022, 138/2022)

Advocate for Respondent No. 2 : Ms. Akashara Madake h/f.

Mr. S. S. Thombre in ACB No.131/2022.

Advocate for Respondent Nos. 2 and 3 : Mr. Prasad B Kadam.

(In ACB Nos. 134/2022, 135/2022, 141/2022 and 143/2022)

Advocate for Respondent No.2 : Shrikrashna B. Salanke and Mr. Anant B. Tidke (In ACB Nos.139/2022 and 140/2022).

Advocate for Respondent No. 2 : Mr. Akash D. Gade (In ACB Nos.137/2022, 142/2022)

Advocate for Respondent No.2 : Mr. Pranoti R. Karpe h/f. Mr. Balaji S. Chondhekar (In ACB No. 146/2022),

Advocate for Respondent No.2 : Mr. Ravi R. Bangar h/f. Mr. Irfan D. Maniyar (In ACB No.169/2022).

CORAM : S. G. MEHARE, J.

Reserved for orders : 10.07.2023

Pronounced on : 19.08.2023.

PER COURT :

1. The set of these applications has been filed by the victim, for cancellation of bail granted to the accused in Crime No. 335 of 2021, registered with Police Station Ambejogai Rural, for the offences punishable under Sections 376(2)(n), 376 (v), 354(a) and 323 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act ("POCSO Act", for short) and Section 9, 10 and 11 of Prohibition of Child Marriage Act, under Section 75 and 77 on Juvenile Justice Care and Protection Act and also under Section 3,4, 5 and 6 of Immoral Traffic (Prevention)(PITA) Act.

2. It's a story of a girl who lost her mother when she was eight. When she was a minor, on 19.05.2018, her father performed her marriage with a man of thirty-one. She stayed with her husband for around a year. However, he slapped her; hence, she fled away and started residing with her father and brother. Her father was scolding her for leaving her husband. She alleged against her father that he was telling her why she left her husband and came to reside with him. He was coming close to her and touching her with sexual intent. Due to the family atmosphere, she got bored, and in the month of June 2021, she started residing at a Bus stand and living as a beggar.

3. On 23 October 2021, the victim lodged a report with the police station alleging that taking advantage of her miserable condition, 15 days before, a student of one academy took her under the promise to feed her and did sexual intercourse. With this allegation, the crime was registered. However, the story took a turn on her statement, as pleaded in the application, recorded by the Child Welfare Committee. She narrated the miseries of her life and levelled allegations against all the accused, some of whom were policemen, and students. Since she levelled the allegations against all the accused, they were arrested and the learned trial Court released them on bail.

4. In brief, she claimed cancellation of bail on the grounds that the orders granting bail were illegal, perverse and without application of mind. It was necessary to consider the presumption enunciated in the POCSO Act. She was a minor. The Court granting bail has ignored the serious allegations constituting an offence under section 376D of the Indian Penal Code, Section 6 of the POCSO Act and under the PITA Act. However, the learned Court granting bail has erroneously granted bail holding that the first information report was belated. The facts she had narrated before the Child Welfare Committee should have been considered. The first information report was to be read along with her supplementary statement and statement under Section 164 of the Criminal Procedure Code. Being a minor girl, she was uncomfortable with the police. Hence, she did not name each accused in the First Information Report. No prompt FIR expected from a child that would not make the prosecution case defective and does not mean that other accused were not involved in the crime. Failure to name the accused in First Information Report was not a ground to grant bail. The gravity of the offence was to be born in mind.

5. The accused, who are respondents, strongly opposed the application. Their defence, one way or another, is similar. They had

come with a case that it was an afterthought report. She was abandoned. The accused, who was a policeman, committed a mistake in giving understanding to her and her relatives when she had been to the police station to lodge the report. The victim had a grievance against him, and under the misguidance of someone else, he was arraigned as an accused. The orders granting bail were legal, proper and correct. There is no perversity in the orders granting bail. The opportunity was granted to the victim, and a counsel to represent her was appointed through the Social Welfare Office. The submissions made by her in the bail applications were considered. The trial Court has properly considered the rules granting bail. They prayed to dismiss the applications.

6. Heard the learned counsel for the applicant, the learned counsel for the respondents/ accused, and the learned A.P.P for the State at length.

7. The arguments in these applications have been advanced as if it is a trial or an appeal on merit. Everyone has advanced marathon arguments with minute details. They have relied on the various case laws on the issues involved in this case.

8. The learned counsel for the applicant Smt. Kulkarni has vehemently argued that the facts of the case were self-speaking. The victim was 13 years, and many police officials, students, and others sexually assaulted her. Considering her age in detail in the first information report could be expected. She would submit that the first information report is not an encyclopedia of the facts. The circumstances in which the report was lodged were equally important. She was comfortable before the Child Welfare Committee. Hence, she narrated how the various persons from the society exploited her physically and socially. It has also been argued that a grave and heinous crime was committed against the helpless minor girl of 13 years. It was unfortunate that her father also tried to exploit her sexually. She was abandoned due to the misbehaviour and ill-intent treatment of her father. She was pulling her life residing at a Bus stand on begging. The bad persons, like accused, took the disadvantage of her compulsion and did forceful sex with her. The learned Judge granting bail ought to have considered the presumptions under the POCSO Act. The seriousness of the PITA has also not been considered. While deciding bail application, the first information report is not the only prime consideration; other material on record is also important. The situation in which the victim was living and trying to lodge the

report ought to have been considered. The very purpose of the POCSO Act, to extend protection to children from sexual offences was also not considered.

9. The learned Counsel for the applicant/victim argued that a serious crime under Sections 376D of the Indian Penal Code has been registered against the accused. The policeman who is accused also took the disadvantage of her miserable conditions. She was badly ravished. She was also pregnant for five months. When she went to the police station, her report was not taken. The ample *prima facie* material to hold that a serious crime was committed was available before the Court, but it was not considered. She was taken to the different lodges. The accused who took her to the lodges have been identified in the test identification parade. The relevant registers were also seized from various lodges. The Managers of the lodge have also voluntarily supported the prosecution. She was also taken to a brothel. She was also sold. The material placed on record before the Court was not properly taken into consideration; hence, the order granting bail is perverse, illegal and arbitrary. The principle of granting bail not to release the accused on bail where the offences are serious, and there is every possibility of tampering with the prosecution witnesses has also

not been considered. She relied on the few case laws and prayed to allow the applications.

10. Per contra, the respective counsels, in their reply, have vehemently argued that the orders granting bail were well reasoned and reflects the application of mind. The relevant documents before the Court were considered and appreciated correctly. It seems that someone has instigated the victim out of sympathy. There were no allegations against the accused in the First Information report except two and her parents. Considering her statement before the Child Welfare Committee, which was in a great detail, it cannot be said that she was uncomfortable before the police while narrating the entire story. They have also argued that Child Welfare Committee has exceeded its jurisdiction in recording the statement of the victim as regards the offence. The prime duty of the Child Welfare Committee is to provide care and protection to the children produced before it and not to investigate a crime. Therefore, whatever the statement recorded before the Child Welfare Committee cannot be considered as the first information report. The supplementary statements were based on here statement before the Child Welfare Committee. However, it smells like an instigation by somebody. The order granting bail was neither perverse nor arbitrary. The Court has correctly applied the principles of

granting bail. Hence, the applications deserve to be dismissed. They have also relied on various case laws which were this way or other similar. They have prayed to dismiss the applications.

11. In reply, the learned counsel for the victim has vehemently argued that the Child Welfare Committee did not record the statement of the victim on its own. However, the victim had submitted her statement in writing before the Child Welfare Committee, Beed. Therefore, it cannot be said that the Child Welfare Committee has exceeded its jurisdiction.

12. It is not in dispute that except for two accused, Hari and Rushi, none of the other co-accused were named in the First Information Report dated 23 October 2021. There is no quarrel that the report was not lodged promptly. After around three weeks of lodging the report, the prosecution came up with a case that on 11.11.2021, the facts in detail were disclosed in writing before the Child Welfare Committee, and thereafter the police put the investigation in motion and all accused before the Court were arraigned as an accused. The investigation papers reveal that on 13.11.2021 she had given her statement before the police constable. The letter/complaint addressed to the Child Welfare Committee, Beed,

is dated 11.11.2021. Thereafter, her supplementary statement was recorded on 13.11.2021 before Superintendent Swadhar Gruha by V. P. Patekar, a lady Police Sub Inspector. The reason best known to her, why she recorded her statement in the presence of Superintendent of *Swadhar Gruha*, and that seems to be the outcome of a written application dated 11.11.2021.

13. The learned counsel for the victim relied on the case of:

- (i) Sonu Vs. Sonu Yadav and Others AIR 2021 SC 1950.
- (ii) Kanwar Singh Meena Versus State of Rajasthan and others
AIR 2013 SC 296
- (iii) Brijmani Devi Versus Pappu Kumar and others
(2022) 4SCC 497

14. She has also relied on the order passed by this Court in the Application for Cancellation of Bai bearing No. 5 of 2023, dated 21 June 2023. Relying on these cases, she reiterated that the Court did not consider the well-settled principles of granting bail.

15. The case of Sonu cited supra is the latest Judgment of the Hon'ble Supreme Court on the cancellation of bail. In the said case, the Judgment, the case of *Brij Nandan Jaiswal Vs. Munna alias Munna Jaiswal MANU/SC/8441/2008: (2009)1 SCC 678* was referred to in which it was observed thus:-

“It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once bail is granted by any Court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder, some reasons justifying the grounds are necessary. “

16. In case of Kanwar Singh Meena (cited supra), the ratio decidendi was “*Bail shall be cancelled if cogent evidence and reasonable appreciation of witnesses proved involvement of the accused in the heinous crime*”. In that case various case laws have been relied upon. *Puran Versus Rambilas and Another MANU/SC/0326/201:(2001) 6 SCC 338* have been considered. Further, referring to *Dolat Ram Versus State of Haryana MANU/SC/0547/1995:(1995) 1 SCC 349*, this Court observed in Dolat Ram thus:-

“it was clarified that the above instances are merely illustrative and not exhaustive and one such ground for cancellation of

bail would be where ignoring the material and evidence on record a perverse order granting bail is passed in a heinous crime and that too without giving the reasons. Such an order would be against the principle of law and interest of justice would require that such perverse order be set aside and bail be canceled”.

In the above case of Puran Versus Rambilas and Another MANU/SC/0326/2011 : (2001) 6 SCC 338 it has been observed that Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other Courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. The Court must not undertake meticulous examination of the evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail Under Section

439(2) of the Code, the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the Court from cancelling the bail.” The High Court or the Sessions Court to bound cancel such orders particular when they are passed against the accused involving in heinous crime because the ultimately result in the weakening the prosecution case and have adverse impact on the society. Needless to say that, that though the powers of this Court are much wider, this Court is equally guided by the above principle in the matter of grant or cancellation of bail.”

17. This Court, while dealing with the application for cancellation of bail in the case of Swapnil Devraj Belle cited supra, has considered the law laid down by the Hon'ble Supreme Court in the case of Sonu cited (supra), *Manoj Kumar Khokhar Versus State of Rajasthan and another, Criminal Appeal No. 36 of 2022 (arising out of SLP) (3) (Cri) No. 4062 of 2022 (Supreme Court) dated 11.01.2022* and *Vs. Ashish Mishra @ Monu and another (2022) 9 Supreme Court cases 321*. The case of Bhagirathsinh S/o Mahipat Singh Judeja Versus State of Gujarat, 1984 (1) SCR 839 and the case of Kamuben Somaji Bhavaji Thakore Versus State of Gujarat (2022) DGLS (Guj.) 299 of (Gujarat High Court) were also placed before this Court for consideration. In Bhagirathsinh (cited) supra, the Hon'ble Supreme Court has laid down the law that very cogent and overwhelming circumstances are necessary for the cancellation of bail. The power to grant bail is not to be exercised as if the punishment before the trial is being imposed. The only material considerations in such a situation are whether the accused could be readily available for trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. If there is no prima facie case, there is no question of considering other circumstances.

18. In the case of Manoj Kumar cited supra, the Hon'ble Supreme Court has reiterated the ratio laid down in the case of ***Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118*** in paragraph No. 16 that reads thus:-

“16. The consideration that guide the power of an appellate Court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violation of the conditions of bail by a person to whom bail has been granted”.

19. It is clear from the above ratio laid by the Hon'ble Supreme Court, while considering the application for cancellation of bail, that the order granting bail should be well reasoned, not perverse, arbitrary, illegal or unjustified. The applicant seeking cancellation of bail must satisfy the Court that there is a likelihood of the accused fleeing from justice. There is a possibility of tampering with the prosecution witnesses, and there must be overwhelming circumstances to cancel the bail.

20. The learned counsel of the accused also relied on various case laws in which the ratio laid down in the cases discussed above regarding cancellation of bail has been reiterated. In sum and substance, the ratio has been laid down that bail can be cancelled on the existence of overwhelming circumstances but not on re-appreciation of the evidence. The order granting bail shall be cancelled, if the order granting bail was perverse, arbitrary, considering the material which was not relevant and ignoring the relevant material. As discussed above, the cases of Bhagirathsinh and Daolat Ram were also relied upon by the learned counsel for the accused. To avoid repetition of the case law, those have not been reproduced. However, apart from the above case laws they relied on the case of *State of Maharashtra Versus Vashishtha Rambhau Anadhale 2007(2) 7 SCC*, *State of Maharashtra Versus Mohd AbdulKha @ Babajani Criminal Writ Petition No. 1490 of 2015 dated 16.07.2016 of Bombay High Court bench at Aurangabad*, *Dataramsingh Versus State of Uttar Pradesh and another 2017 (3) SCC OnLine All 2627* in which the principle of bail that bail is the rule and refusal is exception has been discussed. The case of *Myakala Dharmarajam Versus State of Telangana AIR 2020 Supreme Court 317* has also been relied on in which it has been observed that bail once granted should not be

cancelled unless a cogent case, based on the supervening event, has been made out.

21. This Court has full sympathy for the victim. However, the Court cannot travel beyond the facts and the principles laid down by the higher courts over the issue involved in the case.

22. Now, the Court turns to appreciate the material relied upon by the victim. Considering her age and education and the signature on application dated 11.11.2021, it raises a serious doubt that she wrote it. Be that as it may, lastly, it was a statement before the Child Welfare Committee. Considering the powers and duties of the Child Welfare Committee, this Court has taken a view in Bail Application No. 1971 of 2022 dated 11th January, 2023 (*Prabhu @ Balu Baliram Kohle Versus The State of Maharashtra and Another*) that there is no provision in the said Act that victims of sexual offences shall be produced before the Child Welfare Committee to record their statement as regards the offence. The Child Welfare Committee has no powers and authority to record the statement of the victim about the incident. Its duty was only to provide protection to the children.

23. Regarding the orders granting bail, each order reflects that the lawyer was given to the victim to represent her and oppose the bail applications. The victim has put each fact and role of each accused. The submissions of the prosecution, the accused, and the victim have been discussed in detail. The Court granting bail has also considered the house search panchnama and other relevant material produced before it. However, after having gone through the entire material, the opinion was formed, and bail was granted. Having regard to the reasons mentioned by the learned Additional Sessions Judge, Ambejogai, granting bail, there appears no room for doubt that the Court did not apply mind while passing orders granting bail.

24. As discussed above, the bail orders have been assailed as the victim was dissatisfied with the reasons recorded by the learned Additional Sessions Judge granting bail. This Court has examined all orders granting bail and found that each fact and role attributed to each accused have been considered. The documents placed on record were also considered. After having gone through the papers and the gravity of the offence, the Court has assigned the reasons while granting bail to the accused. The argument advanced by the learned counsel for the applicant, pertaining to the factual aspect in support of

the documents, has also been discussed, and then the Court came to the conclusion that the accused deserve bail. No doubt, the offences registered against the accused were serious, but it appears that the rules granting bail have been correctly considered on the basis of the facts of the case placed before the Court. There was an inordinate delay in lodging the report. That apart, all the accused persons were arrested and interrogated. However, there is no material before the Court that there were overwhelming circumstances to cancel the bail. There is nothing on record to believe that there is a possibility of tampering with the prosecution witnesses in future. They have not violated any law. The Court granting bail has considered the relevant material while granting the bail. The Court is not satisfied with the objection raised to the bail applications and concludes that the applications deserve to be dismissed. Hence, the following order.

ORDER

25. The applications stand dismissed.

(S. G. MEHARE)
JUDGE