

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

APPLICATION FOR CANCELLATION OF BAIL NO.136 OF 2022

XYZ ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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WITH

APPLICATION FOR CANCELLATION OF BAIL NO.144 OF 2022

XYZ ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

...

WITH

APPLICATION FOR CANCELLATION OF BAIL NO.145 OF 2022

XYZ ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

...

WITH

APPLICATION CANCELLATION OF BAIL NO.168 OF 2022

XYZ ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

...

Mrs. Rashmi Kulkarni a/w Mr. Suraj Kumar h/f Mr Sanket S. Kulkarni,
Advocate for the Applicant

Mrs. P. V. Diggikar, APP for Respondent/State

Mrs. Bharati B. Gunjal, Advocate for Respondent No.2 in ACB No.136/2022

Mr. V. B. Garud, Advocate for Respondent No.2 in ACB No.145/2022

Mr. Sandeep Andhale, Advocate for Respondent No.2 in ACB No.168/2022

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 13.09.2023

PRONOUNCED ON : 07.10.2023

FINAL ORDER :-

1. By these group of the applications, the victim in Crime No.335/2021 registered with Police Station Ambajogai Rural seeks cancellation of bail granted in favour of the accused persons by the impugned the order/s passed by the Special Court, Ambajogai in Special.
2. Initially, the incident was reported to the police station on 08/11/2021 by the informant, minor girl, aged about 17 years. In nutshell, she alleges that, she lost her mother when she was aged about 8 years. She is educated up to 7th standard. She used to stay at Savitribai Phule Girls Hostel at Chanai while she was pursuing her education at Vasundhara Primary School, Ambajogai. On 19/05/2018, her father forced her to marry with one Vishal Bhagwat Somwanshi. After marriage, she cohabited with him. Although she was minor, her husband established sexual relations with her. Usually, he used to beat her, hence she left her matrimonial home and started residing with her father. However, her

father disliked her decision, scolded her and asked as to why she left matrimonial home. It is alleged that, her father used to slap and touch her with sexual intention so she left the home. Since June-2021, she stays at bus-stop as a beggar. It is further alleged that, fifteen days prior to lodging of the complaint, accused – Hari and Rushi, who were the students of Dyandeep Academy, offered food and took her at a vacant plot at Adas road. Both of them had forcible sex with her. It is accordingly alleged that the accused persons have constrained her to marry at the age of 13 years. The husband had forcible sex with her although she was of tender age. Similarly, other accused persons have raped her.

3. It is further alleged that, detailed statement of the victim dated 11.11.2021 has been recorded by the Child Welfare Committee [CWC], wherein, she has elaborated further narrations regarding her miserable life story, by which, she was put into flesh trade. Some accused persons are named with their specific role, whereby, she was taken to brothel and put to prostitution. It appears that, during the course of investigation, victim's statements under Sections 161 and 164 of the Code of Criminal Procedure [for short 'Cr.P.C.'] have been recorded and then accused persons were arrested. On completion of investigation, charge-sheet came to be filed against in all 33 accused persons for various offences punishable under Sections 354(A), 376(2)N), 376(D), 323, 504, 506 and 34 of the Indian Penal Code [for short 'IPC'], Sections 4, 6, 12 and 17 of the Protection of Children From

Sexual Offences Act, 2012 [for short 'POCSO Act'], Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 [for short 'the said Act'] and Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 [for short 'the Act']. The arrested accused persons had applied for grant of regular bail before the Special Judge, who was pleased to allow their applications and released them on bail subject to certain conditions.

4. Aggrieved by the said orders, the victim filed applications before this Court for cancellation of bail, wherein, challenge is raised to bail orders on the ground that such orders are erroneous, bereft of reasons, sans consideration of material in charge-sheet depicting commission of offences of heinous in nature.
5. Pertinently, this Court, after considering the submissions advanced and contentions put-forth on behalf of the applicant / victim and respondents / accused, rejected total fourteen applications by a common order dated 19/08/2023 and confirmed the orders granting bail in favour of the accused persons. However, the present four applications were left out, since the accused persons had failed to cause their appearance. This Court had accordingly directed to provide legal aid to them. The Secretary, High Court Legal Services Sub-Committee, Aurangabad had accordingly appointed an Advocate from the panel to represent them. However, in ACB No.144/2022, the notice could not be served against the

accused and even surety was not found. Therefore, this Court vide order dated 10/07/2023 directed the learned Additional Sessions Judge, Ambajogai to take appropriate steps to secure his presence.

6. Mrs. Rashmi Kulkarni, learned Advocate appearing for the applicant / victim vehemently urged that this is a case, where a victim, who was aged 13 years, was subjected to child marriage by her father. At such a tender age, she was subjected to penetrative sexual assault. When the victim escaped from her matrimonial home to save herself from physical and sexual assault at the hands of husband and returned back to her father, instead of getting the support, her father attempted penetrative sexual assault and touched her with sexual intention. When the victim reported to the police, instead of taking cognizance of misdeeds exercised against her, she was again sent back with her father. Thereafter, she was forced to stay at public place like bus-stand where under pretext of providing food to her, she was raped by the accused persons. She would further submit that FIR is not encyclopedia what is recorded in the FIR is the gist of initial misdeeds against the victim. However, the further elaboration of her miserable condition and heinous acts by the accused persons to put her in brothel and then in the flesh business is elaborated before the CWC. Such statement is part of the charge-sheet. She would further point out that supplementary statement of the victim is recorded on 13/11/2021. Her statement under Section 164 of Cr.P.C. has

been recorded on 10/11/2021. If all the statements are read together, the role of each and every accused can be gathered. She would submit that although this Court vide order dated 19/08/2023 rejected the applications for cancellation of bail in respect of 14 accused persons, it was based on the scrutiny of the individual role and material against those accused persons. She would therefore submit that, it would be necessary independently to scrutinize and consider each application for cancellation of bail based on the evidence and role attributed against individual accused.

7. In ACB No.136/2022, she would submit that respondent no.2 is a father of victim. His role is elaborated by victim in detail in her statement given to CWC. She would submit that he is responsible for her marriage at tender age of 13 years. Thereafter, when she returned back to her maternal home, respondent no.2 attempted to establish illicit relations with her and touched her with sexual intention. When she complained to police, she was again sent back with respondent no.2, who put burnt marks on her hands as a punishment of making complaint to the police. Then, she was left to live a life of beggar. She would submit that the Special Court erroneously observed that at the most, the offences punishable under Section 354-A of IPC would attract against respondent no.2. According to her, the Special Court has completely ignored that Sections 18 and 23 of POCSO Act would attract against respondent no.2. Hence, the bail granted to him is based on erroneous consideration and

misconception of law.

8. In ACB No.145/2022, she would submit that the respondent no.2 had repeatedly sexually assaulted her. By inviting attentions of this Court to supplementary statement of the victim dated 13/11/2021 and another supplementary statement dated 06/12/2021, she would submit that before supplementary charge-sheet could be filed against respondent no.2 and when investigation was incomplete, he has been enlarged on bail. She would point out that respondent no.2 had absconded for considerably long time. When initially charge-sheet was filed, he is shown as absconding.
9. In ACB No.168/2022, it is submitted that, respondent no.2 brought the victim to Shalini lodge. The owner of the lodge knows the accused. Even register of the Shalini lodge is seized during the course of investigation, which shows that, the accused had been to lodge accompanied the victim and sexually exploited her in the room no.108. However, learned Special Court granted bail to respondent no.2 on the ground that the evidence indicating identification of the accused is insufficient so also the victim had accompanied him on her volition. It is submitted that the Special Court ignored the provisions of POCSO Act as well as PITA Act. She would further submit that accused is also guilty for the offences punishable under Section 228 of IPC and Section 23 of POCSO Act.

10. In ACB No.144/2022, it is submitted that respondent no.2 took the victim to the house of accused - Draupadi Danke, who is still absconding where he used to bring the customers and receive the commission of Rs.200/-. The accused - Draupadi Danke was running a brothel at her house. The respondent no.2 has actively participated in the commission of offence. However, learned Special Judge while releasing the applicant on bail observed that the role of applicant is restricted to the extent of commission of offence under the provisions of Immoral Traffic [Prevention] Act. Further, there is no material to indicate that the brothel was run at the house of accused - Draupadi Danke and there is delay in lodging the FIR. Learned Advocate appearing for the applicant would submit that respondent no.2 is also guilty for the offence punishable under Sections 228-A of IPC, but said aspect has been totally ignored by the Special Court.
11. The learned Advocate appearing for the applicant would further submit that the Special Court has completely ignored well settled the principles of law governing the powers of Sessions Court under Section 439(1) of Cr.P.C. She would submit that although wide powers are available with the Sessions Court in respect of bail, the Court cannot ignore the gravity of the circumstances in which the offence is committed. She would submit that in the present case, the alleged offences are graver. The accused persons are prima facie guilty of the offences under the POCSO Act and PITA Act. The release of the accused persons in such case would

definitely hamper the smooth prosecution. She would submit that since the order granting bail suffers from serious infirmities and ignores the relevant material indicating prima facie involvement of accused, this is a fit case for cancellation of bail. She would further submit that the Special Court ought to have exercised discretion in judicious manner and in accordance with the principles of law. The order granting bail is bereft of the relevant reasons and non-speaking as regards to material aspects. In support her contentions, she would place reliance on respective judgments in matters of **Kanwar Singh Meena Vs. State of Rajasthan and Ors.**¹, **Brijmani Devi Vs. Pappu Kumar & Ors.**², **Bhagwan Singh Vs. Dilip Kumar alias Deepu alias Depak and Another**³, **Suresh @ Pintya Kashinath Kamble Vs. The State of Maharashtra** in Criminal Appeal No.272/2017 dated 21/09/2022, **Rakesh Ramnivas Sharma Vs. Bharti Shirish Kadam & Anr.** in Criminal Writ Petition No.3797/2022 dated 22/12/2022 and **Swapnil Devraj Belle & Anr. Vs. The State of Maharashtra & Ors.** in ACB No.5/2023 dated 21/06/2023.

12. The learned Advocate appearing for the respective accused in all application/s have vehemently submitted that the Special Court has exercised discretion in accordance with law. They would submit that except two accused persons, no role is attributed against any of the accused although the FIR is belated. The applicants are released on bail long back. The

¹ AIR 2013 SC 296

² (2022) 4 SCC 497

³ (2023) SCC Online SC 1059

application for cancellation of bail are belatedly filed. The applicants have been falsely implicated as accused based on false allegations introduced by the supplementary statement. They would submit that the statement given before CWC by the victim although made part of the charge-sheet, cannot be considered as part of investigation. No sanctity can be attached to such statement. The learned Advocates appearing for the respondents would submit that the Special Court has considered the nature of allegations against the accused persons. It is further submitted that the narration appearing in the supplementary statement is based on the alleged statement recorded before the CWC. The statement before CWC is in the nature of written document and not statement of victim recorded before the Child Welfare Committee. The learned Advocate appearing for the accused submits that the application for cancellation of bail in respect of 14 accused persons have been rejected by this Court while recording elaborate reasoning. The accused / respondent no.2 in the present applications cannot be segregated or given differential treatment. Hence, they urge to reject the applications.

13. Having considered the submissions advanced, apparently, this Court, vide order dated 19/08/2023, rejected the application seeking cancellation of bail in respect of 14 accused persons from the same crime. The gravity of the alleged offence and submissions advanced on behalf of the victim are elaborately considered by this Court while dealing with those

applications. This Court has observed that the first information report dated 23/10/2021 itself is delayed by three weeks, wherein, only two accused persons are named. Subsequently, on 11/11/2021, the narration of further accusation and role under individual accused was placed through a representation signed by the victim. Thereafter, supplementary statements dated 13/11/2021 and 06/12/2021 have been recorded, wherein, alleged role of the other accused persons are elaborated. Thereafter, this Court considered the law laid down by the Hon'ble Supreme Court of India in the matters of **Brij Nandan Jaiswal Vs. Munna alias Munna Jaiswal**⁴, **Dolat Ram Vs. State of Haryana**⁵ so also **Puran Vs. Rambilas and Anr.**⁶, **Manoj Kumar Khokhar Vs. State of Rajasthan and Anr.** in Criminal Appeal No.36 of 2022 (arising Out Of Slp(Crl.) No.4062 Of 2020), **Mahipal Vs. Rajesh Kumar**⁷ and **Myakala Dharmarajam Vs. State of Telangana**⁸ and concluded that there is no reason for cancellation of bail. It is true that this Court has also considered individual allegations and material against each of the applicants.

14. So far as ACB No.136/2022 is concerned, the accused is a father of victim. The attribution against him is that he is responsible for performing the marriage of the victim when she was barely aged 13 years. Similarly, there is allegation that he used to touch her with sexual intention and also

4 (2009) 1 SCC 678

5 (1995) 1 SCC 349

6 (2001) 6 SCC 338

7 (2020) 2 SCC 118

8 AIR 2020 SC 317

brought condoms nearby her. Pertinently, there is no allegation of sexual assault in the FIR and effect of her further statements are considered by the Special Court while granting the bail to the respondent. Although the learned Advocate appearing for the applicant submits that the Special Court did not consider the effect of Sections 18 and 23 of POCSO Act which provides for severe punishment, considering the allegations, *prima facie*, it would be difficult to hold that Section 18 of the POCSO Act would attract in facts of this case to bring home guilt against respondent no.2. Apparently, the Special Court has rightly applied the principles of law governing the grant of bail. Pertinently, there is no allegation that after release of the applicant on bail, he has breached any condition of the bail or his conduct is prejudicial to the interest of prosecution during the period of one and half years.

15. So far as ACB No.145/2022 is concerned, the allegations against the applicant is that the applicant has sexually assaulted her. When the victim attempted to lodge the complaint against him, she was not entertained. Initially, he was shown absconding and thereafter, supplementary charge-sheet is filed against him. Pertinently, respondent no.2 is not named in the FIR or even in statement submitted before CWC on 06/11/2021. The name of the applicant is introduced in the supplementary statement dated 13/11/2021. Even as per the allegations in the supplementary statement dated 13/11/2021, the applicant is

named as Avinash Shankar Devkar. The Special Court while granting bail to the applicant has considered the fact that the applicant is not named in the FIR so also in the statement before CWC given by the victim. There is no reference regarding any role against respondent no.2 in the statement of victim recorded under Section 164 of Cr.P.C. It is difficult to hold that the Special Court has failed to consider the nature of evidence available against respondent no.2 or ignored any other material that could have been affected the decision making process in the grant of bail.

16. So far as respondent no.2 in ACB No.168/2022 is concerned, the allegation is that he had established sexual intercourse with the victim at Shalini lodge. It is alleged that during the course of investigation, the register of Shalini lodge is seized. Even the victim has identified room no.108 where the accused took her for sexual exploitation. The learned Advocate appearing for the applicant urged that the Special Court ignored the material evidence against the accused in the form of the register of Shalini lodge and identification of the accused by the victim. She would submit that the statement of Madhukar Gutte clearly stipulates that the victim was brought by the accused to the Shalini lodge. There is entry in the register along with Aadhar Card of the accused which is sufficient to establish his complicity in the commission of offence, therefore, it is urged that prima facie there is sufficient evidence to establish his guilt. Pertinently, the Special Court has considered the aforesaid material while

granting the bail to the applicant. The elaborate reasons are recorded to hold that the evidence tendered against respondent no.2 is bereft to bring home guilt. Pertinently, the FIR dated 08/11/2021, the statement of victim dated 10/11/2021 recorded under Section 164 of Cr.P.C. do not whisper about role of the applicant. Similarly, the statement dated 11/11/2021 tendered before CWC and supplementary statement dated 13/11/2021 and 06/11/2021 nowhere stipulates the role against the respondent no.2. The entire reliance of prosecution is based on the statement of co-accused Madhukar Gutte recorded dated 14/11/2021, who narrates that the respondent no.2 had been to lodge along with the victim.

17. Although it is argued on behalf of the applicant that the statement of co-accused Madhukar Gutte is recorded on 14/11/2021, when he was not made as accused, therefore such statement would be significant, the veracity of such statement can be looked into during the course of trial. The Special Court has also considered the aforesaid aspects while granting the bail to the respondent no.2. The Court has also considered the conduct of the victim. The reasoning adopted by the Special Court cannot be said to be perverse. The basic principles of law governing the discretion for grant of bail are adhered to.
18. So far as respondent no.2 in ACB No. 144/2022 is concerned, he is alleged to have acted as middle man to bring the

customers at the brothel of Draupadi Danke, where the victim was forced for prostitution. It is pertinent to note that, respondent no.2 is not named in the FIR or even in the statement recorded under Section 164 of Cr.PC before the learned Magistrate. The role of the applicant is surfaced in a statement of victim before President of CWC dated 06/11/2021. The learned Sessions Judge, Ambajogai considered the aforesaid allegation and nature of evidence against the applicant and rightly observed that prima facie, at the most, the applicant can be prosecuted for the offences punishable under PITA Act. No role is attributed against him in actual commission of the offences punishable under IPC or POCSO Act. The complicity of the applicant in the commission of offences can be considered during the trial. However, it is difficult to hold that the learned Sessions Judge has arbitrarily exercised his jurisdiction or exceeded his jurisdiction while adjudicating bail application. The release of the applicant is subjected to necessary conditions that would protect the interest of the prosecution.

19. Learned Advocate appearing for the applicant points out that identify of the victim has been displayed in the bail applications moved by the individual accused person. She would submit that such act on the part of the accused is serious breach of the mandatory imposition laid down by the Hon'ble Supreme Court of India in the case of **Sangitaben Datanta Vs. State of Gujarat**⁹. Therefore, she submits that,

it is necessary to direct the Sessions Court, Ambajogi to expunge/morph the part of applications disclosing identify of the victim. Considering the submissions advanced on behalf of the applicant, it appears that, the guidelines requiring to morph the name of the victim were not adhered to before the Sessions Court. It is therefore explicit to direct to morph the name of prosecutrix wherever it is appearing in the record of the sessions case, particularly, in the applications tendered by individual accused persons.

20. Considering the aforesaid aspects of the matter, no case is made out to show indulgence in impugned the orders passed by the Special Court. Hence, the following order:

ORDER

- (i) The ACB Nos.136/2022, 144/2022, 145/2022 and 168/2022 stand rejected.
- (ii) The Sessions Court is hereby directed to ensure that the name of the victim is morphed wherever necessary in the record in tune with the directions given by the Supreme Court of India in the matter of **Sangitaben Datanta Vs. State of Gujarat** [*Supra*].

[S. G. CHAPALGAONKAR]
JUDGE