

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.235 OF 2022

X.Y.Z.

Through her father

.. Applicant
(original complainant)

Versus

1. The State of Maharashtra
Through Police Station Incharge,
Kallamb Police Station,
District Osmanabad

2. Amit s/o. Machinadranath Mali,
Age 29 years, Occu. Teacher,
R/o. Mangurl, Tq.Kallam,
District Osmanabad

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

Mr. K. R. Doke, Advocate for Applicant;

Mr. K. S. Patil, A.P.P. for Respondent No.1;

Mr. V. B. Deshmukh, Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 10-04-2023

PER COURT :-

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

2. By this application under Section 439 (2) of the Code of Criminal Procedure, the applicant/victim seeks cancellation of bail granted to respondent No.2/accused in C.R.No.261 of 2022 registered with Kallamb Police Station, Taluka Kallamb, District Osmanabad, for the offence punishable under Sections 376(2)(f)

(n), 506 of the Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012, by the learned Joint Additional Sessions Judge, Osmanabad, vide order dated 05.07.2022, passed below Exhibit-7 in Special Case No.71 of 2022.

3. The learned counsel for the applicant would argue that the Court granting bail had not considered the age of the victim as well as other material available on record. He would state that the accused was her Teacher. He took disadvantage of his position. The accused had fiduciary relation with the victim. Hence, she could not complain against the applicant. The order granting bail is perverse and arbitrary. Hence, the order granting bail be cancelled.

4. Per contra, the learned counsel for respondent No.2/accused has vehemently argued that there were no allegations of taking disadvantage as the victim was his student. The victim was heard at length and the papers were also examined by the Court granting bail. It was a consensual sexual relationship. However, the parents learnt about their relationship when her pregnancy came to light. The victim was around 16 years old and able to take appropriate decision. The impugned order is free from error and the principles of granting bail have been followed by the learned Judge granting bail.

5. Perused the impugned order. It appears that the victim and the accused had some consensual relationship. This aspect has been considered by the Court granting bail. The speaking order is passed by the Court granting bail. Nowhere it appears that inadmissible evidence has been considered and admissible evidence has not been considered. It appears that the norms set out by the various judgments and pronouncements by the High Court for granting bail have been considered. The applicant did not intervene the investigation. After going through the order granting bail, nowhere it appears that there were overwhelming circumstances to cancel the bail. The order granting bail is neither arbitrary nor perverse. Hence, the application stands rejected.

(S. G. MEHARE)
JUDGE

rrd