

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

**APPLICATION FOR CANCELLATION OF BAIL NO.277 OF 2022
IN APEAL/739/2022**

**XYZ
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Smt. Vaishali A.Shinde (More)
APP for Respondent No.1 - State : Smt. V. S. Chaudhari
Advocate for Respondent No.2 : Mr. Avinash D. Hande
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 12 JANUARY 2023

PER COURT :

1. Heard learned advocate appearing for applicant and learned APP.
2. Taking into consideration the application, it is not necessary to issue notice to respondent No.2.
3. Present application has been filed under section 439(2) of the Code of Criminal Procedure (Cr.PC.) by the informant for cancellation of bail granted to respondent No.2 in Criminal Appeal No.739 of 2022 by this Court on 01.12.2022. On the basis of FIR lodged by present applicant, offence vide C.R. No.147 of 2022 came to be registered on 15.05.2022 with Kandhar Police Station, District Nanded for the offences punishable under sections 376(2)(n),

323, 504 of Indian Penal Code (IPC) and under section 3(1)(r), 3(1)(s), 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act).

4. Learned advocate for the applicant has contended that after the bail was granted by allowing the appeal under section 14A(2) of SC & ST Act, respondent No.2 has acted in such a manner, which can be termed as breach of condition of the bail. The applicant had gone to Chawani Cantonment Office in Aurangabad, where the respondent No.2 is serving, for submitting papers on 16.12.2022 at about 12.00 p.m. Respondent No.2 started picking up photographs of applicant and therefore, she asked as to why he is taking her photographs. At that time, respondent No.2 had assaulted her by fist and hands, abused her and gave threat to kill. Non-cognizable offence came to be registered by Chawani Police Station, Aurangabad City on the same day, under sections 323, 504 and 506 of Indian Penal Code. Further, respondent No.2 is making phone calls to the applicant and giving her threats. All these acts of respondent No.2 amount to tampering with the evidence and thereby, it can be concluded that he is committing breach of the condition of the bail. Therefore, the said order passed by this Court on 01.12.2022 deserves to be recalled and the bail granted deserves to be cancelled under section 439(2) of Cr.P.C.

5. We would like firstly to deal with the legal position in respect of

cancellation of bail. The Hon'ble Supreme Court in ***Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)*** has held that, *“it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out”*. The principles laid down in ***Daulatram Vs. State of Haryana, (1995) 1 SCC 349)*** have been reiterated, those are as follows :-

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

6. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order

granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

7. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, “when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner.”

8. We would like to further say that the appeal was granted by this Court and the order passed by the trial court rejecting the application under section 439 of Cr.P.C. by the Special Judge under the Atrocities Act filed by respondent No.2 was set aside and that application came to be granted, that means the bail that was granted by this Court was under section 439 of Cr.P.C..

Definitely the application under section 439(2) of Cr.P.C. for breach of condition imposed by this Court would lie before this Court, but when we are considering an application under section 439(2) of Cr.P.C. it has two elements, one breach of terms of conditions and second is the assessment of the order granting or rejecting bail by an appellate or superior court. The present application does not fall under the second category and therefore, it is required to be considered as to whether the applicant has set out any such facts, which would justify setting aside the order passed by this Court amounting to cancellation of bail.

9. At the outset, as the facts which have been stated would show that the applicant has filed non-cognizable complaint with the police on 16.12.2022 in respect of an incident that had taken place in cantonment office, which is the office of respondent No.2. Further, facts have not been stated as to whether the police had sought permission from the Competent Magistrate under section 155(2) of Cr.P.C. for investigation. Under such circumstance, mere filing of non-cognizable case cannot be taken as a circumstance to take away the liberty that has been granted to a person. The second aspect that is required to be considered is that as on today, it appears that the applicant has not filed any private complaint when it was found by her that the police are not investigating her non-cognizable case. She has legal remedy for the same. Secondly, she has not given details as regards the alleged

threat calls from which number she had received, when they were received etc., but only a leaf has been annexed which is a photocopy of screenshot of the call details at Exhibit-‘D’. It does not mention the mobile number and it appears that those calls were recorded, however, she has not stated that she had lodged any complaint with the police and had handed over the said recording to the police. Thus, it can be said that there is absolutely no evidence to support the contention of the applicant that respondent No.2 has committed breach of condition of the bail.

10. Another aspect that has to be considered is that the perusal of the FIR would show that the present applicant intended to say that respondent No.2 has performed forcible marriage with her and thereafter, by cheating her he had sexual intercourse with her. She also alleges that she was abused in the name of caste. This Court while allowing the appeal had observed that the contents of the FIR, *prima facie* disclosed and also the material indicates that there was consensual relationship between them.

11. We are therefore asked learned advocate for the applicant as to whether the applicant is accepting that she had performed marriage with respondent No.2 or not, in view of the submission made on behalf of the applicant that she had gone to the office of respondent No.2 to insert her name in the service-book of respondent No.2 as his wife. If this is to be accepted that she was considering herself as wife, then the question arises as

to whether there can be an offence under section 376 of IPC. We need not go much into further details, but we can still say that the non-cognizable offence registered at the instance of the applicant appears to be due to the situation created which need not be further considered or it cannot be taken as a circumstance amounting to breach of condition to the bail. The ground of the bail is a matter which implicates the liberty of the accused and when on the facts of the case assessed the liberty is restored, it cannot be taken away mechanically. We do not find any merit in the application, it deserves to be rejected at the threshold. Accordingly it is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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