

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

APPLICATION FOR CANCELLATION OF BAIL NO. 176 OF 2018

**FAKKAD S/O MAININATH ZANJE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mrs. Rani Tandale, Advocate h/f Mr. S. S. Thombre, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. K. N. Shermale, Advocate for respondent Nos. 2 to 5.

**WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 18 OF 2019**

**FAKKAD S/O MAININATH ZANJE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mrs. Rani Tandale, Advocate h/f Mr. S. S. Thombre, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. K. N. Shermale, Advocate for respondent No.2.

**WITH
CRIMINAL WRIT PETITION NO.107 OF 2019**

**BHIMRAO S/O. RANGNATH MALSHIKHARE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. K. N. Shermale, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent/State

**WITH
CRIMINAL APPLICATION NO. 538 OF 2019**

**FAKKAD S/O MAININATH ZANJE
VERSUS
BHIMRAO S/O RANGNATH MALSHIKARE AND OTHERS**

Mrs. Rani Tandale, Advocate h/f Mr. S. S. Thombre, Advocate for the applicant

Mrs. G. L. Deshpande, APP for the respondent/State

Mr. K. N. Shermale, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 31st JULY, 2023

P.C. :-

1. These applications are filed for cancellation of bail granted in Criminal Bail Application No. 606/2018 in connection with 209/2018 registered with Ambhora Police Station, whereas petition No. 107 of 2019 is filed challenging order of cancellation of bail. It is a contention of the informant that on 15/10/2018 his minor daughter aged about 16 years was abducted by accused. Later on the girl was found and was handed over the custody of her parents. Offence came to be registered under Section 363, 366, 376(1) of IPC and Sections 4 and 8 of POCSO Act.

2. Learned Sessions court granted anticipatory bail to accused Nos. 2 to 5 whereas accused No.1 Swapnil was granted regular bail under Section 439 of Cr.P.C. The cancellation of bail is sought on the ground that the offences are serious in nature and that learned Sessions Court has failed to take in to consideration the allegation against the present respondents.

3. Learned counsel for the petitioner/informant submitted that the accused are politically influential persons and that there was breach of conditions of bail by one of the accused. It is alleged that the said accused Bhimrao had made a call to the informant and therefore for breach of conditions of bail the anticipatory bail granted to him was cancelled.

4. Learned counsel for the Bhimrao submits that this accused about aged 75 years and that since number of calls were received earlier on his phone from the informant, by mistake one call might have been made. He further states that the said call lasted only for 14 seconds and with it such short period question of threatening informant does not arise. Thus according to him this could not be a case for the cancellation of bail on the ground of breach of condition.

5. Though the offences charged against accused No.1 are punishable under Section 376 of IPC and other relevant provisions of POCSO Act but the statement of victim recorded by the learned Magistrate under Section 164 of Cr.P.C. clearly shows that it is case of love relation and there is consensual physical relationship established between victim and accused No.1. This accused was enlarged on regular bail by considering the statement of the victim and having regard to the love relationship between them, there was no justification for rejection of

the bail application even of accused No.1.

6. As far as other accused are concerned, the offence punishable under Section 376 and POCSO Act would not get attract against them. From the statement of the victim it is clear that on her own accord she went along with accused No.1. In such circumstances, there is prima facie no evidence to connect the other accused with the crime in question. In such circumstances, the learned Addl. Sessions Judge was clearly justified in protecting their liberty by allowing the application filed under Section 438 of Cr.P.C.

7. As far as accused Bhimrao is concerned it is pertinent to note that though his bail application was allowed for pre-arrest bail, without even filing any application for cancellation of bail the said order came to be cancelled by the learned Addl. Sessions Judge by passing order dated 16/11/2019. The reason recorded by the learned Addl. Sessions Judge for cancellation of bail is that a phone call was made by this accused to the informant. This Court finds substance in the contention of the counsel for this accused that the informant had made phone calls when the boy and girl were missing and the possibility of the call being inadvertently made cannot be ruled out. It is pertinent to note that duration of said call was for 14 seconds. Thus, it is hardly believable that within 14 seconds threats could have been issued by the applicant

against informant for withdrawal of the complaint. A specific query was made to the learned counsel for the informant as to whether any time thereafter any such attempt is made by in view of the accused to pressurize the informant or victim. To this the learned counsel for the informant replied in negative. It is pertinent to note that for last four years not even a single attempt is made to cause interference in the evidence of the prosecution. Having regard to this fact also the explanation submitted by the learned counsel for this accused deserves to be accepted.

8. One more aspect needs to be considered is that there was no application for cancellation of bail of this accused. This order of cancellation of bail came to be passed on an application moved for modification of the conditions of bail. There was nothing on record to indicate that this accused was issued notice for cancellation of his bail nor he was heard on that ground. In such circumstances, the order of cancellation of bail cannot sustain. Hence writ petition No. 107/2019 stands allowed. Applications stand dismissed.

(R. M. JOSHI, J.)

ssp