

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 44 OF 2022

Miss. "D"

Through her Mother

Perminder Kaur Bhupender

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr.Aniket Vagal a/w Mr.Kunal Pednekar – Advocates for Applicant.

Mr.S.R.Agarkar – APP for Respondent-State.

Mr.Sachin Teknar – PSI – Rabbale Police Station – Navi Mumbai.

CORAM : S. M. MODAK, J.

DATED : 30TH JUNE 2023

P. C. :

1. Heard learned Advocate Shri.Vagal for the First-Informant and learned APP. Officer from concerned Police Station is present.

2. The First-Informant is praying for cancellation of bail granted by the Court of Additional Sessions Judge – 6, Thane on 14th December, 2021. The First-Informant wants cancellation of bail on following grounds :-

- (i) There are two victims ; one the First-Informant mother and second her daughter who is a minor. In the FIR lodged by the mother on 13th November,

2021 with Rabbale Police Station, she has stated about sexual abuse and harassment to her by the Accused. In addition to that, she has also alleged that the Accused used to touch to the entire body of the victim daughter.

- (ii) According to the First-Informant, there ought to be a separate FIR when there is an allegation of sexual abuse and harassment to the victim/daughter.
- (iii) A copy of roznama of the Bail Application is produced on Page No.19. Roznama dated 2nd December, 2021 mentions that Applicant was heard. It mentions presence of Advocate for the Complainant, learned APP, Investigating Officer and Advocate for the Applicant. After hearing, the matter was adjourned to 6th December, 2021.
- (iv) On 6th December, 2021, a copy of statement recorded under Section 164 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] was provided by the Investigating Officer. On that date, learned Advocate for the First-Informant was not there and she was not heard and it has caused prejudice to her.
- (v) Learned Judge while deciding the Bail Application has not considered the allegations of sexual abuse of the victim daughter. My attention is invited to Para No.9 of the said order.

3. Learned APP submitted that in the FIR, the mother has stated

about abusing her as well as her daughter. He submitted that apart from Section 354, 376, 376(2)(n), 504, 506 of Indian Penal Code, 1860 [“IPC”], the provisions of Section 7 and 8 of Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”] are also invoked. He submitted that the statement of the victim girl is recorded under Section 161 of Cr.P.C., and also under Section 164 of Cr.P.C. He placed reliance on the notings of the roznama as they are reflected.

4. I have read the contents of FIR filed by the mother. The abuses against the mother and victim have taken place in one house. The grievance for a separate FIR cannot be a ground for cancellation of bail. Only we have to see whether the facts were properly considered while granting bail or not.

5. When the matter was argued on 2nd December, 2021, roznama marks the presence of learned Advocate for the Complainant and other Counsels also. When I have read the order, it is true that there is no reference that learned Advocate for the Complainant was heard. If the matter is adjourned for orders to 6th December, 2021, as such it is not expected from the learned Advocate to remain present. But, it seems that a copy of statement under Section 164 of Cr.P.C.

was tendered and taken on record 6th December, 2021. Now, how the Court of Additional Session Judge has dealt with this statement can be seen from observations in Para No.9.

6. Court of Additional Session Judge considered following aspects :-

- (a) One is the date of arrest of Accused on 14th November, 2021
- (b) Offence is under Sections 7 and 8 of POCSO Act
- (c) Applicant is in jail since 14th November, 2021 and lastly,
- (d) Sufficient time was granted to carry out investigation.

7. The offences under Sections 7 and 8 of POCSO Act are punishable upto five years imprisonment. So, I do not think that the trial Judge has decided the Application hastily and without considering the materials.

8. No case for cancellation of bail is made out.

9. Hence, Application is dismissed.

10. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]