

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1239 of 2022

Rehan John Gomes & Anr.	]	..	Applicants
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Ravi Mungekar a/w Neha Rane i/b Prasad Panchal for the Appellants.

Mr.N.B. Patil, App for State-Respondent No.1.

Mr.Ali Bubere a/w Umar Dalvi i/b Rajendra Rathod for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 31st March, 2023.

P.C.

1] By the present Application, the Applicants/Accused seek cancellation of the condition imposed upon them by the Special Judge under POCSO Act, by the order dated 29.11.2021, where it is directed that the Accused Nos.1 and 2 shall deposit their passports on the next date without fail before the Court, till conclusion of trial.

On 14.12.2022, while issuing notice to Respondent No.2, this Court directed that the Sessions Court shall not insist for deposit of Passports.

2] The sequence of events would reveal that the Applicants were accused of committing an offence under Section 354B of the IPC and

Section 8 of the POCSO Act and since they were apprehending arrest in CR No.84/2017, the Special Judge, deemed it fit to release them on bail in the event of arrest, subject to a condition that they shall not tamper with the prosecution evidence. While doing so, a prima facie case was also recorded to the effect that there is enmity between the Applicants and victim as regards the use of public latrine and both of them have filed cross case against each other.

It was specifically recorded that for the present complaint which has invoked Section 354B of the IPC, custodial interrogation is not necessary. The other conditions in the order read as under :

- “6. Applicants shall not leave India without prior permission of the Court.
7. The breach of any of the above condition will be a ground for cancellation of anticipatory bail.”

3] Subsequent to the said order being passed, MA No.594/2019 was taken out by the complainant seeking cancellation of bail and this was on two counts, one being the mother of accused no.1 and sister of accused No.2 are uploading a video on social media that contain comments on the victim, and as a consequence of this, she is suffering from mental stress

An apprehension was expressed, that Alzira Gomes- mother of accused no.1 and sister of accused no.2 were doing this at the instance of present applicants.

Apart from this, another ground which was put forth was to the effect that Accused No.2 was preparing a plan to go abroad with an intent to abscond the proceedings of trial. The relevant Para No.3 of the Application, read as under :-

“ According to applicant, accused No.2 is preparing a plan to go in abroad with intent to abscond the proceeding of trial and therefore he is not attending many dates before the court. The condition imposed on the accused is that they shall not leave India without prior

permission of Court. If accused No.2 will leave India then it will be difficult for the victim to get justice. Thus, prayed for cancellation of bail of both the accused.”

4] On appreciation of the Application, court clearly reminded itself of the conditions imposed in the earlier order dated 05.06.2017 to the effect, that the accused were not permitted to leave India without prior permission of the Court. The Court specifically recorded that there is no record filed by the Applicant that they are going to visit foreign countries and as far as contention of uploading video is concerned, it is recorded in para 5 that it can be proved at the stage of trial, whether the video is uploaded or not.

The pertinent observation is recorded in Para 7 of the order to the following effect.

“In the present case, though accused No.2 was absent on some dates for trial, it cannot be said that he is absconding. Further, no documents are tendered on record to show that both accused tried to visit foreign countries in order to avoid the progress in trial.”

.. However, merely to deal with the apprehension, that there is a possibility of absconding of the accused, the direction came to be issued to deposit their Passports.

It is, this order which is impugned in the present Application.

5] On hearing the learned counsel for the Applicants and on perusal of the orders passed by the Special Court, one releasing the accused on bail and other imposing condition of deposit of Passport, I find the approach completely unreasonable.

Merely because there is power to be exercised under Sub Section (2) of Section 439 Cr.P.C., it can be exercised in rare cases, where it is found that there is breach of condition imposed by the court while releasing the accused on bail or if the order has been passed by

taking into consideration irrelevant material and amount of perversity.

In the present case at the first instance, the Court had clearly recorded that there is no necessity of interrogation and released the accused on bail in the event of arrest, by imposing condition that they shall not travel abroad without prior permission of the Court. Merely because apprehension is expressed by the complainant that one of the accused is preparing to travel abroad, when no material being placed to the effect, I do not think that apprehension ought to have been dealt by the learned Judge by imposing condition to the satisfaction of the complainant, which would ultimately deprive the accused persons of their liberty.

In any case before traveling abroad condition is imposed that they should seek permission of the Court.

In my considered opinion, this would suffice the purpose, being the Applicant's availability at the time of trial.

Hence, Application is allowed. Condition No.2 imposed vide order dated 29.11.2021 is set aside.

Criminal Application is disposed off.

[BHARATI DANGRE, J]