

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 306 OF 2023

Raghunath Babanrao Kuchik .. Appellant
Versus
State of Maharashtra and anr .. Respondent

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Mr. Harshad Nimbalkar a/w Mr. Abhishek Arote, Mr. Satyam Nimbalkar, Mr. Shivam Nimbalkar for the appellant.

Mr. M.R. Tidke, APP for the State.

Ms. Bushra Sayed i/b Mr. Ravindra Pachundkar for respondent no.2.

Ms. Manisha Bhimaji Jadhav, PSI, Shivajinagar Police Station.

CORAM: BHARATI DANGRE, J.
DATED : 31st OCTOBER, 2023

P.C:-

1 The Revision Application is filed being aggrieved by the order dated 2/09/2023, passed by the Additional Sessions Judge, Pune, thereby recalling the order releasing him on bail, upon an application being filed under Section 439 (2) of Cr.P.C by the prosecutrix/complainant.

Worth it to note that the applicant was arraigned as an accused in CR. No. 16/2022, which invoked Sections 376, 313 and 506 of IPC. He was directed to be released on bail subject to certain conditions, and one of the condition imposed on him, restricted him from establishing any contact with the complainant personally, or by any electronic mode till filing of the charge-sheet.

Another condition imposed on him while releasing

on bail, was about he not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade, from disclosing such facts to the Court or to any police officer.

The applicant was release on bail on 11/03/2022.

2 The application was moved for recalling of the said order and cancelling the bail granted to him, as according to the prosecutrix, on 1/04/2022, she was threatened by the accused by showing her the nude photographs and she was also threatened that the photographs will be uploaded and made viral if she do not withdraw the case. Apart from this, it was also alleged that it is the accused, who posted one envelope on her address, on 9/05/2022, which contained stamp paper worth Rs. 500/- bearing the name of the informant and the accused, another stamp paper of Rs. 100/- as well as postdated MOU without signature, Aadhar Card of the accused and six photo prints depicting her in nude position and this was projected, as a ground for, he being taken in custody, by cancelling his bail.

The trial Judge heard the application and also took note of the fact that the complainant/prosecutrix had filed various complaints against the accused and on being convinced, on consideration of the documents produced by her that the objectionable photographs are send to her along with the unsigned MOU, a conclusion was drawn that it is the applicant, who is the author of the same and hence construing the same to be the breach of terms and conditions, subject to which the bail was granted, the order dated 11/03/2022 was cancelled.

3 When the applicant approached this Court by filing the Criminal Revision Application, I directed the Investigating Officer to investigate about the source of the Envelope, which is received by the complainant and she was directed to hand over the one received by her to the Investigating Officer.

On 18/10/2023, the Investigating Officer reported about the investigation carried out by him but, I deemed it appropriate to direct the same to be placed on an affidavit.

Accordingly, the Police-Sub Inspector Ms. Manisha Jadhav, attached to the Shivajinagar Police Station has tendered an affidavit affirmed on 26/10/2023, which is taken on record.

4 The deponent of the affidavit has given the various steps taken by her to ascertain the genuineness and the source of the envelope, received by the complainant. In paragraph nos. 13 and 14 a following statement is made:

“13. I say that after completion of enquiry of the said Application dated 28.09.2023, I have submitted my report to Senior Police Inspector, Shivaji Nagar Police Station, Pune City, Dist: Pune.

14 I say that during the course of enquiry, it revealed that who has made the aforesaid documents, agreement and who has posted is not revealed and even who has snapped the nude photos in the said envelope and who has sent it, is also not revealed.”

5 From the above affidavit filed pursuant to the investigation carried out on accusation that it is the accused, who had send the envelope containing the nude photographs as well as the MOU, on the culmination of the investigation into the said aspect, it cannot be definitely said, that it is the applicant, who

has posted the envelope, on her address.

Since no conclusive finding is arrived that it is the accused, who is responsible for this act, merely on the basis of the accusations faced by him, the learned Judge was not justified in recalling the order directing his release on bail, in the event of his arrest.

6 The counsel for the respondent no.2, at this stage would submit that she had registered another NC with the Police Station, in the interregnum, on 18/10/2023, when she was returning home after finishing her day's work, she received phone call from two persons and she reported the incident and an NC was registered vide NC. No. 448/2023 under Section 507 of IPC.

The learned APP has placed before me the report from Ms. Manisha Jadhav, attached to the Police Station as regards the inquiry into the NC, where it is reported that the phone call received on her mobile was from mobile no.8766734114 and inquiry was made with person using the mobile number, who runs a mobile shoppe in Wakad Pune and he pleaded ignorance about the phone call being made from his mobile on 18/10/2023. He also state that he himself received a call from a number 7083056868 but he did not have any conversation. He offered a clarification that being a owner of mobile shoppe, several customers visit him, and at times, when their mobile is not functional or when the mobile phone, which is brought for some work in the Shoppe is switched off, then phone calls are made from his mobile. He therefore, assertively

state that he was not aware as to who made the phone call and inquiry into the mobile number 7083056868 has also not yielded any results, and in any case, the investigation did not reveal that these calls have any connection with the accused.

7 The counsel for the respondent no.2, also make a new allegation, that the accused forcibly carried her in his vehicle to a spot and threatened her. However, she is in the course of collecting the details of the tower location of the accused.

In respect of the above incident, undisputedly, she is at liberty to approach the police station and make a grievance.

However, taking an over all view of the matter and when the very ground and the accusations, which formed the basis of cancellation/ recalling of the bail order granted in favour of the accused, do not hold any water, on the investigation having been carried and in the light of the affidavit of the Investigating officer, the impugned order cannot be sustained and the same is quashed and set aside.

Upon the order being set aside, the order dated 11/03/2022 is restored and needless to state that the applicant in the said application shall be governed by the terms and conditions imposed upon him while directing him to be released on bail, in the subject CR.

Criminal Revision Application is allowed in aforesaid terms.

(SMT. BHARATI DANGRE, J.)