

SA Pathan

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

CRIMINAL APPLICATION NO.487 OF 2022

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Ujwala Sachin Sonawane ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. A. A. Siddique i/by Mr. A. A. Siddiquie Associates,
for the Applicant.

Mr. Pandurang H Gaikwad, APP for the State-
Respondent No.1.

Mr. Mayur Mohite, for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2023

P.C.:

1. The informant has filed a present application seeking cancellation of the order dated 28 November 2022 passed by learned Additional Sessions Judge, Panvel, in Criminal Bail Application No.896 of 2022, releasing respondent No.2 on bail.

2. According to the prosecution, based on a report filed by the informant (mother of the victim) for an offence punishable under Sections 376(2)(f), 376A, 376B of the Indian Penal Code, 1860 and under Sections 4, 5(1), 5(n), 6 of the Protection of Children from Sexual Offences Act, 2012, were registered against respondent No.2 and others.

3. According to the prosecution, the victim is aged 4 years, 10 months 26 days on the day of the incident. Respondent No.2 is the victim's grandfather and the informant's father-in-law. The incident occurred on 23 August 2020, 7 February 2021 and 11 September 2022. Along with other allegations, respondent No.2 is alleged to have touched a private part of the victim, causing redness and swelling. According to the informant, she left the matrimonial house on 25 September 2022 due to a quarrel between her husband and the informant.

4. Thereafter, Respondent No.2 applied for relief under Section 438 of the Code of Criminal Procedure, 1973, which came to be granted by order dated 28 November 2022.

5. Reading of the impugned order, it appears that the Additional Sessions Judge has granted relief under 438 of Cr.P.C. based on the following circumstances:

- i. The incident took place on 11 September 2022, which reduces the possibility of inflammation, swelling, and reddish to the genital area after 20 days, i.e. date of medical examination
- ii. The WhatsApp chats between family members indicate that the informant expressed her willingness to divorce and suggested lodging the first information report (F.I.R.).
- iii. Prima facie finding is recorded about the possibility of false implications against laws considering report under Sections 498-A, 376, 354 of IPC.
- iv. The applicant is 60 years old and has no criminal

antecedents except a report filed by the daughter-in-law under 498-A.

6. The scope of the application seeking cancellation of bail is limited. The Apex Court, in the case of **Mahipal v. Rajesh Kumar (2020) 2 SCC 118**, has laid down the parameters for cancellation of bail by Superior Court, which are as under;

“17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.....”

7. Considering the parameters laid down by the Court, in my view, the Sessions Judge has considered a prima facie case and has held that there is the possibility of false implication.

8. Learned Advocate for the applicant relied on the judgment in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under the Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words,

the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.” by itself, cannot be a ground to grant anticipatory bail.”

9. In the facts of the case before the Apex Court, the relationship between the parties was of niece. From the material placed on record, the Sessions Judge in the said case *prima facie* accepted the acts alleged against the accused. The High Court, while setting aside the order of the Sessions Judge though, accepted the acts as alleged by the prosecution, but the High Court did not rule out the possibility of sexual assault.

10. In the facts of the present case, based on the date of the

incident and the date of medical examination, the Sessions Court has prima facie ruled out swelling and redness after 20 days. The Sessions Court, based on the cumulative result of the filing of a complaint under Section 498-A by the informant against the husband, mother-in-law, father-in-law and WhatsApp chats, has recorded a finding of the possibility of false implications. Considering the reasons assigned in the order, the element of non-application of mind is absent. Therefore, the application for cancellation of bail need not be entertained. The application is, therefore, rejected.

(AMIT BORKAR, J.)