

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (APPLN) NO. 106/2022

X Y Z in Crime No. 530/2021

.. Applicant

versus

The State of Maharashtra

Th: PSO PS Ramtek and another

.. Respondents

.....
Mr. P. Bezalwar, Advocate for the applicant

Mr. A.M.Kadukar, APP for Respondent No.1

Mr.Rajneesh Vyas, Advocate for Respondent No.2
.....

CORAM: ANIL L.PANSARE,J.

DATED : 10th January, 2023

PC:

The applicant-victim has filed this Application under Section 439(2) of the Code of Criminal Procedure 1973 for cancellation of bail granted to non-applicant no.2 and further to issue directions to the non-applicant no.1- Investigating agency, to arrest the non-applicant no.2.

2. The applicant-victim has registered the FIR on 17th January 2022 mentioning therein that the non-applicant no.2 under the pretext of marriage established physical relationship with her and caused abortion as well. Accordingly the FIR came to be registered vide Crime No. 530/2021 with Police Station, Ramtek for the offences under Sections 376 (2)(n) and 313 of Indian Penal Code. It is the case of the applicant that upon promise to marry, the non-applicant no.2 has committed sexual intercourse on yen number of times. Consequently, the applicant got pregnant on 21st June 2017, but the non-applicant no.2 had made to abort the unborn offspring against her wish. The relationship continued thereafter, however, the non-applicant no.2 did not marry.

3. The learned Advocate for the applicant has invited my attention to the reply filed by the investigating agency before the learned Sessions Court. The investigating agency opposed the application on the ground that the non-applicant no.2 has not cooperated with the investigation. It was also stated that the non-applicant no.2 has not attended Police Station, Ramtek despite there being order of the High Court. However, upon inquiry with the learned Advocate for the applicant, he failed to point out any order of this Court which directed the non-applicant no.2 to attend Ramtek Police Station. On the point of non-cooperation of the non-applicant no.2, the Court found from the records that the applicant has cooperated in the investigation, his blood samples have been collected. Considering this aspect and the nature of the evidence, the learned Sessions Court came to the conclusion that custodial interrogation of the non-applicant no.2 was not required and accordingly, granted anticipatory bail.

4. Learned APP submits that there are no violation of the conditions of bail at the hands of the non-applicant no.2. However, the learned Advocate for the applicant submits that the learned Sessions Court ought to have considered the reply filed by the Investigating agency on the point that non-applicant no.2 has not cooperated in the investigation. This submission is without any substance, inasmuch as the learned Sessions Court has drawn inference of cooperation on the basis of perusal of records. It cannot therefore be said that the findings recorded by the learned Sessions Court on the point of applicant's cooperation in the investigation, is erroneous or without application of mind. The learned Sessions Judge has also considered the judgment of this Court in the matter of Mahesh Dandane vs. State of Maharashtra : 2015 All MR (Cri) 2805, wherein it has been observed that every breach of promise to marry cannot be said to be either cheating or rape. The learned Sessions Judge has also considered the judgment in ABA No.1011/2019 dated 23.09.2019 (Sahebrao Pawar vs.State), wherein it has

been observed that the consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act.

5. In the present case, there appears to be a long-lasting relationship between the two. The applicant was required to abort the fetus as back as 2017 and they thought it proper to continue the relationship thereafter. The learned Sessions Court has considered the lackadaisical approach in filing the FIR and has assessed the factual considerations and the attending circumstances to arrive at a conclusion to grant anticipatory bail.

6. In view of the above facts and circumstances, I am of the considered view that the order impugned cannot be said to be without application of mind or that the same has been passed without considering the relevant material. The applicant has failed to make out a case in her favour. Hence the Application is rejected.

[ANIL L. PANSARE, J.]

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