



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 82 OF 2023

XYZ

....Applicant

VERSUS

The State Of Maharashtra And Another

.....Respondents

.....

Mr. R.C. Bora h/f. Mr. Zakir Umar Shaikh, Advocate for applicant.

Mr. S.V. Hange, APP for respondent No. 1.

Mr. A.L. Kanade, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th FEBRUARY, 2024

ORDER :

1. By this application, applicant seeks cancellation of bail granted to respondent No. 2, in Criminal Bail Application No. 557 of 2023 vide order dated 29.03.2023.

2. Prosecutrix lodged FIR on 14.03.2023 alleging that on 12.03.2023 at 9.00 pm, she and her husband had dinner and they went to sleep along with their 1½ years daughter. At about, 3.00 am, she heard noise of knocking on the door. She opened the door by removing the latch. Respondent No. 2 was standing there. He entered the house without saying anything. He caught her both hands and gave jerk and tried to grope her by keeping both his hands on her waist. She raised hue and cry,

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due to which her husband woke up. Respondent No. 2 then pressed her husband's neck and assaulted him with fists and kick blows. He also threatened that if they tell incident to anybody, he will finish the entire family and ran away.

3. It appears that in supplementary statement recorded on 16.03.2023, prosecutrix alleged that respondent No. 2 caused sexual assault on her. Respondent No. 2 filed Criminal Bail Application No. 557 of 2023 before the Sessions Court, which is allowed by order dated 29.03.2023. Hence, the present application seeking cancellation of anticipatory bail.

4. Heard learned advocate for applicant, learned APP for respondent No. 1-State and learned advocate for respondent No. 2. Perused the documents placed on record.

5. Learned advocate for applicant submits that Sessions Court has granted anticipatory bail in a casual manner, without considering serious allegations levelled by prosecutrix.

6. Learned advocate for respondent No. 2, on the other hand, supported the order passed by Sessions Court.

7. Learned APP submits that appropriate orders may be passed.

8. Perusal of documents placed on record shows that no allegations of Section 376 of IPC are made by prosecutrix in the FIR lodged on 14.03.2023. Thereafter, in supplementary statement recorded on 16.03.2023, for the first time allegations of commission of offence under section 376 of IPC are levelled by prosecutrix against respondent No. 2. Delay in levelling such allegations is not at all explained.

9. Fact remains that while narrating history to the medical officer, prosecutrix has stated that "*the assailant came from front door, assailant pushed her down and removed her pant, caught her from front*". Considering these aspects, Sessions Court has rightly granted anticipatory bail to respondent No. 2.

10. Prosecutrix is a major lady. The Sessions Court has recorded cogent reasons while grant anticipatory bail to respondent No. 2. There is no substance in the argument of applicant that anticipatory bail is granted in a casual manner. Applicant has failed to make out a case for cancellation of bail, criteria for which are well settled. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]

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