



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.619 OF 2023

The State of Maharashtra,
Through: Police Station Tophkhana,
Tq. & Dist. Ahmednagar

... Appellant
(Ori. Prosecution)

Versus

1. Govind Khandu Motake,
Age:48 Yrs. Occu: Business,
R/o. Imampur, Jeur.
Tq. & Dist. Ahmednagar

2. X.Y.Z.

... Respondents

...

Mr. N.B. Patil, APP for Appellant

Mr. G.K. Naik Thigle, Advocate for Respondent No.1

...

CRIMINAL APPEAL NO.420 OF 2023

X.Y.Z.

... Appellant
(Orig. Complainant)

Versus

1. The State of Maharashtra,
Through Police Inspector,
City Police Station, Tophkhana,
Ahmednagar, District Ahmednagar
2. Govind @ AnnaKhandu Motake,
Age:50 Yrs. Occupation: Business,
R/o. Imampur (Jeur).
Tq. & Dist. Ahmednagar

... Respondents

...

Mr. V.H. Dighe, Advocate for Appellant

Mr. N.B. Patil, APP for Respondent No.1/State

Mr. G.K. Naik Thigle, Advocate for Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 06th MARCH, 2024
PRONOUNCED ON : 13th MARCH, 2024**

ORDER :

1. Both these appeals are filed under Section 14A (1) and (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, for cancellation of bail granted to respondent accused by learned Additional Sessions Judge, Ahmednagar, in Special Case No.85/2022.

2. Prosecutrix lodged FIR bearing C.R. No.1043/2021 on 04/12/2021, at Tophkhana Police Station, Ahmednagar, for offences punishable under Sections 376 and 506 of Indian Penal Code and Sections 3(1)(w)(i) and (3)(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against respondent accused. Accused came to be arrested in the said crime on 26/04/2022. On 19/05/2022 charge-sheet is filed. Bail application filed by accused before Sessions Court, Ahmednagar, was rejected on 10/06/2022. Accused by filing Criminal Appeal No.443/2022, challenged the order of Sessions Court rejecting his bail application. The Division Bench of this Court by order dated 28/09/2022, dismissed the appeal.

3. Thereafter trial commenced. During the course of trial accused filed bail application at Exhibit-42 on various grounds including that prosecution is prolonging the trial and delay is attributable to prosecutrix. Sessions Court has allowed his application and granted him bail by order dated 05/04/2023. This

order is impugned in both the appeals.

4. Heard learned advocate for prosecutrix, learned APP for State and learned advocate for respondent – accused. Perused the documents placed on record.

5. Learned APP and learned advocate for prosecutrix submit that when bail application of accused was rejected on merits by the Sessions Court and the said order was confirmed in appeal by the Division Bench of this Court, Sessions Court could not have allowed his bail application. Allegations made against accused are serious and this is not a fit case to grant bail to accused. When evidence of other witnesses was to be recorded, it was not proper on the part of trial Court to grant bail to accused. While releasing him on bail criminal background of accused is ignored by trial Court.

6. Learned advocate for accused, by relying on affidavit-in-reply filed by accused has opposed both the appeals by supporting the order granting bail to him. He submits that there are no overwhelming circumstances brought on record for cancellation of bail granted by trial Court. He, therefore, seeks dismissal of both the appeals.

7. While granting bail, the trial Court has observed that, *“Material evidence of the victim is recorded and only evidence relating to the property is to be recorded. There is no certainty that*

when the said property would arrive and when the said examination can be done. However, the material part of the evidence i.e. video clip is already admitted by the accused during the evidence of the PW1. The defence of the accused is of consensual relations”....“The material on record particularly evidence of PW1 is self explanatory. It would not be good to comment upon the same at this juncture. A care can be taken, so that accused should not pressurize the witnesses or tampering with the evidence, during the trial, if he is released on bail”. Trial Court has observed that, though earlier this Court has rejected bail application, after the evidence of victim in this case, fear in the mind of victim that she would have been pressurized before her evidence is alleviated. Trial Court has further observed that, *“At present, it appears that due to evidence of PW1 and her admissions therein, there is material change in circumstances”.* While granting bail, trial Court has passed a reasoned order.

8. On perusal of evidence of prosecutrix it appears that trial Court is right in observing that in view of admissions given by her, there is material change in circumstance. Order of grant of bail is passed by the trial Court on 05/04/2023 and on a query, learned APP submits that, till date forensic report of cell phone is not produced in trial Court. This indicates that trial is not likely to conclude in the near future.

9. On cancellation of bail, in ***Dolat Ram and Others Vs. State of Haryana, (1995) 1 SCC 349***, Supreme Court has held that, *“very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Bail can be cancelled if there is interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade due course of justice or abuse of the concession granted to accused in any manner. Satisfaction of the Court on the basis of material placed on record of possibility of accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow accused to retain his freedom by enjoying the concession of bail during trial”*.

10. In the case in hand, order granting bail does not suffer from any infirmity resulting in miscarriage of justice. Considering the cogent reasons assigned by the trial Court while granting bail to accused and as almost one year has passed since accused is released on bail, this is not a fit case to cancel the bail granted to him.

11. Both the appeals being devoid of merit are dismissed.

(NITIN B. SURYAWANSHI, J.)