

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.98 OF 2023

Sameer Balu Nikam

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Bhalchandra S. Shinde, for the Applicant.

Ms. Savita Yadav, APP, for the Respondent-State.

Mr. Umesh H. Pawar, for Respondent No.2.

P.S.I. Pooja Patil, Kondhawa Police Station, District-Pune, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 22nd MARCH 2024

P.C.:

1. This Criminal Application is preferred under Section 439 of the Code of Criminal Procedure, 1973 seeking quashing of the Order dated 21st April 2023 passed by the learned Additional Sessions Judge, Pune below Exhibit 7 in Sessions Case No.423 of 2022 and seeking bail. The factual position is as follows:-

- (i) On 17th October 2021, the Respondent No.2 lodged an F.I.R. No.896/2021 against the present Applicant at the Kondhawa Police Station, Pune for the offences punishable under Sections 376(2)(n), 323, 506, and 504 of the *Indian Penal Code, 1980*.
- (ii) The Applicant preferred the Bail Application No.7141 of 2021 before the learned Additional Sessions Judge, Pune. The said bail Application was allowed by the learned Sessions Court by an Order dated 29th October 2021.

- (iii) On 2nd February 2023, Respondent No.2/Complainant preferred an Application bearing Exhibit 7 in Sessions Case No.423 of 2022 for cancellation of said bail, before the learned Additional Sessions Judge, Pune in C.R.No.896 of 2021.
- (iv) The learned Additional Sessions Judge, Pune by Order dated 21st April 2023 allowed the said Application bearing Exhibit 7 preferred by the Respondent No.2 and cancelled the bail granted to the Applicant.

2. The learned Additional Sessions Judge, Pune by the Order dated 21st April 2023 passed below Exhibit 7 in Sessions Case No.423 of 2022 cancelled the bail granted to the Applicant. The relevant paragraphs are paragraph Nos.8, 9, and 10, which read as under:-

"8] *Prima facie it is seen that, even if it is assumed that, applicant/accused is contacted by the informant and they have been in touch with each other, it will not justify his posting defamatory matters on the Facebook and tagging friends and relatives of the informant to them. It would be pertinent to note that, the applicant is trying to justify that he is fighting for the justice. It would be pertinent to note that, the matter is subjudice. The Charge-sheet is filed. It is necessary that the matter is decided on merit which will be decided in due course. It would be pertinent to note that, only because applicant/accused is allegedly a public figure, it is not proper that, he use the case and defend himself in the public in his point of view.*

9] *Prima facie during pendency of this application inspite issuing directions not to posts anything regarding the matter, applicant/accused has gone posting the matters including the case details and the date given in the matter. Prima facie even a cursory look on the posts published on the Facebook, it is seen that, they are defamatory in nature and prima facie it is seen that, they may pressurize the informant as well as her relatives. The bail is granted on the conditions that, applicant shall not approach, contact the complainant and witnesses **in any manner whatsoever**. It is prima facie seen that, applicant/accused who is in a Film Industry using the social media as a platform venting out his feelings saying that he does not want to hurt anyone and only seeking justice.*

10] *The bail granted on merit cannot be canceled lightly. There must be overwhelming and cogent circumstances. Considering conduct of the applicant/accused the circumstances are indeed overwhelming and cogent. It is seen that, applicant/accused does not respect the law. In such circumstances, it is not proper that he is enlarged on bail anymore. Hence, I proceed to pass following order:*

ORDER

- 1] *Application Exh. 7 is allowed.*
- 2] *The bail granted to applicant/accused Sameer Balu Nikam in CR No. 892/2021 registered at Kondhawa Police Station, Pune for the offences punishable under Section 376(2)(n), 323, 504, 506 of IPC is hereby canceled.*
- 3] *Inform the concerned police station accordingly. "*

3. This Criminal Application was lodged in this Court on 2nd May 2023. A learned Single Judge [M. S. Karnik, J.] by Order dated 6th October 2023 continued the facility of bail granted to the Applicant by the Order dated 29th October 2021 of the learned Trial Court, until further Orders. On 9th February 2024, this Court passed the following Order:-

“1. A grievance is made regarding some posts of the Applicant on the social media platform. However, Mr. Shinde, learned Counsel appearing for the Applicant states that all the posts are deleted. He further states that even the Instagram and Facebook Accounts of the Applicant are deleted.

*2. Stand over to **8th March 2024.***

3. Order dated 6th October 2023 passed by this Court shall remain in operation till further orders.”

4. On 9th February 2024, an affidavit-cum-undertaking dated 7th February 2024 was submitted on behalf of the Applicant. The said undertaking of the Applicant is accepted by this Court. The paragraphs Nos.2 and 3 of the said undertaking are relevant and the same are reproduced herein below for ready reference:

“2. I undertake that I will not post any messages, photos, and posts on Instagram and Facebook in respect of Respondent No.2/Original Complainant. I further undertake that I will not post any filthy language post and obscene photo on Facebook and Instagram in connected to Respondent No.2/Original

Complainant.

3. *I further undertake that I will not try to contact to the Respondent No.2/Original Complainant through phone call, WhatsApp message, WhatsApp call, Facebook and Instagram. I will not keep any WhatsApp status in connected to Respondent No.2/Original Complainant.”*

5. Thus, it is clear that the Applicant has deleted all the posts in question from his social media accounts/profiles including that of Instagram and Facebook. In fact, the Instagram and Facebook accounts of the Applicant have also been deleted. The learned Trial Court by the Order dated 21st April 2023 had cancelled the bail only on the ground that the Applicant has published various messages and posts on various social media platforms.

6. Accordingly, the case is made out for continuation of bail granted by the learned Trial Court by the Order dated 29th October 2021 passed in the Bail Application No.7141 of 2021. However, it is clarified that if the said undertaking dated 7th February 2024 given to this Court is violated then apart from the cancellation of bail, the Applicant will also be liable for action for committing contempt of this Court.

7. Accordingly, the following Order is passed:-

ORDER

(i) The Order dated 21st April 2023 passed by the learned Additional Sessions Judge, Pune below Exhibit No.7

in Sessions Case No.423 of 2022 is quashed and set aside.

(ii) The Order dated 29th October 2021 passed by the learned Additional Sessions Judge, Pune below Exhibit No.1 in Criminal Bail Application No.7141 of 2021 shall continue to operate till the conclusion of the trial in Sessions Case No.423 of 2022.

(iii) It is clarified that the Applicant has to comply with all the bail conditions as imposed by the Order dated 29th October 2021 passed by the learned Trial Court and the Applicant has to abide by the affidavit-cum-undertaking dated 7th February 2024 filed in this Court, failing which the Respondent No.2 is at liberty to prefer appropriate Application for cancellation of bail.

(iv) It is also clarified that if the said undertaking given to this Court is violated by the Applicant, then the Applicant will also be liable for action for committing contempt of this Court.

(v) The Applicant shall also not to contact the family members of the Respondent No.2.

8. Accordingly, the Criminal Application is disposed of.

[MADHAV J. JAMDAR, J.]