



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.166 OF 2023

Dr. Diana Subhash Kekan

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Ravindra S. Pachundkar Patil, Advocate for the Applicant.
Mr. P. H. Gaikwad, APP for the Respondent No.1-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 6th FEBRUARY 2024

PC:-

1. Heard Mr. Pachundkar Patil, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing for the Respondent No.1-State.

2. In this Criminal Application filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973, the prayer is to quash and set aside the order dated 1st August 2023 passed by the learned Additional Sessions Judge, Pune in Criminal Bail Application No.4750 of 2023 and to reject the said Bail Application. Thus, the prayer in the present Criminal Application is to cancel the bail granted to the Respondent No.2.

3. The factual position on record is as follows:-

- i. The Applicant as well as the Respondent No.2 are practising Doctors. The marriage between Applicant and Respondent No.2 was solemnized in the year 2013 and they have two children from the said wedlock.
- ii. Thereafter there were differences and quarrels between the Applicant and the Respondent No.2. Since 5 years, the Respondent No.2 is residing along with his parents and he used to visit Pune for 15 days to stay along with the Informant and Children. They separated in the month of March 2022.
- iii. The Applicant filed Divorce Petition in the month of May 2023.
- iv. On 8th July 2023, the Respondent No.2 came to meet the children. On 9th July 2023, the Applicant asked the daughter about the conversation she had with her father and the victim informed the Applicant that her father has sexually assaulted her and accordingly the F.I.R. was lodged on 11th July 2023 under Section 354 of the Indian Penal Code, 1860 and under Sections 9(n), 10, 11, 12 of the Protection of Children from Sexual Offences, Act, 2012.
- v. The Respondent No.2 was arrested on 13th July 2023.

vi. The Respondent No.2 has been granted bail by the learned Additional Sessions Judge, Pune vide order dated 1st August 2023 passed in Criminal Bail Application No.4750 of 2023.

4. It is the contention of learned Counsel appearing for the Applicant that while granting bail, the learned Sessions Court has not taken all the aspects into consideration. Therefore, the order is perverse. He submitted that although the learned Trial Court has held that there is delay in lodging the F.I.R., however, the F.I.R. has been lodged immediately after the Applicant came to know about the offence.

5. Before considering the contentions raised by the learned Counsel appearing for the Applicant, it is necessary to set out the reasons given by the learned Additional Sessions Judge in the impugned order dated 1st August 2023 passed in Criminal Bail Application No.4750 of 2023. The relevant paragraphs 9 to 11 read as under:-

“9] Now in this background, the documents tendered by the applicant plays vital role. Admittedly, the informant and the applicant are husband and wife. On 03.04.2023, the informant issued notice to the

*applicant stating therein that due to irretrievable broken down marital relations, she issued notice for seeking mutual consent divorce and sent the draft of divorce petition. Divorce petition discloses point no. (viii) regarding the custody of the children with the informant and point no.(ix) discloses regarding the visiting rights of the present applicant to the children till they become major by law. It appears that on 09.05.2023, the applicant has issued reply notice to the informant and informed that the applicant was going to file petition for the restitution of the conjugal rights and he wanted to cohabit with the present informant. It seems that **thereafter, on 15.05.2023, the informant has filed petition for the divorce under Section 13(1)(i-a) of the Hindu Marriage Act vide petition no. 984/2023. Thereafter, on 20.05.2023, the informant has filed maintenance petition vide petition no. 92/2023. Further, it reveals that the applicant has executed an affidavit on 01.06.2023 in respect of the complaint lodged by the informant to Vishrantwadi Police Station against him and he remained present for the said inquiry and after discussion, it was decided by the informant to dispose of the petition and the informant agreed to give cooperation to the applicant to have visiting rights to meet the victim and the son and even they decided the terms and conditions of their divorce.***

10] In this background, it appears that on 08.07.2023, the applicant met the children and on 09.07.2023 allegedly the victim disclosed the incident allegedly committed by her father with her when she was in UKG and 1st standard. It seems from the Whatsapp chats even till 22.06.2021, the message was that the victim said her dad will sent it and he is very caring man and suddenly, the victim made allegations on 09.07.2023 against her father, that too now she is in 3rd standard.

11] Thus, prima facie entire conduct before the Court and even the delay in lodging report leads to draw the inference that **there is possibility of filing this report by the informant due to the disputes/litigation between the informant and the applicant.** Further, even in the report, the explanation has given by the informant that the victim was scared to her father and therefore, she did not tell the incident is prima not acceptable explanation. It appears that since the victim was in UKG, 1st standard even in 2nd standard and 3rd standard, she continued to meet her father and never ever denied to meet her father, in view of allegations of commission of sexual assault upon her and if really she was scared to the applicant. Further, photographs also discloses prima facie that the victim was happy with her father. Further, considering the

nature of allegations and punishment provided and in view of above discussion, it is not just and necessary to keep the applicant behind the bars for unknown period. Therefore, application is to be allowed with conditions. With this, I proceed to pass the following order:

ORDER

1] The application is allowed.

2] The applicant Aniket Ashok Daftardar shall be released on bail upon furnishing P.R. bond in the sum of Rs.50,000/- with surety in the like amount.

3] The applicant shall attend concerned police station on every Monday between 10.00 am to 11.00 am till filing of the charge-sheet.

4] The applicant shall not tamper with the prosecution evidence in any manner. He shall not pressurize the victim, informant and family members and witnesses and shall not indulge in any offence.

5] The applicant shall submit his address proof and phone details as well as phone details of two close relatives to Investigating Officer.

6] The applicant shall not leave India without prior permission of the Investigating Officer.

7] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.

8] Bail application stands disposed of accordingly.”

(Emphasis added)

6. The Supreme Court in various decisions has emphasized the distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In the decision of *X vs. State of Telangana & Ors.*¹ The Supreme Court has reiterated the said principles in paragraph Nos.14 and 15, which read as under:-

“14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1

¹ (2018) 16 SCC 511

SCC 349 : 1995 SCC (Cri) 237] observed that : (SCC pp. 350-51, para 4)

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the 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 the accused to retain his freedom by

enjoying the concession of bail during the trial.”

15. These principles have been reiterated by another two-Judge Bench decision in CBI v. Subramani Gopalakrishnan [CBI v. Subramani Gopalakrishnan, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] and more recently in Dataram Singh v. State of U.P. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675 : (2018) 2 Scale 285] : (Subramani case [CBI v. Subramani Gopalakrishnan, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] , SCC pp. 303-04, para 23)

*“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, **interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner.** These are all only few illustrative*

materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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 the accused to retain his freedom by enjoying the concession of bail during the trial.”

(Emphasis added)

7. Thus, it is clear that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. The perusal of the Criminal Application filed for cancellation of bail clearly shows that there is no allegation that the Respondent No.2 has violated any bail conditions. There is nothing to show that there is any interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the Respondent No.2 in any manner. There is nothing on record to show that there is a

possibility of the Accused absconding. Thus, no case is made out for cancellation of bail.

8. Accordingly, the Criminal Application is dismissed.

(MADHAV J. JAMDAR, J.)