

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.11 OF 2024

Leena Dashrath Gavkar

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Pradyumna Tyagi (through V.C.) a/w. Ms. Gayatri Gokhale i/b. Ms. Sneha Jethwa for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

Mr. Kuldeep Nikam for the Respondent No.3.

CORAM : MADHAV J. JAMDAR, J.

DATE : 9th February 2024

ORAL JUDGMENT :

1. Heard Mr. Tyagi, learned Counsel appearing for the Applicant (through V.C.), Mr. Gaikwad, learned APP appearing for the Respondent-State and Mr. Nikam, learned Counsel appearing for Respondent No.3.

2. The Criminal Application is preferred seeking quashing and setting aside of bail Order dated 16th August 2023 passed by learned Additional Sessions Judge, Pune in Criminal Bail Application No.4940 of 2023

("impugned order") and for cancellation of bail granted to the Respondent No.3.

3. It is the contention of Mr. Tyagi, learned Counsel appearing for the Applicant that the Respondent No.3 i.e. the Accused had approached the Applicant i.e. the victim through a matrimonial website and thereafter established a physical relationship with the Applicant. A WhatsApp group was also created by the family members of Respondent No.3 and that of the Applicant. He submitted that the Respondent No.3 established a physical relationship with the Applicant by making a promise of marriage and thereafter, the Respondent No.3 married a different woman. Therefore, an offence under Sections 376(2)(n), 377 and 504 of the *Indian Penal Code, 1860* is made out. He further submitted that the false promise of marriage made to the Applicant was only for the purpose of establishing physical relations with the Applicant on the pretext of marriage. He relied on the decision of the Supreme Court of India in the case of *Puran v. Rambilas*¹ and particularly on paragraph no.11 thereof. He submitted that the Order granting bail passed by the learned Trial Court is a mechanical order and is perverse as the factual aspects have not been taken into consideration. He also relied on the decision of the Delhi High Court in the case of *Anil Nirwan v. State (NCT of Delhi)*² and particularly on paragraph no.18

¹ (2001) 6 SCC 338

² 2024 SCC OnLine Del 3

thereof.

4. On the other hand, Mr. Nikam, learned Counsel appearing for Respondent No.3 submitted that even a bare perusal of the F.I.R. shows that the relationship between the Applicant and the Respondent No.3 was consensual. The said contact between the Applicant and the Respondent No.3 was established in the year 2021 through a matrimonial website and the F.I.R. has been lodged only on 23rd July 2023. He submitted that although the Applicant and the Respondent No.3 came in contact with each other through a matrimonial website, thereafter there was a constant exchange of messages between them and thereby consensual relations developed between them. He submitted that both - the Applicant and the Respondent No.3, were never serious about their relationship. He submitted that investigation is completed and Charge-sheet is filed. Respondent No.3 has been released on bail on 16th August 2023. He further submitted that in the Application for cancellation of bail, there is no allegation whatsoever, made out that the Respondent No.3 has violated any of the bail conditions.

5. It is well established that there is a distinction between rejection of bail in a case of non-bailable offence at an initial stage and cancellation of bail after it has been granted.

6. The Supreme Court of India in the case of *X v. State of Telangana*³ has reiterated the law in this regard 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 observed that : (SCC pp. 350-51, para 4)

"4. "Rejection of a 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, broadly (illustrative and not exhaustive) are: administration of justice or evasion of 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 Gopalkrishnan and more recently in Dataram Singh v. State of U.P. : (Subramani case, 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

³ (2018) 16 SCC 511

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."

7. Thus, it is well established that the grounds for cancellation of bail particularly 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. The satisfaction of the Court, on the basis of material placed on record, of the possibility of the accused absconding is also another reason justifying cancellation of bail.

8. Thus, it is well established that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it unfavourable to a fair trial to

allow the accused to retain his or her freedom by enjoying the concession of bail during trial.

9. In this case, there is no allegation that the Respondent No.3 has violated any of the conditions of bail. It is to be noted that Mr. Tyagi, learned Counsel appearing for the Applicant fairly submitted that he is not seeking cancellation of bail on the ground that the Respondent No.3 has violated any bail conditions. He submitted that the only ground on which cancellation of bail is sought is that the order passed by the learned Trial Court is perverse and that it does not take into consideration the factual position.

10. Learned Counsel appearing for the Applicant has relied on *Puran* (supra) and more particularly on paragraph no.11 thereof, which reads as under:

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] . In that case the Court observed as under: (SCC p. 124, para 16)

“If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may

as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court."

11. He relied on *Anil Nirwan* (supra) and more particularly on paragraph no.18 thereof which reads as under:

"18. It is not in dispute that the complainant and the petitioner met on a dating App "Hinge" and not on a matrimonial App. There has been exchange of numerous WhatsApp messages between them and in none of the messages there is any promise made by the petitioner to marry the prosecutrix or a proposal of marriage mooted by the prosecutrix and accepted by the petitioner."

12. The learned Additional Sessions Judge, while granting bail has recorded the reasons in paragraph no.7 which reads as under:

"7. On perusal of FIR, prima-facie it is seen that the applicant and prosecutrix met on matrimonial site. They started to meet in October. Prima-facie Ld. Advocate for applicant has filed some chats between prosecutrix and the applicant. On perusal of police papers it is seen that the police has also recovered the chats between prosecutrix and the applicant. Prima-facie it is seen as per the F.I.R. the request was sent on 10/10/2021 and the chats have begun from 11/10/2021. The prosecutrix and applicant, both are major. They worked in Software company. Prima-facie considering the chats, it is seen that the talks are bold. Considering the chatting, prima-facie it is seen that the applicant though chatted with the prosecutrix, he is not serious about being in serious relationship. Prima-facie it is seen that the prosecutrix who proposed for marriage in February-2022. The applicant

denied the proposal. Prima- facie it is seen that thereafter, the relations turned sour. Prima-facie the threats are also seen at the hands of the prosecutrix. I have gone through the police papers, it is seen that substantial part of the investigation is done. The recovery is done. The mobile phones are seized. Medical examination is done. The C.D.R. is called. Spot panchanama is also done. Prima-facie it is seen that substantial part of investigation is over. Prima-facie applicant is arrested on 24/07/2023. He is behind the bars for almost three weeks. Whatever evidence is there in form of digital nature it is with the police. The statement of the prosecutrix is recorded. The native places of prosecutrix and the applicant are different. As such there is no possibility of pressurizing or meeting. Prima-facie it is seen that there are no antecedents. In such circumstances, further detention is not required. The applicant is ready to furnish surety and abide by terms and conditions. It is proper to grant bail on stringent terms and conditions."

13. The factual position on record in this case shows that the Applicant came in contact with the Respondent No.3 through a matrimonial website on 10th October 2021 and that the online conversation began from 11th October 2021 and thereafter consensual relations developed between them. The F.I.R. has been lodged only on 23rd July 2023.

14. Perusal of the said text chats clearly shows that the learned Additional Sessions Judge has taken a possible and plausible view. The learned Additional Sessions Judge has provided detailed reasons for granting bail to the Respondent No.3 and therefore the impugned order granting bail cannot be termed as mechanical or perverse in nature. The factors pointed out by the learned Counsel appearing for the Applicant may

be relevant at the stage of trial but are not relevant for deciding the Application for cancellation of bail.

15. Accordingly, this is not a fit case for quashing and setting aside the impugned bail order and for cancellation of bail granted to Respondent No.3. The Application is rejected and disposed of as such.

16. It is clarified that the observations made herein are *prima facie* observations for considering the prayer of cancellation of bail and the learned Trial Court shall decide the case on its own merits and uninfluenced by the observations made in this Judgment.

[MADHAV J. JAMDAR, J.]