



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.28 OF 2023

Poonam W/o Abhishek Trivedi

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Mankapur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. D. Sharma, Advocate for applicant.

Mr. Nitin Autkar, APP for respondent No.1/State.

Mr. H. R. Gadhia, Advocate for respondent Nos.2 to 9.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 29/04/2024

1. By this application, the applicant who is the first informant seeking cancellation of bail granted to the non-applicant Nos.2 to 9 in connection with Crime No.236/2022 registered at Police Station Officer, Mankapur, District Nagpur for the offences punishable under Sections 420, 406, 498-A, 354, 354-A, 323, 294 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act.

2. As per the contention of the applicant, she lodged report on 20/10/2022 on the basis of which crime is registered. The non-applicant No.2 is the husband and non-applicant No.3 is the mother-in-law and other non-applicants are her in-laws. She is the legally wedded wife of non-applicant No.2. As per

the allegation in the FIR, her marriage with the non-applicant No.2 was solemnized at Nagpur on 30.05.2015. After marriage, she resumed the cohabitation at the house of the non-applicants, but since the marriage, she was not treated well and she gone through the unbearable domestic violence at the hands of the present non-applicants for various reasons including demand of dowry. It is further alleged that her parents bowed down to the demand of dowry of the non-applicants and gifted them several expensive gifts during the marriage ceremony including gold and silver ornaments, but the greed of the present non-applicants was not satisfied and finally she was driven out of the house on 02.01.2019, thereafter, she approached the Police Station and lodged the report.

3. After registration of the crime, the non-applicants approached to the learned Sessions Court for grant of bail and the learned Sessions Court granted the bail in the event of arrest in Criminal Bail Application No.3179/2022 by passing order on 02.01.2023. The ground raised by the present applicant for cancellation of bail is that the learned Sessions Court had not considered the specific role of each and every non-applicants and without assigning any reasons casually passed the order releasing the non-applicants on bail. It is further contention of the present applicant that the consideration for grant of anticipatory bail are not considered by the learned

trial Court and in a routine manner the bail was granted.

4. Learned Counsel for the applicant reiterated the said contention and submitted that on perusal of the order passed by the learned Additional Sessions Judge, Nagpur it reveals that no reason is assigned by the learned Sessions Court while granting the bail, in the event of the arrest to the non-applicants. The gravity of the offence is also not considered. The stridhan of the present applicant is lying with the non-applicant Nos.2 to 10 and they have not returned the same and therefore, the custody of the non-applicants was required. In view of that, the bail granted to the present non-applicants deserve to be cancelled.

5. Learned Counsel for the non-applicant Nos.2 to 9 raised the strong objection on the ground that overwhelming and supervening circumstances are required for cancellation of the bail. It is further submitted that if the order of the learned trial Court is perused it shows that the presence of the non-applicants was not required. Moreover, the trial Court has considered the provision of Section 41A and also observed that after issuance of notice the non-applicants have cooperated with the investigating agency and thereby granted bail, therefore, no error is committed by the learned trial Court and no interference is called for.

6. In support of his contention, he placed reliance on the order of this Court passed in **Criminal Application (APPLN) No.117/2022 [Smt. Savita wd/o Sanjay Murarka Vs. State of Maharashtra and others]** decided on 15/01/2024 and submitted that wherein this Court has considered cancellation of bail in detail in para Nos.11, 12 and submitted in view of the well settled law the considerations for cancellation of bail are not satisfied in the present case and therefore, the application deserves to be rejected.

7. Having heard the learned Counsel for the applicant and learned APP for the State and learned Counsel for the non-applicant Nos.2 to 9, perused the investigation papers as well as the impugned order passed by the learned Sessions Court. The facts of the case shows that they were prosecuted on the basis of report lodged by the present applicant on an allegation that they have subjected the applicant for domestic violence and for demand of dowry and fulfillment of the said dowry. The contents of the FIR are considered by the trial Court and by observing that notice under Section 41A of Cr.P.C. was issued to the non-applicants and they have cooperated with the investigating agency and therefore, their custodial interrogation is not necessary and released them on bail.

8. As far as the contention of the learned Counsel for the applicant is concerned that reasoned order is not passed by the learned Sessions Court is not sustainable, as Sessions Court has considered the contents of the FIR as well as the fact that the marriage of the present applicant and the non-applicant No.2 was confirmed in the year 2015. It is further considered that the incidents are narrated by her about harassment as well as it is also considered that the custodial interrogation of the non-applicants is not required and they have cooperated with the investigating agency. Thus, it is apparent that the reason is assigned by the Sessions Court while granting bail.

9. As far as the law laid down in regard to the cancellation of bail is concerned, in **Bhuri Bai vs The State of Madhya Pradesh** reported in **2022 LiveLaw (SC) 956** wherein the Hon'ble Apex Court held that the powers of cancellation of bail cannot be approached as if disciplinary proceedings against the accused. In a case where bail has already been granted, its upsetting under Section 439(2) Cr.P.C. is envisaged only in such cases when the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. Unless a strong case based on and supervening event is made out, an order granting bail is not to be lightly interfered.

10. In the case of **Brijmani Devi vs Pappu Kumar and another** reported in **(2022) 4 SCC 497**, wherein also, the similar issue is discussed by the Hon'ble Apex Court and Hon'ble Apex Court observed that the reasoning of the High Court while granting bail. As noted from the aforesaid judgment, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised.

11. In **Savitri Agarwal and others V/s State of Maharashtra and another** reported in **(2009) 8 SCC 325**, wherein also, it is held by the Hon'ble Apex Court moreover, merely because the High Court had a different view on the same set of a material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse.

12. In the case of **Bhagirath Sinh s/o Mahipat Singh Judeja V/s State of Gujarat** reported in **(1984) 1 SCC 284** wherein also, it is held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. Thus, well settled principle is laid down is that very cogent and overwhelming

circumstances are necessary for an order directing cancellation of bail already granted.

13. In the recent Judgment in **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **2022 LiveLaw (SC) 577**, the Hon'ble Apex Court has dealt with the offences wherein the punishment of less than seven years is provided and observed that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. This provision mandates the police officer to record his reasons in writing while making the arrest. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence.

14. By referring the decision in **Arnesh Kumar Vs. State of Bihar and another** reported in **(2014) 8 SCC 273** wherein it is held that from a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent

such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

15. The learned Sessions Court has considered all these aspects and also considered that after issuance of the 41A notice the non-applicants have cooperated with the investigating agency and thereby released them on anticipatory bail. Thus, I do not find any error committed by the learned Sessions Court while releasing the present non-applicants on bail. On the settled principles of law, the non-applicants are released on bail by the Sessions Court, in view of that, the application is devoid of merits and liable to be rejected. Accordingly, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)