



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

CRIMINAL APPLICATION (APPLN) NO.30 OF 2023

XYZ victim

Vs.

State of Maharashtra, Through Police Station, Dhantoli Nagpur,
District Nagpur and another

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

Court's or Judge's orders

Mr. B. C. Chandrakapure, Counsel for the applicant.
Ms. Kavita Bhongde, APP for non-applicant No.1 /State.
Mr. S. R. Pille, Counsel along with Mr. S. A. Gemanani, Counsel for the
non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/12/2024

1. Heard learned Counsel for the non-applicant No.2. Considering the reason mentioned by him, the bailable warrant issued against non-applicant No.2 is hereby cancelled.

2. By this application, the applicant is seeking cancellation of bail granted to the non-applicant No.2 by the learned Sessions Court in Criminal Bail Application No.439/2023 by order dated 14.03.2023 in connection with Crime No.45/2023 registered for the offence punishable under Section 376 and 506 of the Indian Penal Code (for short 'IPC').

3. The accusation against the present applicant is on the basis of report lodged by the

victim aged about 32 years on an allegation that she has registered herself on a Buddhist Marriage Bureau Application and added her mobile number. In December 2022, she received a WhatsApp message on her mobile number that the person liked her profile and intended to marry with her. He has called her at Empress Mall, Nagpur, accordingly, she went there wherein she got acquaintance with the present applicant. The present applicant promised her for marriage and subjected her for sexual assault on various occasions. It is further alleged that on 12.02.2023, he called her in a hotel and subjected her for the sexual assault and also threatened her not to disclose the said incident to anybody otherwise, he would kill her and subsequent to that he denied to marry with her and therefore, she approached to the Police Station and lodged a report. On the basis of the said report, police have registered the crime.

4. After registration of the crime, the applicant approached to the learned Sessions Court for grant of anticipatory bail and the learned Sessions Court by passing order on 14.03.2023 granted the bail to the non-applicant No.2 in the event of his arrest, hence this application for cancellation of bail.

5. It is contended by the applicant in the application that while granting the bail to the present non-applicant No.2, the learned Sessions Court has not considered the gravity of the offence and ignored

the material and granted bail which requires to be cancelled.

6. Heard learned Counsel for the applicant who reiterated the said contentions and invited my attention towards the order passed by the learned Sessions Court and submitted that while granting the anticipatory bail, no reasons were assigned by the Sessions Court as well as the material was not referred while passing the order which was collected during the investigation. He submitted that there were threats to the applicant by the non-applicant No.2 which was also not considered by the Sessions Court and the bail was granted. He invited my attention towards the statement of the victim as well as other investigation papers, medical report and submitted that *prima facie* case is out against the present non-applicant No.2, despite of the same, the anticipatory bail was granted to the non-applicant No.2. As the Sessions Court has ignored the material which was collected during the investigation, the order passed by the Sessions Court is perverse and therefore, the bail granted to the present non-applicant No.2 deserves to be cancelled.

7. Per contra, learned Counsel for the non-applicant No.2 strongly opposed the said application and submitted that during the investigation, the Investigating Officer has collected the WhatsApp chat which shows that there was a

consensual relationship between the non-applicant No.2 and the victim. The victim is a grownup lady who knows the consequences of her act. A mere breach of promise is not sufficient to attract the provisions under Section 376 of the IPC and the learned Sessions Court has considered this aspect and released the non-applicant No.2 on bail. There is no complaint that the non-applicant No.2 has either tampered the prosecution evidence or jumped from the bail conditions or there is non-cooperation on his part. Now the investigation is already completed, charge-sheet is filed and the custodial interrogation of the present non-applicant No.2 is not required, in view of that, the application deserves to be rejected.

8. Learned APP supported the contention of the applicant and prays for cancellation of the bail.

9. After hearing both sides and on perusal of the investigation papers, it reveals that the crime is registered on the basis of report lodged by the victim girl who is aged about 32 years and from the recitals of the FIR and the statement, it reveals that she got acquaintance with the present non-applicant No.2. The present non-applicant No.2 promised her for marriage thereafter, she visited along with the present non-applicant No.2 at various places. They also visited the hotels wherein there was a physical relationship between them. During the investigation, the Investigation Officer has also collected their

WhatsApp chats from which it reveals that a physical relationship was developed between them after their acquaintance and it nowhere reveals that as far as this relationship is concerned, the applicant has shown any displeasure about the said relationship. Thus, on the basis of the WhatsApp chat, the learned Sessions Court has considered that there was a consensual relationship. As far as the breach of promise of marriage is concerned, now it is well settled that mere breach of promise of marriage is not sufficient to attract the provisions of Section 376 of the IPC.

10. The Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P. (Criminal) No.6532 Of 2018)*** in para number 20 which reads as under:

"20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual

acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC."

11. The applicant has prayed for the cancellation of bail. As far as the cancellation of bail is concerned, the considerations for cancellation of bail are considered by the Hon'ble Apex Court in catena of decisions in ***Myakala Dharmarajam & Ors. Etc. Vs The State Of Telangana & Anr [2020 (2) SCC 743]***, wherein it is held that:

"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of

bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail”.

12. In ***Deepak Yadav Vs. State of U.P. and another*** reported in ***2023 (2) Mh. L. J. (Cri) (S.C.) 196***, wherein also it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima-facie* view of the involvement of the accused are important.

13. The Hon'ble Apex Court laid down illustrative circumstances where the bail can be cancelled are as follows:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is *prima-facie* misuse of position and power over the victim.
- iii) Where bail has been granted on untenable grounds.

- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- v) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

14. In light of the well-settled legal position, if the facts of the present case are taken into consideration, the learned Sessions Court has considered the WhatsApp chat and the investigation papers from which it reveals that there was a consensual relationship. The learned Sessions Court has also considered that the accused/non-applicant No.2 has filed copies of the WhatsApp chats and had claimed that there was a consensual relationship which is substantiated by the material. They have exchanged their personal information about their business and working and from the WhatsApp chat no displeasure is shown by the victim as far as the physical relationship is concerned. Thus, the learned Sessions Court has considered the circumstances under which the relationship was developed and there was a concern on the part of the victim and thereafter granted bail. As far as the grounds made out by the applicant are concerned, which is not

substantiated by any material. It is well settled that overwhelming and supervening circumstances are required for cancellation of bail which are not available in the present case. In view of that, the application is devoid of merits and deserves to be rejected. Accordingly, I proceed to pass following order:

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)