



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

CRIMINAL WRIT PETITION NO.367 OF 2024

Corrected as per
Hon'ble Court's
order dated
09.05.2024

Abdul Matin S/o Abdul Wahab
Age : 46 years Occup. : Nil
R/o. : Daryabad, Tahsi1 :Achalpur,
District : Amravati.
(At present in District Jail, Washim)

....PETITIONER

...V E R S U S...

State Of Maharashtra
Through Police Station Officer
Karanja (Gramin) Police Station
Talrsi1 : Karanja, District : Washim.

...RESPONDENT

Shri R.D. Hazare, Advocate for the petitioner.
Shri Sooraj Hulke, Advocate for respondent.

CORAM:- M.W. CHANDWANI, J.
DATED :- 07/05/2024.

ORAL JUDGMENT:

. **Rule.** Rule is made returnable forthwith. Heard finally at the admission stage with consent of the learned counsel for the parties.

2. The petition challenges the order dated 03.04.2024 passed by the learned Additional Sessions Judge, Mangrulpir, District Washim in Special POCSO Case No.11 of 2017, thereby cancelling the bail granted to the petitioner and taking the petitioner in custody.

3. The petitioner is being prosecuted for the offence punishable under Section 376 (2) (b) (f) (I) of the Indian Penal

Code, 1860 read with Sections 3, 4, 5 (c), (f), (i) and 6 of the Protection of Children from Sexual Offences Act, 2012. The prosecution examined the witnesses and closed its side of evidence. Thereafter, the statement of the accused under Section 313 of the Code of Criminal Procedure (for short, “Cr.PC”) came to be recorded on 21.02.2024. Since, the petitioner wanted to examine himself and other witnesses in his defence, on 28.02.2024, the petitioner filed documents, which came to be allowed. On 19.03.2024, the petitioner examined himself and also gave a list of four witnesses and filed an application for issuance of summons to them. Instead of issuing witness summons, the petitioner was told to keep those witnesses except the doctor present on 03.04.2024. On 03.04.2024, the petitioner filed an application for filing documents and also moved an application stating that those witnesses are not ready to attend the Court without witness summons. The learned trial Court observed that the petitioner is delaying the matter and therefore issued show-cause notice as to why his bail should not be cancelled. The petitioner filed his reply to the show-cause notice. By the impugned order, the learned Additional Sessions Judge, cancelled the bail granted to the petitioner and took him in custody. Feeling aggrieved with the order impugned, the present petition came to be filed.

4. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for respondent/State. I have gone through the record.

5. It is settled position of law that very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. It appears from the record that after statement of the petitioner/accused came to be recorded under Section 313 of the Cr.P.C. immediately on the next date some documents were filed and examined himself. On 19.03.2024, the petitioner gave a list of the witnesses. However, instead of issuing summons to all the witnesses, it was directed to the petitioner to produce all witnesses except for the doctor, to whom witness summons were issued by the Court. On the next date due to non-service of summons to the doctor, he could not be examined. The petitioner also filed an application vide Exhibit-137 that witnesses are not ready to attend the Court, and therefore requested the Court to issue summons to those witnesses. Instead of issuing summons to those witnesses, the trial Court due to chain of circumstances, for which the petitioner may not be blamed, issued show-cause notice to the petitioner as to why bail granted to him should not be cancelled and after going through the reply filed by the petitioner, passed the impugned order.

6. Considering the material on record, it appears to this Court that the learned Trial Judge was carried away by the chain of circumstances and held that the trial is being delayed for which the petitioner may not be blamed. Rather, the impugned order shows that on some of the dates the Court was busy in other cases. The above circumstances did not indicate that the trial is delayed by the petitioner. The trial Court ought to have issued summons to the defence witnesses as prayed. Thus, no overwhelming circumstances to compel the cancellation of bail are found. Therefore, the order impugned does not sustain and is required to be set aside. Accordingly, following order is passed:

ORDER

- i. The impugned order dated 03.04.2024 passed by the learned Additional Sessions Judge, Mangrulpur below Exhibit-1 in Special POCSO Case No.11 of 2017 is set aside.
- ii. The petitioner shall be released forthwith on continuation of earlier bail bonds.

Rule is made absolute in above terms.

JUDGE

Wagh