



(1)

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

**CRIMINAL APPEAL NO.498 OF 2023**

XYZ in Crime No.529/2022  
Police Station, Gittikhadan, Nagpur. .... **APPELLANT**

**// VERSUS //**

1) The State of Maharashtra,  
through Police Station Officer,  
Gittikhadan Police Station,  
Tahsil and District Nagpur.

2) Kamlesh Tulsiram Wagadare,  
Aged : 56 Years,  
Occupation : Lawyer,  
R/o Plot No.81, Shivshakti  
Layout, Near CGHS Colony,  
Sonegaon, Nagpur – 440 025.

3) Aaditya Vijay Choudhary,  
Aged : 27 Years,  
Occupation : Private,  
R/o. Plot No.34,  
Bhagwan Nagar,  
Nagpur – 440 027.

.... **RESPONDENTS**

-----  
Mr. Sunil Kulkarni, Advocate for appellant.  
Mr. K. R. Lule, APP for respondent No.1/State.  
Mr. U. P. Dable, Advocate for respondent Nos.2 and 3.  
-----

**CORAM : URMILA JOSHI-PHALKE, J.**  
**RESERVED ON : 28.11.2024**  
**PRONOUNCED : 06.12.2024**

**JUDGMENT :**

1. Heard.

(2)

2. **Admit.**

3. By this appeal, the appellant - original complainant is challenging the order passed by the learned Special Judge and Additional Sessions Judge, Nagpur dated 05.04.2023 by which application for cancellation of anticipatory bail in Crime No.529/2022 is rejected.

4. The appellant is the original complainant and on the basis of information given by her to the Police Station Gittikhadan Crime No.529/2022 for the offences punishable under Sections 376(2)(n), 377, 506, 509 and 323 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w) (i), 3(1)(w)(ii), 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act of 1989').

5. After registration of the crime, the respondent Nos.2 and 3 filed an application for grant of anticipatory bail bearing No.2194/2022 and 2195/2022 which were allowed by the learned Special Court by granting anticipatory bail. The condition imposed was that the respondent Nos.2 and 3 shall not indulge in similar type of the offences.

6. As per the contention of the appellant, she is a practicing lawyer since last 13 years in District Court, Nagpur.

(3)

She got acquaintance with respondent No.2 and the respondent No.2 by taking advantage of her gender shown her high hopes and developed an intimacy towards her. He has captured her photographs without her knowledge and threatened her that if she disclosed the incident of having physical relationship, she has to face dire consequences, therefore, lodged the report against the respondents. Subsequent to the said incident, another crime was registered on the basis of report lodged by the appellant under Section 354-D read with Section 12 of the Protection of Children from Sexual Offences Act. Thus, the respondent No.2 has contravened the conditions imposed while releasing him on bail and on that count, she is seeking cancellation of bail. It is submitted that learned Special Court has not considered that the respondent No.2 has committed the breach of the condition of the order which was imposed while releasing him on bail and subsequent to that another crime is registered against him which is clearly a contravention of the order passed by the learned Sessions Court and therefore, bail granted to the respondent Nos.2 and 3 deserves to be cancelled.

7. Heard learned Counsel Mr. Kulkarni for the appellant he reiterated the contention and submitted that while releasing the respondent Nos.2 and 3 on anticipatory bail specific condition imposed was that the respondents shall not commit an

(4)

offence similar to the offence of which, he is accused. Due to the registration of the subsequent offence against the present respondents, which is admittedly the contravention of the terms and conditions which are imposed on the respondent Nos.2 and 3 and therefore, the bail granted in the event of arrest, deserves to be cancelled.

8. Learned APP supported the said contentions and submitted that there is a breach of terms and conditions and therefore, the appeal deserves to be allowed.

9. Learned Counsel Mr. Dable for the respondent Nos.2 and 3 submitted that as far as the second incident i.e. the facts of the Crime No.133/2023 is concerned, which allegedly took place in the Court premises i.e. in the Bar Room. During the investigation, the various statements of the witnesses are recorded including the xerox Operator and the employees working there. None of the statements reflects alleged incident has taken place. Merely to create a ground for cancellation of bail, the said crime was registered on the basis of the report lodged by the victim. The supervening and overwhelming circumstances are required for cancellation of bail. He further submitted that the order passed by the learned Special Court specifically shows that the allegation of outraging of modesty incident dated 02.11.2022, the Court has granted anticipatory

(5)

bail on 16.12.2022 on merits. The respondent No.2 and the informant both are members of the District Bar Association. The informant earlier filed report of sexual assault on the basis of which Crime No.529/2022 was registered. Whereas, another Crime No.430/2022 is also registered on the basis of the report. In both the crimes, the investigation is already completed and charge-sheets have been filed. The statements of the witnesses i.e. room attendant, staff working in a photocopies Center, Librarian, Book Seller have not supported the contention of the appellant. Thus, no case is made out by the appellant for cancellation of bail, and therefore, rejected the application. He submitted that thus, the observation of the learned Special Court that the second incident of outraging the modesty which took place in the Court premises is not substantiated by any material and therefore, bail was granted. No overwhelming and supervening circumstances are brought on record for cancellation of bail. In view of that, the appeal is devoid of merits and liable to be dismissed.

10. After hearing both the sides and on perusal of the investigation papers, it is not in dispute that both the respondents allegedly involved in Crime No.529/2022 registered under Sections 376(2)(n), 377, 506, 509, 323 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)

(6)

(w)(ii), 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of the Act of 1989. After registration of the crime, the respondents approached the learned Special Court for grant of anticipatory bail. The Special Court has considered the entire evidence on record and observed that there was a consensual relationship between the informant and the respondent No.2. It is further observed that after the incident, the victim is regularly attending the Court proceeding therefore, as far as the allegation of threatening is concerned are not supported as no report was lodged by the informant against the respondents as to the threatening. The considerations of bail are also considered and it is observed that when a *prima facie* case of rape is not made out as well as the offence is committed in a public view is not made out, and therefore, released them on a bail.

11. Being aggrieved with the same, the appellant filed the application for cancellation of bail, wherein also the learned Special Court has considered the object of the bail and rejected the application.

12. Section 439(2) of the Code of Criminal Procedure empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused persons. Generally the grounds for

(7)

cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. Thus, what is required is that very strong grounds to cancel the bail.

13. As far as the law regarding the cancellation of bail is concerned, it is well settled that considerations for grant of bail and cancellation of bail are different. As far as the cancellation of bail is concerned, the considerations are laid down by the Hon'ble Apex Court in ***Myakala Dharmarajam & Ors. Etc. Vs The State Of Telangana & Anr [2020 (2) SCC 743]***, wherein it is held that:

(8)

*"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".*

14. 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.

15. 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.*

(9)

*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.*

16. In light of the well-settled legal position, if the facts of the present case are taken into consideration, admittedly, the Special Court has imposed the condition that the respondents shall not involve themselves or indulge in similar types of activities. The subsequent offence is registered against them under Section 354 of the Indian Penal Code. As observed earlier, the overwhelming and supervening circumstances are required for cancellation of bail, and one of the grounds which is to be considered whether the Court has taken into consideration the relevant investigation papers, which

(10)

were before it or whether the order was passed by ignoring the relevant material.

17. In the light of the above principles if the facts of the present case are taken into consideration, as far as the second incident is concerned it is not substantiated by any of the material. Merely because the subsequent offence is registered against the present respondents is not sufficient to cancel the bail. While rejecting the application for cancellation of bail learned Special Court has considered all these aspects and rightly rejected the application. I do not find any reason to interfere with the said order. In fact, no overwhelming and supervening circumstances are brought on record to cancel the bail. Both the orders i.e. granting of bail to the respondent Nos.2 and 3 and the rejection of cancellation of bail application are reasoned orders. I do not find any substance in the appeal being appeal is devoid of merits and liable to be dismissed. In view of that, the appeal is dismissed.

**(URMILA JOSHI-PHALKE, J.)**