



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.60 OF 2023

Smt. Poonam w/o Rahul Bhartiya
Aged about 42 years,
Occupation – Household,
R/o. Kane Building,
Near Kala Ola City, Akola,
Tq. and District Akola

...APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
P.S. Khadan, Akola, District Akola
2. Rahul Kisanchand Bhartiya,
Aged about 44 years,
Occupation – Labour,
3. Sau. Premlata Kisanchand Agrawal
Aged about 72 years,
Occupation – Household,
Nos.2 and 3 R/o. Lane No.3,
Balaji Nagar, Akola,
Tq. and District Akola
4. Sau. Pooja w/o Pavan Date,
Aged about 42 years,
Occupation – Private,
5. Pavan s/o Rajendra Date,
Aged about 40 years,
Occupation – Private Service,
Nos.4 and 5 R/o. Sitara Apartment,
Ambika Nagar, Malkapur Road,
Akola, Tq. and District Akola

...NON-APPLICANTS

Mr. B.V. Gupta, Advocate for the appellant.
Mr. A.R. Chutke, APP for the State.
Mr. Vijay Kumar Goyal, Advocate for non-applicant Nos.2 to 5.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 06, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By this application, the applicant/original complainant seeks cancellation of bail granted to respondent Nos.2 to 5 by order dated 27/12/2022 in Misc. Criminal Application No.877 of 2022 passed by the Additional Session Judge-1, Akola in connection with Crime No.762/2022 for the offence punishable under Sections 498-A, 377, 323, 506 read with Section 34 of the Indian Penal Code.

3. As per the contention of the applicant, the applicant is the wife of respondent No.2 – Rahul Bhartiya, respondent No.3 is her mother-in-law, respondent No.4 is sister-in-law and respondent No.5 is the husband of respondent No.4. Her marriage was solemnized with respondent No.2 on 20th June, 2007 and at the time of marriage it is alleged that respondent Nos.2 to 5 have demanded money and gold

ornaments. After the marriage, respondent No.2 – husband used to suspect her character and also demanded money from her parents due to which she constrained to leave matrimonial house. It is further alleged that she was also ill-treated and harassed for want of male child. On the basis of said report, police have registered the crime vide Crime No.762/2022 registered at police station Khadan, Akola, District Akola for the offence punishable under Sections 498-A, 377, 323 and 506 read with Section 34 of the Indian Penal Code. After registration of the crime, respondent Nos.2 to 5 approached to the Sessions Court for grant of anticipatory bail. After issuing the notice and after hearing both the sides, the Sessions Court held that the applicant/wife has levelled several allegations against the husband and in-laws and the applicant/husband has also levelled counter allegations against her in the matrimonial petition. It is further observed from the First Information Report that the allegations for demand of money, physical ill-treatment and illicit relations of respondent No.2 with another lady as well as an unnatural offence. All such allegations are general so far as respondent Nos.2 to 5 are concerned and released them on bail.

4. Being aggrieved with the same, present application is filed on the ground that learned trial Court has not considered the submissions made by the present applicant and released respondent Nos.2 to 5 on

bail. It is submitted by the learned Counsel for the applicant that respondent No.2 has given threats to the victim to withdraw the FIR as with circulate the obscene photographs and videos of victim on social media. The said act itself shows the cruelty on the part of respondent Nos.2 to 5 and this fact is not considered by the trial Court while releasing respondent Nos.2 to 5 on bail. He submitted that regarding the said incident, the applicant approached to the Magistrate Court by filing application under Section 156(3) of the Code of Criminal Procedure. Said application was allowed and the FIR registered against the present respondent Nos.2 to 5 under Sections 409, 419, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code vide Crime No.472. He submitted that considering all these circumstances, it is apparent that the present respondent Nos.2 to 5 have misused the liberty granted to them, and therefore, the anticipatory bail granted to them deserves to be cancelled.

5. *Per Contra*, learned Counsel for respondent Nos.2 to 5 submitted that in the present crime, now the investigation is already completed and charge-sheet is filed, no purpose would be served by sending the present respondent Nos.2 to 5 behind bar. He further invited my attention towards the order passed by the trial Court wherein the trial Court has observed that the complainant appeared through her

Advocate for seeking permission to assist the prosecution. She also filed written notes of argument at Exhibit-16. The order further reflects that while releasing the present respondent Nos.2 to 5 on bail, the contention raised by the present applicant is taken into consideration and after appreciating the entire material, the respondent Nos.2 to 5 are released on bail.

6. Learned Additional Public Prosecutor supported the contention of the present applicant and prays for cancellation of the bail.

7. I have heard learned Counsel for the applicant, learned Additional Public Prosecutor for the State and learned Counsel for respondent Nos.2 to 5. I have also perused the order passed by the Additional Sessions Judge while releasing respondent Nos.2 to 5 on bail. The trial Court has observed that from the FIR it reveals that allegation for demand of money, physical ill-treatment, illicit relations of respondent No.1 with another lady as well as the unnatural offence. All such allegations are general in nature so far as the other respondents are concerned. As far as respondent No.1/husband is concerned it is apparent that they had about 16 years of marital life between them without any prior complaints whereas there are counter allegations levelled by them against each other. Thus, it is apparent that while

releasing the present respondent Nos.2 to 5 on bail in the event of the arrest, the trial Court has considered the entire material on record and thereafter passed an order. It is well settled that while considering the application for cancellation of bail the parameters are different. Here no supervening or overwhelming circumstances are brought on record to show that after releasing the respondent Nos.2 to 5 on bail they have either misused the liberty or jumped from the bail conditions. It is also apparent that now investigation is completed and charge-sheet is filed, no purpose would be served by sending the present respondent Nos.2 to 5 behind bars. In *Satender Kumar Antil Vs. Central Bureau of Investigation*, [(2022) 10 SCC 51] wherein the Hon'ble Apex Court held 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. The Hon'ble Apex Court further held that if the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Considering the nature of the offence in the present case also the arrest of the present respondent Nos.2 to 5 is not required. Moreover, the order passed by the trial Court

also reflects that the trial Court has considered the entire material on record, and thereafter passed an order. So it is not the fact that the trial Court has ignored some evidence and thereafter passed the order. The trial Court further considered the submissions made by the present applicant also and thereafter come to the conclusion and released respondent Nos.2 to 5 on bail.

8. Considering the same, present application is devoid of merits and liable to be rejected. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*