



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

CRIMINAL APPEAL NO.484 OF 2024

XYZ (Crime No.56/2024)

...APPELLANT

VERSUS

1. State of Maharashtra,
through PSO, Police Station,
Kapil Nagar, Nagpur
2. Vijayprakash @ Pankaj s/o
Ramnarayan Gupta,
Aged about 35 years,
R/o. Plot No.82,
Dipak Nagar, Kapil Nagar,
Nagpur

...RESPONDENTS

Ms V.B. Manvatkar, Advocate for the appellant.
Mrs. H.N. Prabhu, APP for the State.
Mr. A.S. Band, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 11, 2025.

ORAL JUDGMENT :

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

2. By preferring this appeal, the appellant who is the original complainant has challenged the order passed by the Special Court granting bail to present respondent No.2 in Special Case No.209/2024 by passing the order below Exhibit-3 on 12/06/2024 allowing the application and releasing him on bail on executing PR. Bond of Rs.1,00,000/- with solvent surety in the like amount.

3. The brief facts, which are necessary for the disposal of the appeal are as under:

A] The crime No.56 of 2024 is registered on the basis of the report lodged by the victim aged about 40 years for the offence punishable under Sections 376(1), 506(2), 504 of the IPC and Sections 3(1)(W)(i)(ii), 3(2)(v), 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

B] It was alleged that the victim got acquaintance with the present appellant and present appellant projected himself that he is of a 'Brahmin' community and also expressed his feelings to her. Thereafter, they started communicating with each other and love relationship was developed between them. On 29/08/2023, on the promise of marriage, he subjected her for the forceful sexual assault and subsequent thereto on multiple occasions. On the basis of the said report, police have

registered the crime against the present appellant. During investigation, the present appellant was arrested on 21/03/2024. He applied for the grant of bail and the learned trial Court considered that there was a love affair between the victim and the present appellant and the FIR alleges that the accused had forcible sexual intercourse with the victim on the pretext of marriage but the said incident remained unreported for more than five months and that too without any reasonable grounds and by considering that it is a consensual relationship, released him on a bail.

4. Being aggrieved and dissatisfied with the same, present appeal is preferred for cancellation of bail on the ground that the appellant has suppressed the fact regarding his criminal antecedents. The further ground raised is that he has not abided with the condition imposed by the trial Court and the trial Court has not considered the material aspect while releasing him on bail, and therefore, the bail granted to the present appellant deserves to be cancelled.

5. Heard learned Counsel for the appellant/victim. She reiterated the contention that the victim was represented by the present appellant that he is unmarried person and on the promise of marriage he subjected her for the forceful sexual assault. Thus, under the misconception of fact, her consent was obtained and she was subjected for the forceful sexual assault. This aspect is not considered by the trial

Court while releasing the present appellant on bail. Moreover, the appellant has suppressed the fact regarding his criminal antecedents. Thus, considering that the material considerations are ignored by the trial Court while releasing him on bail. The bail granted to him deserves to be cancelled.

6. Learned APP supported the contention of the appellant/victim whereas learned Counsel for respondent No.2 strongly opposed the said appeal on the ground that on merits considering the nature of the relationship between the victim and the present appellant, learned trial Court by observing that it is a consensual relationship, granted the bail. He further submitted that the law regarding the cancellation of bail and it is well settled that considerations for grant of bail and cancellation of bail are different. There are no supervening or the overwhelming circumstances brought on record for the cancellation of bail. In view of that, the appeal is devoid of merits and liable to be dismissed.

7. I have heard learned Counsel for both the sides. Perused the recitals of the FIR from which it reveals that the FIR is lodged by the victim after five months of the incident, alleging that the present appellant projected himself as an unmarried person. Thereafter love relationship was developed between them and on the promise of

marriage, the present appellant has subjected her for the forceful sexual assault. During the investigation, such statement of the various witnesses, including the statement of the friend of the victim, is also recorded who was aware about the relationship of the present appellant with respondent No.2. The statement of the friend also shows that there was a love affair between the victim and respondent No.2 and out of that love affair, it was disclosed by the victim to her that she had the physical relationship with present respondent No.2. Thus, the entire investigation papers show that, out of love affair, they come together and physical relationship was developed between them. Now, this aspect regarding whether it is a breach of promise or intentionally under the misconception of fact, the victim was subjected for the sexual assault is settled by 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.”

8. Thus, considering the various statements of the witnesses, including the statement of the victim and her friend it reveals that out of love affair, the physical relationship was developed between the victim and responded No.2. As far as the law regarding the cancellation of bail is concerned, it is well settled that the considerations for grant of bail and cancellation of bail are different. 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 including Myakala Dharmarajam & Ors., v. 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.

9. In Deepak Yadav vs. State of Uttar Pradesh and another [(2022) 8 SCC 559] 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.

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

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) 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.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) 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.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

11. In the light of the above legal position if the facts of the present case are taken into consideration admittedly, the Sessions Court has considered the relationship and the nature of the relationship between the victim and respondent No.2. The Sessions Court has also considered that the investigation is completed and charge-sheet is filed. As observed earlier the overwhelming and supervening circumstances are required for cancellation of bail and by considering the order passed

by the learned Sessions Court and the ground raised in the application, no overwhelming and supervening circumstances are brought on record. On the contrary, the order passed passed by the Sessions Court shows the reasoning that why the discretion is used in favour of respondent No.2.

12. Considering all these facts, the appeal is devoid of merits and liable to be dismissed.

13. Hence, the appeal is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*