

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL NO.32 OF 2020

(X)

APPLICANT

VERSUS

1. The State of Maharashtra,
through its Dharangaon Police Station,
Tq. Dharangaon, Dist. Jalgaon
2. Mohit Subhash Chavan,
Age : 23 years, Occu. Service,
R/o Near Mahadeo Temple,
Pardhiwada, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon

RESPONDENTS

Mr. Vijay B. Patil, Advocate for the applicant
Mr. P.G. Borade, A.P.P. for the respondent/State
Mr. Satej S. Jadhav, Advocate for respondent No.2

CORAM : MANGESH S. PATIL, J.

DATE : 05.02.2021

PER COURT :

This is an application for cancellation of bail by resorting to the provision of Section 439 (2) of the Code of Criminal Procedure.

2. The applicant, who was then still less than 18 years of age, set the criminal law in motion by filing an FIR on 17.12.2019 on the basis of

which offence was registered under Sections 376, 417, 506 of the Indian Penal Code and under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short) against respondent No.2. Apprehending his arrest, he filed application seeking anticipatory bail before the Sessions Court, Jalgaon. By the impugned order, the learned Additional Sessions Judge granted anticipatory bail to respondent No.2. Being aggrieved and dissatisfied by the order granting anticipatory bail, the applicant is before this Court.

3. The learned Advocate for the applicant would submit that though the offence is serious and also covers the provisions of the POCSO Act, the learned Additional Sessions Judge without applying his mind and in a cryptic manner, decided the application by the impugned order and granted anticipatory bail merely for asking. He would submit that though the informant was still a minor and though the learned Additional Sessions Judge appreciated the fact that her consent would not matter, by making flimsy observation that she had sufficient maturity and that there was some delay in lodging the FIR, has readily granted anticipatory bail to respondent No.2. The approach of the learned Additional Sessions Judge was clearly in dereliction of the settled norms and the anticipatory bail granted to respondent No.2 be cancelled.

4. The learned Advocate for respondent No.2 submits that the discretion vested in the learned Additional Sessions Judge, which he has

exercised for the plausible reasons based on the facts and circumstances of the case. The parameters for cancellation of bail stand on a different footings. This Court may not substitute its discretion in place of the discretion exercised by the learned Additional Sessions Judge.

5. One need not delve as to the seriousness of the crimes under the POCSO Act. The very object of its being on the Statute book is indicative of its seriousness.

6. The applicant, stated to be 18 years of age, lodged the FIR, alleging that when she was studying in 9th standard in the year 2014-2015, respondent No.2 started stalking her. Since he was her distant relative, he used to keep coming to her house. She further alleged that during that period, he clandestinely effected entry into the house from a backside door and committed rape on her. He also threatened her of consequences if the incident was disclosed. She further alleged that even thereafter he continuously stalked her and threatened her. Pertinently, she alleges that he used to come frequently to her house and used to have sexual intercourse. She has also stated that sometimes, he used to use contraceptive. Since she was afraid, she never disclosed this fact to anybody. She further alleges that when she alongwith a social worker and her mother went to lodge a report with the Police Station, the mother of respondent No.2 somehow persuaded them not to lodge the complaint by promising that she would accept her as her daughter-in-law. She would further allege that even respondent No.2

once got executed a writing on a stamp paper from her illiterate mother, stating that there was an affair between the two and with her consent, they both had indulged in sex. It was promised that since she was still a minor, the marriage would be performed after she completed 18 years of age. However, lateron, respondent No.2 and his mother backed off from the promise and the FIR was lodged.

7. One can easily conclude that going by the allegations respondent No.2 has sexually exploited the applicant for a sufficiently long period, since she was around 16 years of age. The papers of investigation would further corroborate the applicant's version about execution of a writing on a stamp paper of Rs.500/-. Respondent No.2 and his family seem to be so influential that they could get executed this writing from the applicant and her widowed mother. The very fact that they could get such writing executed is indicative and is sufficient to infer that respondent No.2 had indulged in sex with the applicant even when she was merely 16 years of age. Pertinently, this writing also bears his signature and signature of his mother.

8. If such is the state-of-affair, the impugned order passed by the learned Additional Sessions Judge is indeed atrocious. The only reason that can be found in the impugned order, which weighed with the learned Judge is contained in paragraph 6, which reads as under :

“The alleged incident first occurred during the year 2014-15 when the Victim was alone in the house. The accused is

admittedly known to be Victim and her family and that they are distantly related. No doubt, the Victim being less than 18 years old at the relevant time. There was no question of her consent for the so called relations, which were later on portrayed to be consensual. Yet the fact remains that the Victim though minor had sufficient maturity as to what unfortunate incident had happened with her, wherein she has with meticulous details mentioned about use of contraceptive by the Applicant. The applicant had aid and advice of independent adviser as per her own version and yet there is no explanation for this belated lodging of FIR. The possibility of false implication of the Applicant who is now a public servant cannot be ruled out. It is therefore, that I am inclined to grant anticipatory bail, subject to stringent conditions so as to ensure that the investigation is not hampered and Applicant's liberty is not unjustifiedly curtailed."

9. The approach of the learned Judge from such a reasoning clearly shows his utter lack of sensitivity in such serious matters. Inspite of having noted that the applicant was still a minor when respondent No.2 had sexually exploited her and inspite of observing that her consent would be immaterial, he has concluded that it was a consensual relation. Astonishingly, merely because she has mentioned in the FIR about use of contraceptive by respondent No.2, the learned Judge has jumped to the conclusion that she was having sufficient maturity. The height is committed by the learned Additional Sessions Judge even to record an observation that there is a possibility of false implication of respondent No.2. Such an approach is a clear indication that the learned Judge utterly lacks competence. It is indeed a matter which deserves a serious consideration. The learned Judge has clearly deprived the Investigating Officer of an opportunity to custodial

interrogate respondent No.2 by granting anticipatory bail merely for asking. The reasoning resorted to by the learned Additional Sessions Judge clearly undermines the legal principles and parameters, which should weigh with the Court in entertaining the application for anticipatory bail as laid down by the Supreme Court in catena of judgments, as recently as in the case of

Sushila Aggarwal Vs. State (NCT of Delhi) & Another; (2020) 5 SCC 1.

10. Considering all the above mentioned facts and circumstances, this is a case where it can easily be concluded that the learned Additional Sessions Judge has not exercised the discretion vested in him judiciously. The order being clearly perverse, arbitrary and capricious, the application deserves to be allowed and the impugned order granting anticipatory bail to respondent No.2 is liable to be quashed and set aside.

11. The application is allowed. The anticipatory bail granted to respondent No.2 by the learned Additional Sessions Judge, Jalgaon by the impugned order, is quashed and set aside. Respondent No.2 shall surrender before the Investigating Officer immediately.

12. A copy of this order be forwarded to the Registrar General of this Court for placing it before the Hon'ble the Chief Justice.

**[MANGESH S. PATIL]
JUDGE**

