

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

CRIMINAL APPLICATION (APPLN) NO.73 OF 2021

MRS. UPINDER KAUR W/O RAJESH SELARKA VS STATE OF MAHARASHTRA, THR. POLICE
STATION INCHARGE, POLICE STATION JARIPATKA, NAGPUR AND ANOTHER

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.P. Bhandarkar, Advocate a/w. Shri Saurabh Bhende, Advocate for applicant
Shri S.A. Ashirgade, APP for the State / Non-applicant
Shri Y.S. Gorle, Advocate for the complainant

CORAM : ANIL S. KILOR, J.

DATED : 06.10.2022.

1. By way of this application, filed under Section 439(2) of the Cr.P.C., the applicant is praying for cancellation of bail granted to the respondent No.2 by the learned District Judge-12 and ASJ, Nagpur vide order below Exh.1 dated 29.06.2021 in MISC. Criminal Application No.1552 of 2021. The ground on which the cancellation of bail is sought is that the respondent No.2 has breached the condition No.3 of the order dated 29.06.2021.

2. The facts in brief are that, the applicant lodged a complaint against the respondent No.2 alleging that after her divorce with first husband on 09.07.2015, she came in contact with the respondent No.2, who gave marriage proposal to her and thereupon, they got married on 17.11.2018. However, thereafter she alleges ill-treatment at the hands of the respondent No.2 and his family members. On such complaint, crime was registered with Jaripatka police station as crime No.281 of 2021 for the offence punishable

under Sections 294, 323, 376, 377, 406, 420, 494, 495, 498-A, 506 read with Section 34 of the Indian Penal Code and Section 67-A of the Information Technology Act.

3. The respondent No.2 thereupon, preferred an application for grant of bail under Section 438 of the Cr.P.C., which was allowed on certain conditions, vide order dated 29.06.2021. One of the conditions was that, the accused i.e. respondent No.2 shall not contact informant and other prosecution witnesses in any manner and shall not tamper with the prosecution evidence.

4. Thereafter, the applicant moved an application before the Sessions Court under Section 439(2) of the Cr.P.C. for cancellation of bail granted to the respondent No.2, on the ground that the respondent No.2 breached the condition No.3 and thereby contacted the informant. It was also alleged that the respondent No.2 threatened through unknown person to pressurize her to withdraw the complaint lodged against the respondent no.2, when she was present outside the office of her lawyer. It is stated that the said incidence was reported to the Bajajnagar, police station. It was further alleged that the accused is threatening the applicant through his friends for withdrawal of the prosecution.

5. The learned Sessions Court after hearing both the parties, rejected the application vide order dated 12.08.2021 on the ground that the applicant has failed to made out grounds for cancellation of bail. On rejection of the said application, the applicant has moved

the present application before this Court with same relief and on the same grounds.

6. I have heard Shri Bhandarkar, learned counsel for the applicant, Shri Asirgade, learned Additional Public Prosecutor and Shri Gorle, learned counsel for the respondent No.2.

7. The learned counsel for the applicant submits that at least on nine occasions condition No.3 of the order granting bail was breached by the respondent No.2, by making calls to the complainant/applicant or to her daughter. He submits that the respondent No.2 sent WhatsApp messages frequently in violation of the condition No.3. For this purpose, he has drawn attention to the screen shots of the WhatsApp messages filed along with the application.

8. He further submits that a police complaint was lodged with the Bajajnagar, Police Station on a threat given by unknown person for withdrawal of prosecution lodged against the respondent No.2, when the applicant was outside the office of her lawyer. It is therefore, submitted that the respondent No.2 is pressurizing the prosecution witnesses.

9. He further submits that the respondent No.2 is an influential person and he is continuously threatening and pressurizing the applicant for withdrawal of the complaint lodged by her. For that purpose, the learned counsel for the applicant has drawn attention of this Court to the various documents filed along with the present application.

10. On the other hand, the learned APP supports the present application. However, the respondent No.2 strongly opposes the application on various grounds.

11. The learned counsel for the respondent No.2 submits that there is nothing to show that phone numbers from which the applicant received WhatsApp messages, are of the respondent No.2. He further points out from those WhatsApp messages that though the applicant blocked the said number for sometime, she again unblocked it. It is submitted that the conduct of the applicant is doubtful as when she had facility to block the numbers from which she was receiving some objectionable messages, she ought to have blocked it permanently. It is further submitted that to create a ground for seeking cancellation of bail, all sort of allegations are being made and even false complaints have been made to the police alleging that some third persons are threatening the applicant to withdraw the complaint lodged by her against the respondent No.2.

12. It is pointed out that two complaints were lodged with the police by the respondent No.2 against the applicant. As such, the respondent No.2 has denied all the allegations made against him.

13. In the above referred backdrop of submissions of both the parties, I have perused the record.

14. As far as the allegation that some third persons are threatening the applicant to withdraw the complaint lodged against the respondent No.2, there is nothing incriminating found in the complaint lodged by the applicant to the police, against the

respondent No.2 to suggest that he pressurized the applicant. Thus, the said contention cannot be accepted in absence of any reliable or convincing evidence to show the involvement of the respondent No.2.

15. As far as WhatsApp messages are concerned, no cogent and reliable evidence has been brought on record to show that the numbers from which the applicant had received messages, are of the respondent No.2.

16. On the other hand, the respondent No.2 has also made similar complaint against the applicant, by which he made a request to find out the truth regarding the alleged WhatsApp messages, from the Cyber Cell. The investigation to that effect is pending.

17. The learned trial Court has dealt with the same grounds in detail while rejecting the application of the applicant for cancellation of bail. After going through the reasons recorded by the learned trial Court, I am of the opinion that the learned trial Court has rightly rejected the application of the applicant for cancellation of bail of respondent No.2. Thus, in the backdrop of above referred observations, I do not find any merit in the present application. Accordingly, the application is **rejected**.

JUDGE