

Diary no 4345/2021

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

[S.C.R., ORDER XXII RULE 2(1)]

Under Article 136 of the Constitution of India

SPECIAL LEAVE PETITION (CRL.) NO. _____ OF 2021

(WITH PRAYER FOR INTERIM RELIEF)

(Arising out of Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad)

IN THE MATTER OF:-

Mohit Subhash Chavan . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . Respondents

WITH

CRL.M.P.NO. _____ OF 2021

APPLICATION FOR EXEMPTION FROM FILING
CERTIFIED COPY OF THE IMPUGNED JUDGMENT

WITH

CRL.M.P.NO. _____ OF 2021

APPLICATION FOR EXEMPTION FROM FILING
OFFICIAL TRANSLATION

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: **ANAND DILIP LANDGE**

Diary No. 4345 /2021

DECLARATION

All defects have been duly cured. Whatever has been/deleted/modified in the Petition is the result of curing of defects and nothing else. Except curing the defects. Nothing has been done. Paper Books are complete in all respects.

Signature

AoR's Name ANAND DILIP LANDGE

AoR Code _____

Contact No. _____

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A

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CRL.) NO. _____ OF 2021

IN THE MATTER OF:-

Mohit Subhash Chavan . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of ____ days in filing the same against Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad and Petition for condonation of ____ days delay has been filed.
3. There is delay of ____ days in refilling the Petition and Petition for condonation of ____ days delay in refilling has been filed.

(BRANCH OFFICER)

Place : New Delhi
Date : 15.02.2021

PROFORMA FOR FIRST LISTING

SECTION - II-A

The case pertains to (Please tick/check the correct box):

- Central Act: (Title) IPC
- Section: 376, 417 & 506
- Central Rule: (Title) N/A
- Rule No(s): N/A
- State Act: (Title) N/A
- Section: N/A
- State Rule: (Title) N/A
- Rule No(s): N/A
- Impugned Interim Order: (Date) N/A
- Impugned Final Order/Decree: (Date) 05.02.2021
- High Court: (Name) High Court of Judicature at Bombay Bench at Aurangabad
- Names of Judges: MANGESH S. PATIL, J.
- Tribunal/Authority: (Name) N/A

-
1. Nature of matter: Civil Criminal
2. (a) Petitioner/Appellant No.1: Mohit Subhash Chavan
 (b) e-mail ID: N/A
 (c) Mobile Phone Number: N/A
3. (a) Respondent No.1: The State of Maharashtra & Anr.
 (b) e-mail ID: N/A
 (c) Mobile Phone Number: N/A

4. (a) Main category classification: 14 CRIMINAL MATTER
 (b) Sub classification: 1407 OTHERS.
5. Not to be listed before: N/A
6. (a) Similar disposed of matter with citation, if any, & case details:
No Similar matter disposed of
 (b) Similar pending matter with case details: No Similar matter pending
7. **Criminal Matter: Yes.**
 (a) Whether accused/convict has surrendered: Yes No
 (b) FIR/C.R. No.1/2017 Date: 03.01.2017
 (c) Police Station: Dharangaon Police Station, Jalgaon, Maharashtra
 (d) Sentence Awarded: No sentence awarded
 (e) period of sentence undergone including period of Detention/Custody undergone UNDER TRIAL
8. **Land Acquisition Matter: N/A**
 (a) Date of Section 4 notification: N/A
 (b) Date of Section 6 notification: N/A
 (c) Date of Section 17 notification: N/A
9. **Tax Matter: State the tax effect: N/A**
10. **Special Category (first Petitioner/Appellant Only): N/A**
 Senior Citizen > 65 years SC/ST Woman/Child Disabled Legal Aid case In custody
11. **Vehicle Number (in case of Motor Accident Claim Matters): N/A**

Filed by



[ANAND DILIP LANDGE]
 Advocate for the Petitioner(s)

SYNOPSIS & LIST OF DATES

The present Special Leave Petition is filed against the Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, whereby the Hon'ble High Court without considering the provision U/s.439(2) of Cr.P.C. and without following the several parameters contemplated regarding cancellation of Anticipatory Bail in the catena of judgments passed by this Hon'ble Court erroneously allowed the said Application filed by the informant thereby cancelling anticipatory bail granted by the Ld. Sessions Court to the Petitioner.

It is alleged that the Petitioner used to follow the informant on her way to school and he was relative, he used to sit near. Hence her grandfather used to scold Petitioner for the reason and asked him as to why he come to their home and he used to answer that, his aunt resides in-front of their house and therefore he came there. It is further alleged that, thereafter when the grandparents and mother of informant had gone to Akola for work and her brother was out of station, the informant was alone in the house. It is alleged that, on the same day in the night around 12.00 am, the Petitioner entered in the house through the backdoor and gagged her mouth and tied her hands and legs and had

C

forced sexual intercourse with her. It is further alleged that, the Petitioner thereafter threatened informant that, if she says anything about the said incident, he would throw acid on her face and then no one will marry her. Further alleged said that, he will tie her brother on railway tracks as he is in contact with hooligans from Mumbai and thereafter he left her house. It is further alleged that, the Petitioner continued following the informant carrying patrol cane on his motorcycle and used to threaten her, he will pour petrol on her body. Whenever the mother of informant was outstation for work and the informant used to be alone in the house, the Petitioner allegedly used to come and have forced sexual intercourse with her by threatening to throw acid on her face. The Petitioner allegedly had sexual intercourse with the informant since she was in 9th std. for about 10 to 12 times without using any precaution by threatening her. The informant did not mention the said incident to anyone as she was afraid of the Petitioner. Thereafter, considering the defame in society due to the said incident, when the informant was attempting suicide by hanging, her mother arrived and stopped her from doing it and took her to the police station. When the informant along with her mother reached at police station to lodge the proposed complaint, mother of the Petitioner requested them not to lodge any complaint as she accept the guilt of the Petitioner and she is

D

ready to make the informant her daughter in law. It is further alleged that, after execution of notarized undertaking on 02.06.2018, when the informant became 18 year old, the mother of informant requested the mother of Petitioner to perform the said promised marriage but she refused the same and therefore the informant lodged the present complaint against the Petitioner.

Apprehending the arrest, the Petitioner filed Anticipatory Bail Application before the Ld. Sessions Court and after considering the allegations in the FIR and say filed by the prosecution, the Ld. Sessions Court by way order dated 06.01.2020 was pleased to grant anticipatory bail to the Petitioner. The Ld. Sessions Court specifically directed to the Petitioner to attend police station on every Saturday and Sunday till the filing of charge sheet and also directed not to enter limits of village Dharangaon till the completion of trial. The said condition duly complied by the Petitioner by visiting police station on every Saturday and Sunday.

Challenging the said anticipatory bail granted to the Petitioner the informant filed Application For Cancellation Of Bail before the Hon'ble High Court and the same was allowed by way of impugned order without considering the provision of section 439 (2) of Cr.P.C. and delay in filing the alleged FIR against the Petitioner.

E

The Petitioner herein approaching by way of present Special Leave Petition on the following substantial grounds:-

- A. The bail can be cancelled where (i) the accused misuses his liberty by indulging in similar activity, (ii) interferences with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threaten 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 investigation agency, (vii) attempts to place himself beyond the reach of his surety, etc.
- B. Because by way of order dated 06.01.2020, the Ld. Sessions Court, Jalgaon was pleased to grant Anticipatory Bail to the Petitioner and the same continued till the Impugned Order dated 05.02.2021. Therefore, the Petitioner has been protected since more than 1 year and therefore physically interrogation of the Petitioner is not necessary in the present crime.
- C. An order of Anticipatory Bail does not in any manner limit or restrict the rights or duties of the Police or Investigation Agency, to investigation into the charges

F

against the person who seeks and is granted pre-arrest Bail.

- D. It is open to the Police or the Investigation Agency to move the Court concerned, which grants Anticipatory Bail, for a direction U/s.439(2) of Cr.PC to arrest the Accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.
- E. The Petitioner is a public servant doing his service as a Technician in Maharashtra State Electricity Production Company Ltd. and therefore Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are applicable to him. Rule 4 (1) (2) of the said Rules specifically pointed out that if a government servant is detained in police custody under criminal charges for a period of 48 hours then he shall be deemed to have been placed under suspension by an order of appointing authority. Therefore, specific protection may be granted to the Petitioner in the interest of justice.
- F. The informant alleged in the FIR that the said incident was happened since 2014-2015 when the informant was in 9th std and that continued upto 12th std but the informant had not lodged any complaint with the police station or not made the same before any family member

G

but suddenly after refusing marriage with the Petitioner intentionally lodged the same belatedly.

- G. The informant lodged the present alleged complaint after an inordinate delay of more than 2 years after deliberation and consultation with somebody and with intention to implicate the Petitioner. Further, the informant has not explained the said delay in the said alleged complaint.
- H. After considering the grounds raised by the Petitioner in the Criminal Anticipatory Bail Application and say below Exh. 5 submitted by the prosecution, the Ld. Trial Court was pleased to grant anticipatory bail to the Petitioner thereby imposing specific terms and conditions of attending police station on every Saturday and Sunday and not to enter limits of village Dharangaon till the completion of trial. The said conditions duly complied by the Petitioner time to time and till date there is no any complaint by the police authority regarding violation of any terms and conditions contemplated in the order dated 06.01.2020.
- I. While challenging anticipatory bail order dated 06.01.2020, the informant has not made specific averments in the application for cancellation of bail regarding violation of any terms and condition in the

H

order dated 06.01.2020 passed by the Ld. Sessions Court.

- J. The Ld. Sessions Court while granting anticipatory bail has exercised judicial discretion within the parameters as contemplated under section 438 of Cr.P.C. and passed reasonable order in favour of the Petitioner and except ground of violation of the terms and conditions contemplated in the said anticipatory bail order, protection of anticipatory bail cannot be curtailed.

Apart from the above, this Hon'ble Court in the recent constitutional Judgment reported in (2020) 5 SCC 1: *Sushila Aggarawal & Ors. Vs. State & Anr.* has held as under:-

“92.7. An order of Anticipatory Bail does not in any manner limit or restrict the rights or duties of the Police or Investigation Agency, to investigation into the charges against the person who seeks and is granted pre-arrest Bail.

92.9. It is open to the Police or the Investigation Agency to move the Court concerned, which grants Anticipatory Bail, for a direction U/s.439(2) of Cr.PC to arrest the Accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.”

On the same way, this Hon'ble Court in one of the reported Judgment of *Dolat Ram & Ors. Vs. State of Haryana* reported in (1995) 1 SCC 349 in Para 4 held as under: -

4. "...However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial..."

Therefore, considering the abovesaid substantial grounds and parameters laid down in catena of Judgments passed by this Hon'ble Court, order cancelling Anticipatory Bail may be quashed and set-aside.

INDIAN LIST OF DATES

--- The Petitioner is serving as a technician in the Maharashtra State Electric Production Company Ltd. **ANNEXURE-P-1** is the True Translated Copy of I-Card dated Nil, issued by the Government of Maharashtra. (at Page Nos. 23)

02.06.2018 Notarized undertaking executed between the Petitioner and informant. In the said undertaking, both the parties have decided to marry after attaining age of 18 years.

J

17.12.2019 The informant lodged alleged C.R. No. 462 of 2019 against the Petitioner with the Dharangaon Police Station making allegations u/s 376, 417, 506 of IPC and u/s 4 & 12 of the POCSO Act, 2012. **ANNEXURE-P-2** is the True Copy of the relevant portion of C.R. No. 462 of 2019 dated 17.12.2019 registered with Dharangaon Police Station, Jalgaon. (at Page Nos. 24-27)

23.12.2019 Apprehending arrest, the Petitioner filed Criminal Bail Application No. 942 of 2019 before the Ld. Sessions Court, Jalgaon and prayed for anticipatory bail on the substantial grounds. **ANNEXURE-P-3** is the True Copy of Criminal Bail Application No. 942 of 2019 dated 23.12.2019 filed before the Ld. Sessions Court, Jalgaon. (at Page Nos. 28-34)

06.01.2020 After considering the grounds raised in the Criminal Bail Application and say below Exh. 5 submitted by the prosecution, the Ld. Sessions Court was pleased to grant Anticipatory Bail to the Petitioner. While granting anticipatory bail, the Ld. Sessions

K

Court specifically imposed following

conditions:-

ORDER

A. Criminal Bail Application No. 942 of 2019 filed by Mohit Subhash Chavan, is allowed and in the event of his arrest, in Cr. No. 162 of 2019, registered with Dharangaon Police Station, u/Ss. 376, 417, 506 of Indian Penal Code and u/Ss. 4 and 12 of POCSO Act, he be released on anticipatory bail on his furnishing PB and cash security of ₹20,000/- (Rupees Twenty Thousand Only) on following conditions:

B. The Applicant shall attend the concerned Police Station as and when called as well as on every Saturday in between 6.00 p.m. to 8.00 p.m. and on every Sunday in between 9.00 a.m. to 7.00 p.m. till filing of chargesheet.

C. The Applicant shall not commit an offence similar to the offence of which he is accused or suspected.

D. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court.

E. The Applicant shall not leave the State of Maharashtra without prior permission of this Court and shall not enter limits of village Dharangaon, Tal. Dharangaon, Dist. Jalgaon, till completion of trial, except in course of attending the police station or in course of his employment.

F. The Applicant shall surrender his passport if any with the investigating officer.

G. The Applicant shall deposit amount of cash security in the Court of jurisdictional Magistrate on or before 13-01-2020 and shall furnish proof thereof the I.O. or in his absence to the P.S.O. and this bail shall

L

unless cancelled enure for the trial if any as well.

ANNEXURE-P-4 is the True Copy of order dated 06.01.2020 in Criminal Bail Application No. 942/2019 passed by the Ld. Sessions Court, Jalgaon. (at Page Nos. 35-39)

05.02.2020 Challenging the said order dated 06.01.2020, the informant preferred Application for Cancellation of Bail No. 32 of 2020 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. **ANNEXURE-P-5** is the True Copy of Application for Cancellation of Bail No. 32 of 2020 dated 05.02.2020 filed before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. (at Page Nos. 40-44)

01.02.2021 The Hon'ble High Court has expressed its inclination to allow the application filed by the informant. **ANNEXURE-P-6** is the True Copy of order dated 01.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of

M

Judicature at Bombay Bench at
Aurangabad. (at Page Nos. 45)

05.02.2021 the Hon'ble High Court without considering
the provision U/s.439(2) of Cr.P.C. and
without following the several parameters
contemplated regarding cancellation of
Anticipatory Bail in the catena of judgments
passed by this Hon'ble Court erroneously
allowed the said Application filed by the
informant thereby cancelling anticipatory
bail granted by the Ld. Sessions Court to the
Petitioner. **(Impugned Order)**

15.02.2021 Hence this Special Leave Petition.

INDIAN LEGAL NEWS



1
Impugned Judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.32 OF 2020

Rinku Nana Pardhi,

APPLICANT

VERSUS

1. The State of Maharashtra,
through its Dharangaon Police Station,
Tq. Dharangaon, Dist. Jalgaon
2. Mohit Subhash Chavan,

RESPONDENTS

INDIAN LEGAL NEWS

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. In spite of having noted that the applicant was still a minor when respondent No.2 had sexually exploited her and in spite 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



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ACB32-2020

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.

TSUC COPY

[MANGESH S. PATIL]
JUDGE

npj/ACB32-2020

IN THE SUPREME COURT OF INDIA 7

CRIMINAL APPELLATE JURISDICTION

[S.C.R., ORDER XXII RULE 2(1)]

Under Article 136 of the Constitution of India

SPECIAL LEAVE PETITION (CRL.) NO. _____ OF 2021

(WITH PRAYER FOR INTERIM RELIEF)

POSITION OF THE PARTIES

	<u>Before Trial Court</u>	<u>Before High Court</u>	<u>This Hon'ble Court</u>
<u>BETWEEN:-</u>			
Mohit Subhash Chavan,	Petitioner	Respondent No.2	Petitioner

- AND -

- | | | | | |
|----|---|------------|--------------------|----------------------------------|
| 1. | The State of Maharashtra through its Dharangaon Police Station, Tq. Dharangaon, Dist. Jalgaon (Maharashtra) | Respondent | Respondent
No.1 | Contesting
Respondent
No.1 |
| 2. | Rinku Nana Pardhi,
Age : 18 years, Occu.
Education,
R/o Pardhiwada, Near
Parola Naka,
Dharangaon, Tq.
Dharangaon,
District Jalgaon | Not Party | Petitioner | Contesting
Respondent
No.2 |

TO

THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUDGES
OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION
OF THE ABOVE NAMED PETITIONER.

MOST RESPECTFULLY SHOWETH:-

1. That the Petitioner above named respectfully submit this Petition seeking Special Leave to Appeal under Article 136 of Constitution of India against the Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, whereby the Hon'ble High Court without considering the provision U/s.439(2) of Cr.P.C. and without following the several parameters contemplated regarding cancellation of Anticipatory Bail in the catena of judgments passed by this Hon'ble Court erroneously allowed the said Application filed by the informant thereby cancelling anticipatory bail granted by the Ld. Sessions Court to the Petitioner.

2. QUESTIONS OF LAW:-

The following questions of law arise for consideration by this Hon'ble Court:-

- (i) Whether an order of Anticipatory Bail does in any manner limit or restrict the rights or duties of the Police or Investigation Agency, to investigation into the charges against the Petitioner who seeks and is granted pre-arrest Bail?

- (ii) Whether the investigation officer/prosecution complied the mandatory provision warranted under Section 439(2) of the Cr.PC?
- (iii) Whether any condition contemplated in the order dated 06.01.2020 in Criminal Bail Application No. 942 of 2020 passed by the Ld. Session Court thereby granting Anticipatory Bail breached by the Petitioner?
- (iv) Whether the investigation Officer/Prosecution has made prima facie case against the Petitioner regarding cancellation of Anticipatory Bail?
- (v) Whether the observations in the order dated 06.01.2020 passed by the Ld. Sessions Court within the discretionary power as contemplated u/s 438 of Cr.P.C.?
- (vi) Whether the Parameters laid down by way of various authoritative pronouncement by this Hon'ble Court regarding cancellation of Anticipatory Bail followed by the Courts below?

3. DECLARATION IN TERMS OF RULE 2(2):-

The Petitioner state that no other Petition seeking leave to appeal has been filed by him against the Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail

No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad.

4. **DECLARATION IN TERMS OF RULE (4):-**

That **Annexures-P-1** to **Annexure-P-6** produced alongwith the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the Hon'ble High Court against whose order the Leave to Appeal is sought for in this Petition.

5. **GROUND:-**

Leave to Appeal is sought for on the following grounds:-

- (A) Because the bail can be cancelled where (i) the accused misuses his liberty by indulging in similar activity, (ii) interferences with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threaten 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 investigation agency, (vii) attempts to place himself beyond the reach of his surety, etc.

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- (B) Because by way of order dated 06.01.2020, the Ld. Sessions Court, Jalgaon was pleased to grant Anticipatory Bail to the Petitioner and the same continued till the Impugned Order dated 05.02.2021. Therefore, the Petitioner has been protected since more than 1 year and therefore physically interrogation of the Petitioner is not necessary in the present crime.
- (C) Because an order of Anticipatory Bail does not in any manner limit or restrict the rights or duties of the Police or Investigation Agency, to investigation into the charges against the person who seeks and is granted pre-arrest Bail.
- (D) Because it is open to the Police or the Investigation Agency to move the Court concerned, which grants Anticipatory Bail, for a direction U/s.439(2) of Cr.PC to arrest the Accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.
- (E) Because the Petitioner is a public servant doing his service as a technician in Maharashtra State

Electricity Production Company Ltd. and therefore Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are applicable to him. Rule 4 (1) (2) of the said Rules specifically pointed out that if a government servant is detained in police custody under criminal charges for a period of 48 hours then he shall be deemed to have been placed under suspension by an order of appointing authority. Therefore, specific protection may be granted to the Petitioner in the interest of justice.

- (F) Because the informant alleged in the FIR that the said incident was happened since 2014-2015 when the informant was in 9th std and that continued upto 12th std but the informant had not lodged any complaint with the police station or not made the same before any family member but suddenly after refusing marriage with the Petitioner intentionally lodged the same belatedly.
- (G) Because the informant lodged the present alleged complaint after an inordinate delay of more than 2 years after deliberation and consultation with somebody and with intention to implicate the

Petitioner. Further, the informant has not explained the said delay in the said alleged complaint.

(H) Because after considering the grounds raised by the Petitioner in the Criminal Anticipatory Bail Application and say below Exh. 5 submitted by the prosecution, the Ld. Trial Court was pleased to grant anticipatory bail to the Petitioner thereby imposing specific terms and conditions of attending police station on every Saturday and Sunday and not to enter limits of village Dharangaon till the completion of trial. The said conditions duly complied by the Petitioner time to time and till date there is no any complaint by the police authority regarding violation of any terms and conditions contemplated in the order dated 06.01.2020.

(I) Because while challenging anticipatory bail order dated 06.01.2020, the informant has not made specific averments in the application for cancellation of bail regarding violation of any terms and condition in the order dated 06.01.2020 passed by the Ld. Sessions Court.

(J) Because the Ld. Sessions Court while granting anticipatory bail has exercised judicial discretion

within the parameters as contemplated under section 438 of Cr.P.C. and passed reasonable order in favour of the Petitioner and except ground of violation of the terms and conditions contemplated in the said anticipatory bail order, protection of anticipatory bail cannot be curtailed.

Apart from the above, this Hon'ble Court in the recent constitutional Judgment reported in (2020) 5 SCC 1: *Sushila Aggarawal & Ors. Vs. State & Anr.* has held as under:-

“92.7. An order of Anticipatory Bail does not in any manner limit or restrict the rights or duties of the Police or Investigation Agency, to investigation into the charges against the person who seeks and is granted pre-arrest Bail.

92.9. It is open to the Police or the Investigation Agency to move the Court concerned, which grants Anticipatory Bail, for a direction U/s.439(2) of Cr.PC to arrest the Accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.”

On the same way, this Hon'ble Court in one of the reported Judgment of *Dolat Ram & Ors. Vs. State of*

Haryana reported in (1995) 1 SCC 349 in Para 4 held as under: -

4. “....However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial....”

Therefore, considering the abovesaid substantial grounds and parameters laid down in catena of Judgments passed by this Hon'ble Court, order cancelling Anticipatory Bail may be quashed and set-aside.

6. **GROUND FOR INTERIM RELIEF:-**

- (i) Because by way of order dated 06.01.2020, the Ld. Sessions Court, Jalgaon was pleased to grant Anticipatory Bail to the Petitioner and the same continued till the Impugned Order dated 05.02.2021. Therefore, the Petitioner has been protected since more than 1 year and therefore physically interrogation of the Petitioner is not necessary in the present crime.
- (ii) Because the Petitioner has set out all the relevant facts in details in the accompanying List of Dates

and the Petitioner shall crave leave to refer to and rely upon the same as if incorporated herein verbatim for the sake of brevity. The Petitioner submits that the Petitioner has good case on merits and is likely to succeed before this Hon'ble Court. The Petitioner states that Petitioner has made out prima-facie case on merits and that the balance of convenience is also in favour of the Petitioner, therefore, it is desirable in the interest of justice that during the pendency of proceedings in this Hon'ble Court the interim relief as prayed for herein be granted or else the Petitioner shall suffer irreparable loss.

7. **MAIN PRAYER:-**

The Hon'ble Court be graciously pleased to:-

- A. Grant Special Leave to Appeal under Article 136 of the Constitution of India against the Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad; and
- B. Pass any other order and/or directions, as this Hon'ble Court may be fit and proper.

8. **PRAYER FOR INTERIM RELIEF:-**

- (A) Grant ex-parte ad-interim stay to the execution and operation of the Impugned judgment and final order dated 05.02.2021 in Application for Cancellation of Bail No. 32 of 2020 passed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad; and
- (B) Grant ad-interim relief in terms of Prayer Clause 'A' and
- (C) Pass any other order and/or directions as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE
PETITIONER SHALL AS IN DUTY BOUNDS EVER PRAY.

DRAWN & FILED BY:-

Drawn on : 08.02.2021
Filed on : 15.02.2021
Place : New Delhi

(ANAND DILIP LANDGE)
Advocate for the Petitioner