

MHNS070022852019



Order below Ex. 15 in Session Case No. 226/2019

1. Read application filed by victim-girl herself at Ex.15 and then, her own supporting affidavit to it at Ex.16. Seen all the documents so produced by her in support of such application below list Ex.14. Read the say of accused at Ex.24. Seen the documents produced by him in support of such say below Ex.26. Heard learned S.P.P. and then, advocate for accused. However, it needs to be mentioned that victim-girl and any advocate of her so, privately engaged by her, is also absent throughout.

2. This application is so made by this victim to cancel the bail of this accused, so granted to him by this Court by such order below Ex. 04 dated 27.11.2019. Learned S.P.P. has himself not moved any such application at Ex. 15, but he has endorsed on the application with a request that the Court may pass any necessary order as may deems fit, considering the grounds raised in this application. As a matter of fact, this victim herself is continuously absent since after the filing of such application in this Court and her any such privately engaged advocate, though not authorised to make any such application as required u/sec. 301(2) of Cr.P.C., 1973, still moved this such application with his own and without seeking any permission of the learned S.P.P.

3. Learned S.P.P. submitted that this Court granted earlier bail application of this accused as per order below Ex. 04 dated 27.11.2019 with all usual conditions, but specifically with a condition that he shall not enter within the jurisdiction of Manmad city till the trial is over; however, this accused did all such acts as complained of in this application, for

which a Non-Cognizable Case No. 05/2020 has already been registered against him at Manmad City Police Station on 02.01.2020 and this complaint has been so lodged by the mother of this victim herself, namely, Sunita Sunil. He submitted that this accused is a habitual offender and several offences were previously registered against him including an offence u/sec.302 of I.P.C. and he is a very dangerous accused person, who commits all such serious acts as alleged in the present Session Case and then also, has threatened the life of this minor-victim by repeating the same acts as before. He submitted that this victim is always under a very great apprehension to her life from this accused and since, he has committed such breach of the bail condition dated 27.11.2019, his bail be cancelled and necessary legal action be taken against him, after cancelling such bail. He submitted that the application is well maintainable in law and, therefore, it should be entertained.

4. On the other hand, advocate for accused strongly opposed this application with a submission that this accused has not committed any such breach of the terms of the bail granted to him in this case and in fact, this application itself is at all not tenable in law and it is so made just to cause trouble to this accused and harass him. He submitted that in fact, this accused does not reside in Manmad city after such grant of bail to him and he was residing in Pune. He, further, submitted that bail is valuable right of this accused and any such application for cancellation of bail, should not be considered mechanically and only in the exceptional circumstances, any such bail can be cancelled, but only if it is satisfactorily established by the prosecution as to accused committing breach of the bail deliberately.

5. After going through the entire record of the case and hearing both the sides, a very first question arose here is whether any such application so made by this victim through any such advocate engaged by her privately, can be entertained without getting necessary permission from the Court ? In this regard, the provision made in Section 301(2) of Cr. P.C., 1973 is very much clear and if any complainant – victim or any other person has to engage his own advocate other than the learned Public Prosecutor; then a necessary permission is absolutely necessary, since the scope of any such advocate engaged privately is only to assist the learned S.P.P. and with the permission of the Court filing a written argument in case of evidence in the case being closed. In this case, what has been contended by advocate for accused in connection with this legal aspect is properly correct and, therefore, this application itself is at all not entertainable and it totally fails on that ground. However, since learned S.P.P. is heard for such absence of complainant and he has made a request relying on any such application so made by this victim privately, it will have to be seen whether other grounds raised in this application for such cancellation of bail can be well considered and approved.

6. Now, this application at Ex.15 makes mention all about the incident dated 02.01.2020 and in that regard such Non-Cognizable Case No. 05/2020 seems to have been registered at Manmad City Police Station on 02.01.2020 and it makes mention that, on that particular day, 02.01.2020 this accused kicked gate of the compound where this victim resides and then abused that Sunita Sunil and the other members of her family and also threatened to kill them. As a matter of fact, police have not taken any cognizance of such complaint, it being a Non-Cognizable Case, but then this complainant could have, on her own, moved any such complaint to

the learned Magistrate for taking necessary legal action. However, it seems that no such stepping is made by this complainant Sunita Sunil or even this victim girl herself and, therefore, it is clear that for such any alleged incident dated 02.01.2020, there does not require any further action as so now requested by this victim girl herself here. The application seems to be made casually with no proper follow up regarding such complaint dated 02.01.2020. So, application itself is not good one and it is, therefore, worth of rejection. Accordingly, the application stands rejected.

Date : 22.07.2022.
Place : Malegaon.

(S.C. Magare)
Extra Joint District Judge and
Additional Sessions Judge,
Malegaon.