



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 367 OF 2025
(For Cancellation of Bail)

The State of Maharashtra ...Applicant
Versus
Aakash Sandhi Bindu ...Respondent

WITH
INTERIM APPLICATION (ST) NO.19317 OF 2025
(For Intervention)

IN
CRIMINAL APPLICATION NO. 367 OF 2025
Saanen Kuresh SutterwalaApplicant
Versus
The State of Maharashtra ...Respondent

Ms Megha S Bajoria, *APP for the Applicant-State in Appln/367/2025.*
Mr Shlok Saraogi, *for the Respondent-Accused in Appln/367/2025.*
Mr Shivamsinh Deshmukh, *with Tarun Shetty, for the Applicant in IAST/19317/2025.*
Mr Sachin Khondre, *PI attached to D N Nagar Police Station, Mumbai present.*

CORAM DR. NEELA GOKHALE, J.
DATED: 30th SEPTEMBER 2025

ORAL JUDGMENT:-

1. This is an Application moved by the State, seeking recall of the order dated 24th February 2025 passed by the Additional Sessions Judge at Dindoshi (Borivali Division), Goregaon, Mumbai in Criminal Bail Application No.119 of 2025 in C.R. No.1309 of 2024 registered with D.N. Nagar Police Station. Vide the said order, the Sessions Court, Mumbai has enlarged the Respondent-Accused on bail subject to the conditions mentioned therein. By way of the present Application, the State seeks cancellation of the said bail order on several grounds. The Respondent-Accused, along with 2 other accused, is alleged to have committed offences punishable under Sections 70(1), 115(2), 351(2), 123, 3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. There is also an Intervention Application (St) No.19317 of 2025 made on behalf of the Victim-Complainant seeking to intervene in the present Application and advance submissions. The said Intervention Application is allowed.

3. As per the prosecution, the offending part of the Impugned Order is contained in paragraph nos.5, 6 and 7 which read as thus:

“5. The learned Advocate for accused drawn attention to the medical papers filed alongwith charge-sheet and submitted that medical examination of the victim was immediately conducted and no fresh injury was found, which prima facie show that there was no such incident happened as alleged by the informant.

6. From the story narrated in first information report prima facie it appears that relations between informant and accused Shabbir Rangunwala were since long Informant was knowing him since ten years. She went to him on his call voluntarily. In the history no previous incident from him is narrated. On the basis of medical evidence though there are external injuries found on person of informant, then also on examination of private parts of the informant no fresh injuries was seen. Informant was examined by medical officer immediately on 10.12.2024. It is within 24 hours of the alleged incident.

7. *Investigation of the case is now completed. Trial would take its own time. In such circumstances. I am of the opinion that basis allegations are against accused Mustafa Rangunwala of assault and forceful sexual intercourse with informant. In such circumstances indefinite detention of the applicant is not required. Taking into consideration the grounds that marriage of the applicant is scheduled on 01.03. 2025, I am of the opinion that by imposing stringent conditions applicant may be released on bail. Hence, I proceed to pass the following order:"*

4. Ms. Megha Bajoria, learned APP representing the State, submits that there are several infirmities in the said bail order, which are as follows:

(i) According to her, the Trial Court has not appreciated the medical evidence in respect of the Victim-Complainant in its proper perspective inasmuch as that the Trial Court has held that although, there are external injuries found on the person of the Victim-Complainant, no fresh injuries are seen on her private parts;

(ii) The Trial Court failed to appreciate the statement of the Victim-Complainant recorded under Section 164 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short);

(iii) That the marriage of the Respondent-Accused is scheduled on 1st March 2025 cannot be the basis for grant of bail to the Respondent-Accused;

(iv) The premises in which the alleged act/offence took place, were rented premises of the Respondent-Accused;

(v) A Mobile phone containing indecent photos of the Victim-Complainant, was recovered from Accused no.1. The said photographs were part of the supplementary charge-sheet, yet the Trial Court failed to consider them;

(vi) The statement of the uncle of the Victim-Complainant specifically stating that the Victim-Complainant tried to contact him for help, lending credibility to the story of the victim, has not been considered at all by the Trial Court;

(vii) Medical report of the Victim-Complainant clearly shows, injuries on her head. The final opinion of the Doctor also records evidence of physical violence in terms of the head injury, scratch marks, etc., on her person, which has been totally overlooked by the Trial Court;

5. In support of her submissions, Ms. Bajoria has tendered the entire charge-sheet including the supplementary charge-sheet. The same are taken on record. She thus, submits that despite all the aforesaid aspects being part of the charge-sheet/supplementary charge-sheet and despite the fact that minimum punishment for the said offence is 20 years, the Trial Court allowed the Bail Application. She submits that the Trial Court thus, erred in granting bail to the Respondent-Accused.

6. Mr. Shivamsinh Deshmukh, learned counsel appearing for the Intervenor, supports the contentions of Ms. Bajoria. Additionally, he submits that common intention of committing the offence of gang rape is implicit, right from the beginning

as seen from the conduct of all three Accused. He drew my attention to the spot panchanama, which reveals that there was a ladies undergarment, found at the spot of the incident. He also drew my attention to the statement of the owner of the flat, who states that the flat was rented out to the Respondent No. 1- Accused. He placed on record several decisions of the Supreme Court, in support of his arguments. He thus, prays that the bail granted to the Respondent-Accused, be cancelled.

7. Per contra, Mr. Shlok Saraogi, learned counsel appearing for the Respondent-Accused defended the impugned order. He submits that there are discrepancies in the FIR and the statement of the Victim-Complainant recorded under Section 164 of the Cr.PC. inasmuch as the victim has improved her story in her 164 statement. He also submits that the Victim-Complainant is said to have telephoned her brother before 11.30 p.m. but in the CCTV footage, she was seen entering the

building at 11.31 p.m. He thus, supports the order passed by the Trial Court and prays that the Application be rejected.

8. Heard all the counsels for the parties and perused the record with their assistance. Upon taking into account the entirety of the case, it appears that the impugned order requires intercession. A plain reading of the order reveals that the Respondent-Accused was enlarged on bail, without examining all material aspects placed by the prosecution before the Trial Court by way of filing the charge-sheet and the supplementary charge-sheet.

9. Recently, the Supreme Court in the case of **Shabeen Ahmad v. The State of Uttar Pradesh & Anr.**¹ while placing reliance upon the case of **Ajwar v. Waseem**², cancelled the bail granted to the accused in a dowry death case, observing as follows:

“15..... A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary’s

1 2025 INSC 307

2 (2024) 10 SCC 768

*resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalizing a crime that continues to claim numerous innocent lives. These observations regarding grant of bail in grievous crimes were thoroughly dealt with by this Court in **Ajwar v. Waseem** in the following paras:*

“26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer : Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., [(2004) 7 SCC 525]; Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528]; Masroor v. State of U.P. [(2009) 14 SCC 286]; Prasanta Kumar Sarkar v. Ashis Chatterjee [(2010) 14 SCC 496]; Neeru Yadav v. State of U.P. [(2014) 16 SCC 508]; Anil Kumar Yadav v. State (NCT of Delhi) [(2018) 12 SCC 129]; Mahipal v. Rajesh Kumar [(2020) 2 SCC 118].

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner.

However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of M.P [(2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)CrPC in the following words : (SCC p. 224, para 24)

“24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and

interference by the appellate court. (emphasis supplied)”

Considerations for setting aside bail orders

28. *The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.”* (Emphasis Supplied)

10. I have gone through the FIR as well as the statement of the Victim-Complainant recorded under Section 164 of the Cr.P.C. The Victim-Complainant has narrated the entire sordid ordeal faced by her at the hands of the three accused in the

criminal case. A plain reading of the FIR as well as the statement of the Victim-Complainant recorded under Section 164 of the Cr.PC. clearly reveal that although she went to the said flat voluntarily with Accused no.1, being her friend, accompanied by the Respondent-Accused, she was given a spiked drink, after which she was taken to the bathroom and beaten up by accused no.1. She fell and banged her head on the commode. Thereafter, she was disrobed, brought on the bed, her hands were tied, her mobile phone was taken away and she was brutally raped by all the three accused. The 164 statement is consistent with the averments in the FIR. The medical report shown to me by Ms. Bajoria also indicates an injury on left side of her head. Findings of the doctor also demonstrate evidence of physical violence in terms of a head injury along with other scratches and other injuries found on her person. The statement of the Victim-Complainant's uncle also corroborates that of the Victim-Complainant. The spot panchanama of the incident also records the items found lying in the house, which include a pink colour ladies underwear

along with an old monk bottle, some cigarette buds, a hair scrunchy, bed-sheet, etc. Statement of the landlord of the flat also makes it clear that the said flat was rented out to the Respondent-Accused.

11. I have also perused the decisions of the Supreme Court relied upon by the Intervenor.

12. What bothers me the most is the considerations which are weighed by the Trial Court while writing the impugned order. The Trial Court has considered only two aspects; *Firstly*, that there are no injuries on the private part of the Victim-Complainant *albeit*, the Trial Judge does record injuries on the person of the Victim-Complainant as appearing in the medical report; *Secondly*, the Trial Court appears to have been swayed by the fact that the marriage of the Respondent-Accused is scheduled in the near future. Ms. Bajoria insists, even if that ground is considered as tenable, it was a misleading statement as till date, no marriage of the Respondent-Accused is solemnized.

However, the fact that the Trial Court has considered this as a parameter for grant of bail itself, is somewhat troubling. The Respondent-Accused was arrested on 9th December 2024 and was released on bail on 24th February 2025, i.e., within a period of 2 and half months from the date of his arrest on the ground that his marriage was scheduled in March 2025, despite all the material on record *prima facie* indicting the Respondent-Accused. Furthermore, the offence is that of gang rape. The alleged acts attributed to the Respondent-Accused are heinous. Considering the totality of the circumstances, I am satisfied that the Trial Court has ignored the relevant material available on record and failed to consider the gravity of the offence.

13. The statute as well as a series of decision of the apex court and various high court have well settled the parameters for the grant of bail to an under trial. Impending marriage of an accused is not one of them.

14. Accordingly, for the reasons as stated aforesaid, the impugned order is set aside and the order granting bail to the Respondent-Accused is cancelled.

15. The Respondent-Accused is directed to surrender before the Investigating Officer latest within two days from the date of uploading of this order.

16. Application is accordingly disposed of.

17. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
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