

GAHC010130282023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : I.A.(CrI.)/508/2023**

THE STATE OF ASSAM AND ANR  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: SATKHOKAI CHANGSAN  
S/O T.S. CHANGSAN  
ADDL. S.P. (CRIME)  
KAMRUP  
P/R/O HAFLONG  
DIMA HASAO  
PIN-78881

VERSUS

AMRINDER SINGH WALIA  
S/O COL. MANJIT SINGH WALIA, R/O HOUSE NO. 155/1 RANJIT NAGAR,  
AMBALA CITY, P.S.-BALDEV NAGAR, HARYANA

**Advocate for the Petitioner : PP, ASSAM**

**Advocate for the Respondent : MS. T SOM**

Linked Case : Bail Appln./1514/2023

AMRINDER SINGH WALIA  
S/O COL. MANJIT SINGH WALIA R/O HOUSE NO. 155/1 RANJIT NAGAR  
AMBALA CITY PS. BALDEV NAGAR HARYANA

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP  
ASSAM

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Advocate for : MS. T SOM  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**Date : 27.06.2023**

Heard Mr. M. Phukan, learned Public Prosecutor for the State/applicants.  
Also heard Mr. M. Biswas, learned counsel for the accused/respondent.

2. The applicants have filed an application seeking modification of order dated 17.05.2023 passed by this Court in BA/1514/2023.

3. It is stated in the petition that the applicants have preferred this instant application before this Court praying for modification of the order dated 17.05.2023 passed by this Court in BA No. 1514/2023, allowing the accused/respondent to go on bail in connection with Changsari P.S. Case No. 58/2023 registered under Sections 365/302/201/34 IPC. In connection with the aforesaid case, the accused/respondent was arrested by police on 25.02.2023 and initially he was sent to police custody for 7(seven) days and later, he was sent to judicial custody. Thereafter, the accused/respondent has preferred a bail application vide BA No./1514/2023 before this Court. This Court considering the length of detention of the accused/respondent allowed the bail application vide

order dated 17.05.2023 and directed the accused/respondent to be released on bail on furnishing a bond of Rs.50,000/- with 2(two) suitable sureties of like amount to the satisfaction of learned CJM, Kamrup, Amingaon.

4. It is further stated in the petition that the applicants are highly aggrieved and dissatisfied with the impugned order dated 17.05.2023 passed by this Court while allowing the accused/respondent on bail as this Court did not put any condition(s) except furnishing a bail bond of Rs.50,000/- with 2(two) suitable sureties. As such, the applicants have preferred this application seeking modification of the order dated 17.05.2023, as aforesaid.

5. It is submitted by the learned Public Prosecutor for the State that since no conditions were given while releasing the accused/respondent on bail, he may take advantage of the said fact and there is every possibilities of flight risk. To avoid investigation, he may flee to outside Assam or aboard which will greatly hamper the investigation and grave injustice will be caused to the victim.

6. It is further submitted that after the accused/respondent was released on bail, he has not co-operated and participated in the investigation of the case. Section 41 A Cr.P.C., notices were served upon the accused/respondent on two occasions to appear on 04.06.2023 and 07.06.2023, which he failed to comply with.

7. It is also the submission of learned Public Prosecutor that another case has been lodged against the accused/respondent which is registered as Changsari Police Station Case No. 175/2023 under Section 365/368/370(4) IPC for kidnapping the minor girl of the murdered deceased. It is also alleged that

the minor girl was sexually exploited by the accused/respondent. Under such backdrop, there is every likelihood of absconding of the accused/respondent and thus, it is prayed for modification of the order dated 17.05.2023 passed by this Court in BA No. 1514/2023 by imposing some condition(s) thereon.

8. In response, the learned counsel for the accused/respondent has submitted that the accused/respondent is an Army officer. Although, this Court granting bail, can cancel the bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in Section 362 of Cr.P.C., it cannot review its order as to grant of bail on the ground of it being unjustified, illegal or perverse and such challenge to bail order on the ground of it being illegal or contrary to law can be determined only by the court superior to the Court which granted bail.

9. In support of his submissions, the learned counsel for the accused/respondent has placed reliance on a case law-

(2004) vol.7 SCC 338 (Adalat Prasad vs. Rooplal Jindal & Ors.)

10. I have considered the submissions advanced by the learned counsel for the parties.

11. In the instant petition, admittedly, the bail was granted to the accused/respondent vide order dated 17.05.2023 in BA No. 1514/2023 without imposing any condition(s).

12. The Hon'ble Supreme Court in the case of **Abdul Basit v. Mohd. Abdul Kadir Chaudhary** reported in **(2014) 10 SCC 745** has held as under:-

*“It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.*

*In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.”*

13. In view of the aforesaid proposition of law, this Court does not deem it appropriate to interfere in the matter by imposing some conditions on the bail order earlier passed by this Court.

14. In the result, prayer of the applicants is rejected.

15. The I/A stands disposed of.

**JUDGE**

**Comparing Assistant**