

GAHC010158992023



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

Case No. : Crl.Pet.(Suo Moto)/1/2023

XXX

VERSUS

IN RE- STATE OF ARUNACHAL PRADESH AND 2 ORS.
REPRESENTED BY THE PUBLIC PROSECUTOR

2:TADAM SAMNAM
(INFORMANT)
S/O LATE TAJO SAMNAM
VILL-KOMTE
DIST-SHI YOMI
ARUNACHAL PRADESH

3:YUMKEN BAGRA
S/O LATE NIYUM BAGRA
VILL-TADIN
P.O. AND P.S.-AALO
DIST-WEST SIANG
ARUNACHAL PRADESH

Advocate for the Petitioner : MR. T J MAHANTA (SC, GHC)
MR. P. P. DUTTA, ADVOCATE

Advocate for the Respondent : MR. I. CHOUDHURY, AG, ARUNACHAL PRADESH
MR. N.N.B. CHHOUDHURY, ADDL. AG, AP
MR. KAGAM BAGRA, SPECIAL PP, AP
MS. NIKITA DANGGEN, LEGAL AID COUNSEL
MR. D. MAZUMDER, SR. ADVOCATE
MR. S. DEORI, ADVOCATE

**BEFORE
HONOURABLE THE CHIEF JUSTICE**

ORDER

Date : 31-07-2023

This case is a classic example of "*The protector turning into the predator*".

2. This *Suo Moto* Criminal Petition for cancellation of bail was registered by this Court vide order dated 21.07.2023, after coming across the news articles published in two newspapers, namely, "*Purvanchal Prahari*" and "*The Arunachal Times*" regarding grant of bail by the Special Judge, POCSO Act Cases, Yupia, Arunachal Pradesh, vide order dated 23.02.2023 to the accused/respondent Yumken Bagra.

3. Facts in nutshell, relevant and essential for disposal of this *Suo Moto* Cancellation of Bail petition are noted hereinbelow:

The accused/respondent was working as a Hostel Warden in the Government Residential School at Karo Village, Monigong, Shi Yomi District in Arunachal Pradesh. The father of the twin minor girls, being the boarders in the said hostel, lodged a written complaint dated 01.11.2022 alleging *inter alia* that the Hostel Warden, i.e. accused/respondent herein, had indulged in sexual assault, harassment, molestation and attempted rape upon the minor victims on multiple occasions. It was also alleged that the hapless victims were forced to watch porn movies. Upon receiving the said report, FIR No. 2/2023 came to be registered in Monigong Police Station for the offences punishable under Sections 10/12/14(1)/15(1)/2 of the POCSO Act. The accused/ respondent was arrested on 13.11.2022. The co-accused, Daniel Pertin, was arrested on

14.11.2022 on the charge of harbouring the accused/respondent herein. The investigation revealed a gravely distressing story that as many as 21 tender aged child victims residing in the hostel were sexually assaulted by the accused/respondent. The statements of the victims were recorded, who gave harrowing accounts of them having been the victims of ghastly crimes committed by the accused, ranging from sexual harassment to rape. They were also physically hurt by the accused/respondent. Boys as young as 6 years to 10 years were sexually molested. A few of the children also disclosed that they tried to commit suicide because of the atrocities they faced at the hands of the accused. Not only this, the victims were forced to consume psychotropic drugs which were seized by the Investigating Officer during investigation. The mobile phone of the accused was also seized. The gory trail of sexual assault on the young victims continued for years together. The victims further stated that the children who objected were beaten up by the accused/respondent. The statements of the victims have been corroborated by medical examination, because four of the girl victims were found with their hymen torn. All these girls were roughly of 12 to 15 years of age when they were sexually assaulted.

4. The charge-sheet came to be filed against the accused/ respondent and the co-accused Daniel Pertin on 27.01.2023. Two previous bail applications filed by the accused/respondent were dismissed by the Special Judge, POCSO, Yupia. However, vide order dated 23.02.2023, the learned trial court accepted the third Bail Application filed by the accused/respondent, which order is under scrutiny in this *Suo Moto* bail cancellation petition.

5. A perusal of the order dated 23.02.2023 would reveal that the learned Special Public Prosecutor vehemently opposed the application for bail. The petition for bail was filed by the accused/respondent on 22.02.2023 by

impleading the complainant as party/respondent, but the Special Judge did not issue notice to the complainant and proceeded to accept the successive bail application on the very next day i.e. 23.02.2023 by assigning an absolutely flimsy reasoning, which reads as follows”

“9. The statements of these victims reveal a grave offence having committed upon them, however, the trial is yet to begin due to non-appearance of co-accused Daniel Pertin.

10. Having regard to the nature of allegation levelled against him, this court is inclined to grant bail to the accused with a condition:-

- i. That accused shall execute a bail bond of Rs. 40,000/- with like amount of sound surety and be released from custody, if not required in any other case(s).*
- ii. That accused shall not visit the District of Shi Yomi till trial is completed.*
- iii. That accused shall not contact any of victims by any means, their relatives and family members.*
- iv. The accused shall refrain from alluring, inducing, threatening or intimidating any persons acquainted with the facts of the case so as to dissuade him/her from giving evidence against him before the concerned police officer or court as the case may be.*
- v. In result, application is allowed and disposed of.”*

6. It may be mentioned here that the co-accused Daniel Pertin was on bail. Thus, he was out on bonds executed to the satisfaction of the court and securing his presence facing the trial did not require any complicated steps.

7. Be that as it may. The trial court, in an absolutely high-handed manner and with gross indifference to the gravity of allegations, proceeded to grant bail to the accused/respondent vide order dated 23.02.2023. Not only this, the Special Judge has acted in gross contravention of the mandatory provisions of the POCSO Act and Section 309 CrPC because, as per the order framing charge

dated 28.06.2023, the next date, which has been fixed for recording of evidence of the witnesses is 03.10.2023 and 04.10.2023 whereas the provision mandates that the trial of such cases must be concluded within two months of filing of Chargesheet.

8. Mr. T. J. Mahanta, learned Senior counsel assisting the Court urged that the learned Special Judge committed grave error in facts as well as in law while granting bail to the accused/respondent. The mandatory requirement of Section 439(1A) CrPC was violated because no notice of the bail application filed by the accused/respondent was issued to the complainant. He further urged that though the learned Public Prosecutor raised objection against the entertainment of the successive bail applications urging that the allegations levelled against the accused were grave in nature and that the accused, being a person in authority, there was every chance of him influencing the victims and the witnesses. Moreover, neither of these grounds were adverted to by the Special Judge while granting bail to the accused. Mr. Mahanta has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***R. Rathinam vs. State (By DSP, District Crime Branch, Madurain District, Madurai) and Others***, reported in ***(2000) 2 SCC 391***, and urged that ends of justice require that the bail granted to the accused/respondent should be cancelled and he should be taken into custody to face trial so that any possibility of his influencing the witnesses or tampering with the evidence can be ruled out. He further submits that, even otherwise, in a matter where the Court is seized of a highly sensitive trial pertaining to continued sexual assaults on young victims over a prolonged period of time, consideration of the merits and opinion on prima facie case is essential before considering grant of bail to the accused.

9. Learned Legal Aid Counsel Ms. Nikita Danggen, who has been appointed to

assist the victims pursuant to the direction given by this Court vide order dated 21.07.2023, also vehemently and fervently urged that the bail was granted to the accused/respondent in an absolutely illegal and cavalier manner without due consideration of the material available on record and, hence, the same deserves to be cancelled.

10. Learned Advocate General, Arunachal Pradesh, Mr. I. Chowdhury also implored the Court to exercise its *suo moto* jurisdiction to cancel the grossly illegal bail granted to the accused/respondent. He, however, frankly concedes that in this case the Special Public Prosecutor concerned ought to have remained more vigilant and the State should have filed application for cancellation of bail forthwith. He assures the Court that he shall direct the concerned authorities to undertake sensitisation exercise of the Special Public Prosecutors in the State of Arunachal Pradesh.

11. Mr. D. Mazumder, learned senior counsel representing the accused/respondent has vehemently and fervently contended that there is no justification warranting exercise of *suo moto* powers of this Court so as to cancel the bail granted to the accused/ respondent. Neither the State nor the complainant has questioned the order granting bail and as nearly a period of more than five months has already elapsed since the accused/respondent was granted bail, there is no reason as to why the bail granted to the accused should be cancelled. He contended that during the long interregnum between grant of bail and registration of this *Suo Moto* Bail Cancellation Petition, no complaint has been received from any quarter regarding the accused/respondent having tried to influence the witnesses or tampering with the evidence and this by itself is a sufficient reason to close this *Suo Moto* Bail Cancellation Petition. In support of his contentions Mr. Mazumder has placed

reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Sanjay Chandra vs. Central Bureau of Investigation***, reported in **(2012) 1 SCC 40**. However, Mr. Mazumder is not in a position to dispute the fact that no notice of the bail application is given to the complainant even though he was impleaded as a party respondent.

12. I have given my thoughtful consideration to the submissions advanced at the Bar and have carefully perused the order dated 23.02.2023 granting bail to the accused/respondent, the charges framed and other material documents.

13. Any comment by this Court on the nature of the allegations and the adequacy of evidence may prejudice the outcome of the trial. Nevertheless, the fact remains that Charge-Sheet has been filed against the accused/respondent for grave and heinous offences referred to above. The accused/respondent was a person in authority in whose trust as many as 21 children had been placed as boarders in the Government Hostel. Rather than performing his duty as a guardian, the accused/respondent indulged in a blatant abuse of his authority by forcing the young, tender-aged children to watch pornographic movies, administered psychotropic medical preparations to them and subjected the tender-aged victims to aggravated penetrative sexual assault. He thus indulged in committing the offence as defined under Section 6 of the POCSO Act which entails capital punishment. All the children who were victims of these ghastly acts have given out the gory details of the devastating sexual assaults and other reprehensible offences to which they were subjected when their statements were recorded during investigation. Section 29 and 30 of the POCSO Act provide presumptions in dealing with the cases under this Act. Offence under Section 376(AB) of the IPC has been applied by the Investigating Agency while filing Charge-Sheet against the accused/respondent. As per Section 439 (1A) of the

CrPC it was mandatory to have put the victims/complainant on notice of the bail application filed by the accused. Not only this, as per Section 40 of the POCSO Act, it was the obligation of the Presiding Officer to have provided the services of a free Legal Aid counsel to the victims and their families. None of these mandatory requirements was followed by the Presiding Officer in the present case. The Presiding Officer acted in an absolutely cavalier fashion and did not even care to issue notice to the complainant although he was impleaded as a party in the Bail Application. The grossly indifferent approach of the Presiding Officer in dealing with the highly sensitive case is further spelt out from the record which reflects that the next date for recording of evidence of the witnesses has been fixed in October, 2023, whereas Section 309 CrPC mandates that whenever a case involves offence punishable under Section 376(AB) and other associated offences, the trial must be concluded within two months from the date of filing of the Charge-Sheet. However, in this case, four months were allowed to elapse before framing of the charges against the accused. Thus, there has been blatant disregard to the mandatory requirements of the provisions of CrPC and the POCSO Act in conducting the proceedings.

14. It may further be noted that it was the third successive bail application filed on behalf of the accused on the same grounds. This Court is compelled to note that mere filing of Charge-Sheet cannot be treated as change in circumstances and, more particularly, in a case involving such grave offences. Thus, without there being any change in circumstances, the trial Court not only entertained the successive bail application filed on behalf of the accused, but also granted bail on a totally extraneous consideration that the co-accused was not available for trial. However, the fact remains that Daniel Pertin, the co-accused, was on bail and, hence, summoning him to face the proceedings was

in the exclusive domain of the trial Court.

15. In the case of ***Y vs. State of Rajasthan***, reported in ***(2022) 9 SCC 269***, the Hon'ble Supreme Court considered a case wherein the accused was alleged to have sexually assaulted his niece for a period of 3 to 4 years. Finding the cryptic reasons assigned by the High Court in the order granting bail to be inapt, the Hon'ble Supreme Court laid down the principles for considering the matters involving cancellation of bail, and also cancelled the bail granted to the accused in that case.

16. In the present case, despite taking note of the arguments of the learned Public Prosecutor that the allegations attributed to the accused were very grave and that there was ample chance of his tampering with the evidence and influencing the witnesses, the learned Special Court proceeded to grant bail to the accused/respondent while totally flouting the mandate of Section 439 (1A) CrPC by passing a cryptic and sketchy order without assigning any valid reason whatsoever for grant of bail. Hence, the order granting bail to the accused/respondent is absolutely illegal, apart from being based on totally extraneous consideration and, hence, the same cannot be sustained.

17. In view of the above discussion, the order dated 23.02.2023, passed by the Special Judge, POCSO, Yupia, granting bail to the accused/respondent is hereby quashed and set aside. Consequently, the bail granted to the accused/respondent by the Special Judge, POCSO, in connection with Monigong P.S. Case No. 02/2022 stands cancelled. The accused/respondent, Yumken Bagra, shall forthwith be taken into custody.

18. Before parting with this *Suo Moto* Criminal Petition, this Court would like to further observe that the manner in which the trial Court is proceeding with

the trial is absolutely lackadaisical and contrary to the mandate of law, because nearly five months have elapsed since filing of the Charge-Sheet against the accused/respondent, but till date the trial Court has made no effort to record the evidence of the witnesses, what to speak of concluding the trial within the time frame prescribed under Section 309 CrPC.

19. Thus, the Special Court, POCSO Act cases, Yupia, is hereby directed to forthwith pre-pone the dates fixed for recording evidence of the witnesses with due intimation to all concerned. A suitable schedule shall be chalked out for recording of evidence of the witnesses on day to day basis. Efforts shall be made to conclude the trial as per the mandate of Section 309 CrPC.

20. The mandate issued vide order dated 21.07.2023 to the Director General of Police, Arunachal Pradesh, for providing appropriate security to the victims shall remain in force till the trial of the case is concluded. The free Legal Aid Counsel Ms. Nikita Danggen shall continue offering her services to the victims during the course of the trial. The Special Judge, POCSO Act cases and the Member Secretary, Arunachal Pradesh State Legal Services Authority shall ensure that all benefits under the Arunachal Pradesh Victims Compensation Scheme and any other beneficial schemes being offered by the Central Government/State Government are forthwith extended to the victims/their families as per their entitlement.

This Court appreciates the assistance provided by Mr. T.J. Mahanta, learned Senior Counsel; Ms. Nikita Danggen, learned Legal Aid Counsel, and Mr. I.A. Choudhury, learned Advocate General, Arunachal Pradesh.

Copy of this order shall forthwith be transmitted to the Special Judge, POCSO Act Cases, Yupia, and Registrar, Arunachal Bench, for compliance.

Copy of this order shall also be placed before the Juvenile Justice Committee, Gauhati High Court, for ensuring that counselling and other restorative measures are provided to the victims as per the provisions of the Juvenile Justice Act and the POCSO Act.

The instant Suo Moto Criminal Petition stands disposed of with the above observations and directions.

CHIEF JUSTICE

Comparing Assistant