

GAHC040010842023



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

Crl. Rev. Petn./20 (AP)/2023

- 1. Shri Lige Ori,**
Aged about 36 years, S/o Shri Moli Ori,
Resident of Hu Moli, P.O. & P.S.: Aalo,
West Siang District, Arunachal Pradesh.
Email: Nil, Mobile No. 9394487887.

...APPLICANT

-VERSUS-

- 1. State of Arunachal Pradesh,**
Represented by the Public Prosecutor.
- 2. Shri Dorik Doji,**
S/o Shri Jumdo Doji, Resident of Doji Jeko Village, P.O &
P.S: Aalo.
West Siang District, Arunachal Pradesh.

....RESPONDENTS

Advocate for the appellant : Mr. M. Kato

Advocate for the respondent : Ms. T. Jini, Addl. P.P.

Mr. D. Kamduk, for R-2

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 08.11.2023
Date of Judgment & Order: 09.01.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. Kato, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. D. Kamduk, learned counsel for the respondent No. 2.

2. This is an application under Section 439(2) of the Code of Criminal Procedure, 1973, for cancellation of bail order dated 18.07.2023, passed by the learned Sessions Judge, Aalo, in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012.

3. The brief facts of the case is that an F.I.R. was filed before the Officer-In-Charge, Women Police Station, Aalo, West Siang District, Arunachal Pradesh, on 03.07.2023, alleging *inter alia* that on 01.07.2023, at around 1.45 p.m., the victim, namely, Ms. X (name withheld), aged about 13 years, was locked inside the room by the present accused/respondent No. 2 and attempted to commit rape on her and in that process, the accused sexually assaulted her and also kissed her in her private parts several times. The accused also threatened her not to disclose to anyone about the incident. Thereafter, on the strength of the said F.I.R., a case was registered under Women Police Station, Aalo, vide Aalo

WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012. The accused was accordingly arrested on the same day of lodging the F.I.R. However, the learned Sessions Judge, Aalo, West Siang District, vide order dated 18.07.2023, granted bail to the accused at the very nascent stage of investigation and even before recording of the statement of the victim under Section 164 Cr.P.C., which is mandatory to be recorded before the Magistrate. It is further stated that the learned Court below granted the bail hastily even without considering the prayer made by the I.O. of this case, who produced the relevant Case Diary and objected in granting bail to the accused. Further, despite there being a vehement objection by the prosecution, the learned Court below granted bail to the accused person vide impugned order dated 18.07.2023.

4. It is further stated that after few days from the release of the accused from police custody, the accused again followed the victim at her school campus and the victim was scared of him seeing him following till school campus and was very afraid of him, who once attempted to rape on her. When the matter was informed to the petitioner by the victim, he again lodge a complaint on 21.07.2023 before the Superintendent of Police as the Officer-In-Charge, Women Police Station, Aalo was not taking interest despite giving information to them. Thereafter, the Officer-In-Charge of the Women Police Station, Aalo forwarded the complaint to the learned Court below and stated that the accused had the *mala fide* intention to influence the witness and he may cause harm to the victim if he get chance and accordingly, prayed for cancellation of bail order dated 18.07.2023. Thereafter, the petitioner/informant also filed an Interlocutory Application, being I.A. No. 01/2023 in B.A. No. 13/2023 before the learned

Sessions Judge, Aalo for cancellation of bail order dated 18.07.2023. Notice was accordingly issued to the accused vide Order dated 27.07.2023 by the learned Sessions Judge, Aalo and next date for hearing was fixed on 04.08.2023. However, on the date fixed, due to some inconvenience, the hearing could not be taken and next date was accordingly fixed on 07.08.2023. But, after hearing the submissions made by both the parties, the learned Court below had rejected the prayer for cancellation of bail and passed the order dated 07.08.2023 in a most casual manner without even calling for the Case Diary and without considering the report of the Officer-In-Charge and the statement made by the witness under Section 164(4) of the Code of Criminal Procedure. Hence, the present petition praying for cancellation of bail order dated 18.07.2023, passed by the learned Sessions Judge, Aalo, in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012.

5. Mr. M. Kato, learned counsel for the petitioner, has submitted that the learned Sessions Judge, Aalo, while passing the bail order dated 18.07.2023, did not comply with the mandatory provision as contemplated under Section 439(1A) of the Code of Criminal Procedure, whereby the presence of the victim or any persons authorized by her, shall be obligatory at the time of hearing of the bail application. But, without complying the mandatory provision of law, the learned Sessions Judge, Aalo had passed the bail order which is illegal, perverse and unjustified. Further, the accused, taking the privilege of bail, followed the victim at her school and created fear psychosis, which may influence or hamper the other witnesses and in such a situation, there may not be any just and proper investigation of the case. Further it is submitted that it is a settled

principle that the bail order should be a reasoned order. Though it is not required that every details has to be discussed, but it is the duty of the Court to record the reasons while exercising the judicial discretion. Further, as per the mandated provision of Section 439(1A) of the Code of Criminal Procedure, it is mandatory to issue notice to the victim and the victim or the informant should be given a chance of hearing. But, here in the instant case, the learned Court below has passed the impugned bail order without giving any opportunity of hearing and even before recording of the statement of the victim under Section 164 of the Code of Criminal Procedure.

6. In support of his submission, the learned counsel for the petitioner also relied on the decision of Hon'ble Apex Court passed in **Crl. A. No. 649/2022, arising out of SLP (Crl.) No. 7893/2021 (Ms. Y Vs. State of Rajasthan & Anr.)** and further emphasized on Nos. 14 & 15 of the said judgment, which reads as under:

“14. Recently, a three Judges’ Bench of this Court in [Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr.](#) in Criminal Appeal No. 632 of 2022, has reiterated the factors that the Court must consider at the time of granting bail under [Section 439](#) CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the abovementioned section. This Court observed as follows:

“28. We may, at the outset, clarify that power to grant bail under [Section 439](#) of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following well-established principles, and not in a cryptic or mechanical manner.”

15. It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under [Section 439](#) CrPC in granting bail appropriately. Such an assessment is different from deciding whether

circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyze whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. In [Neeru Yadav v. State of U.P.](#), (2014) 16 SCC 508 this Court held as follows:

“12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court.”

7. The learned counsel for the petitioner further submitted that this Court in a *suo moto* criminal petition, being No. CrI. Pet.(Suo Moto)/1/2023, had expressed the view that there should be a valid reasons for granting bail in case of serious and grave in nature, specially in the cases where the POCSO matters are involved and it is mandatory to exercise the provision under Section 439(1A) of the Code of Criminal Procedure. It is further observed that it is the obligation of the Presiding Officer to have provided the service of a free Legal Aid Counsel to the victims and the families.

8. The learned counsel for the petitioner also relied on another judgment passed by a Division Bench of this Court in **Criminal Appeal (J) No. 40/2022 (Dipak Nayak Vs. The State of Assam)**, wherein, some guidelines were being formulated to adopt in all proceedings viz. Criminal Appeals/Revisions or

Criminal Petitions filed in cases arising from prosecution under the POCSO Act. The said guidelines, which are being formulated, are read as under:

“In every Bail Application/Criminal Appeal/Criminal Revision/Criminal Petition arising from cases involving offences under the POCSO Act and those covered by Section 439 (1A) CrPC; the Registry shall

- (i) Serve a copy of such Bail Application/Criminal Appeal/Criminal Revision/Criminal Petition to the Public Prosecutor concerned who, in turn, shall forward the same to the Investigating Officer concerned, or the Officer-in-Charge of the concerned Police Station, through email and also a hard copy requiring the officer(s) to apprise the victim/guardian/support person regarding filing of such proceedings before the High Court.*
- (ii) In every such Bail Application/Criminal Appeal/Criminal Revision/Criminal Petition filed in the High court, it shall be mandatory to implead the victim/guardian/support person, as the case may be. While making such impleadment identity of the victim shall be properly screened strictly adhering to the mandate of Section 33(7) of the POCSO Act. Upon impleadment of the victim/guardian/support person in the Bail Application/Criminal Appeal/Criminal Revision/Criminal Petition, as the case may be, formal notice shall be issued to such victim/guardian/support person through the Investigating Officer/Officer-in-Charge of the concerned Police Station. It shall be the responsibility of the officer(s) to get the notice served.*
- (iii) The notice issued to the victim/guardian/support person shall also contain a stipulation that in case he/she is unable to engage a counsel of choice, services of free legal aid counsel shall be provided to represent him/her in the proceedings filed before the High Court.”*

9. Accordingly, the learned counsel for the petitioner submitted that the learned Sessions Judge, Aalo passed the impugned bail order dated 18.07.2023 arbitrarily and in a casual manner and in the same time, the release of the accused on bail has created fear psychosis in the mindset of the minor victim as well as there is every probability of hampering or influencing the other witnesses of this case. Therefore, the learned counsel for the petitioner prayed

to set aside and cancel the bail order dated 18.07.2023, passed by the learned Sessions Judge, Aalo, in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012.

10. On the other hand, Mr. D. Kamduk, learned counsel appearing on behalf of the respondent No. 2, has submitted that the learned Court below, while granting bail to the accused/respondent No. 2, passed a reasoned order after considering all aspects of the case and there is no reason to make any interference in the said order. He further submitted that only Criminal Petition will lie against the order of bail or for cancellation of bail and no Criminal Revision Petition will lie under Section 397 of the Code of Criminal Procedure as the bail order is considered to be an interlocutory order. In this context, he also relied on a decision of Hon'ble Himachal Pradesh High Court reported in **2008 (4) Crimes 682 (H.P.) (State of H.P. Vs. Dile Ram)**, decided on 09.07.2008, wherein it has been held that the order of granting bail would be an interlocutory order and thus the revision does not lie.

11. The learned counsel for the respondent No. 2 further submitted that the petitioner did not come with a clean hands and from the order itself, it reveals that the notice was issued to the victim/informant and the matter was initially taken up on 10.07.2023 when the bail application was filed before the learned Sessions Judge and the notice was accordingly issued on the said date to the victim/informant and the Case Diary was also called for. Accordingly, next date was fixed on 14.07.2023, wherein it is specifically mentioned in the order as "*I have heard the learned counsel for the parties at length. The applicant's father and the informant's father are also present in person.*" Thus, the plea taken by

the petitioner that the opportunity of hearing was not given to the informant/victim is a wrong submission as from the order itself, it is very specific that the learned Sessions Judge, while taking up the application for bail so filed before him, issued notice to the informant/victim and on the date of hearing also, i.e. on 14.07.2023, the matter was heard at length in presence of both the parties. Moreover, the father of the victim was present in person in the Court at the time of hearing of the case. He further submitted that petitioner intentionally did not furnish the orders dated 10.07.2023 & 14.07.2023, passed by the learned Sessions Judge, Aalo, and only furnish the order dated 18.07.2023 and suppressed the fact that the notice was issued to the victim/informant and the opportunity of hearing was also given to both the parties.

12. Further it is submitted that the order of bail was granted on 18.07.2023 and within these period, there is every probability of recording of statement of the victim under Section 164 Cr.P.C. Moreover, the accused is also co-operating in the investigation of the case and there is no petition from the prosecution/I.O. side to show that the accused is not co-operating the Investigating Agency in further investigation of this case. The learned counsel further submitted that there should be a strong/extra-ordinary ground for cancellation of bail. But, there is no ground in the petition that the accused violated the condition of bail or he has not co-operated the I.O. in the investigation of this case, nor there is any complaint from the prosecution side that the accused is trying to influence the witnesses or hampering and tampering the investigation of this case.

13. Per contra, the learned Additional Public Prosecutor, Ms. T. Jini, has

submitted that the revision is maintainable in present situation and circumstances of the case as the bail order is palpably illegal and unjustified. She further submitted that the bail was granted only on the ground that the accused is a local person and he has business in Aalo area. Except this ground, there is no other reasonable ground brought in the order of the learned Sessions Judge while allowing the accused to go on bail. More so, the respondent No. 2 was granted with bail in a case which is grave and serious in nature. In that context, the learned Additional Public Prosecutor also relied on 2 (two) decisions of this Court reported in **(2011) 4 GLR 350 (State of Manipur Vs. Chanambam Binoy Singh)** and **(2009) 4 GLR 893 (The State of Manipur & Anr. Vs. Shri Thokchom Jadumani Singh)**. Accordingly, she submitted that the bail order itself is palpably illegal and perverse and in that circumstance, the bail order can be interfered with under the revision petition.

14. Though it is seen that the presence of the father of the victim is recorded, but no submission from the victim or informant side is recorded. Thus, there may be a physical presence of the informant, but only due to physical presence of the informant/victim in the Court, it cannot be considered that an opportunity of hearing was given to the informant side or the informant side was heard by the learned Court below before passing the order on bail. She further submitted that from the statement made by the present petitioner, it is seen that the accused is also mentally harassing the minor victim even by following her to her school campus and thus, the plea of hampering or tampering the witnesses cannot out rightly be rejected and hence, it is submitted that it is a fit case wherein the bail granted to the accused vide order dated 18.07.2023, by the

learned Sessions Judge, Aalo, in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012, should be cancelled.

15. After hearing the submissions made by the learned counsel for both sides, I have perused the case record as well as the order passed by the learned Sessions Judge, Aalo, in B.A. No. 13/2023.

16. The Hon'ble Apex Court in the case of **Myakala Dharmarajam & Ors. Vs. the State of Telangana & Anr. [(Criminal Appeal Nos. 1974-1975 of 2019) arising out of SLP (Crl.) Nos. 8882-8883 of 2019]**, has held as under:

“It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.”

17. Further, in **Raghubir Singh Vs. State of Bihar**, reported in **(1986) 4 SCC 481**, the Hon'ble Supreme Court has held that bail can be cancelled where:

- (i) the accused misuses his liberty by indulging in similar criminal activity,
- (ii) interferes with the course of investigation,
- (iii) attempts to tamper with evidence or witnesses,
- (iv) threatens 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 investigating agency,
- (vii) attempts to place himself beyond the reach of his surety, etc.

18. So, it has to be seen as to whether there is any supervening circumstances for cancellation of bail or whether the granting of bail to the accused is perverse and suffers from any infirmities which may result the miscarriage of justice.

19. On perusal of the case record and the order passed by the learned Sessions Judge, Aalo, it is seen that the petition seeking bail was filed on 10.07.2023 and notice was also issued to the victim/informant and the Case Diary was also called for. Thereafter, the next date for hearing was fixed on 14.07.2023, wherein he learned Sessions Judge also mentioned about the presence of the father of the informant in the Court premises itself. However, the submission from the informant side was not recorded, if any, by the learned Sessions Judge, Aalo while granting bail to the accused petitioner vide order dated 18.07.2023. Further it is seen that the submission made by the learned Special Public Prosecutor was also recorded by the learned Sessions Judge, whereby the learned Special Public Prosecutor raised objection in granting bail to the accused. But the bail was granted to the accused only considering the aspect that accused is a local person and doing business in the Aalo area. Apart from that, there is no reason recorded by the learned Sessions Judge while granting bail to the accused in a case where the allegation under the POCSO Act is also brought by the informant/victim. Thus, it is seen that no reasoned order has been passed by the learned Sessions Judge while granting bail in such a serious nature of case or sensitive case where the allegation of sexual assault is

brought against a minor victim. More so, it is also a fact that at the time of production of the Case Diary, or at the time of passing the bail order, the statement of victim was also not recorded under Section 164 Cr.P.C., which is required to be recorded mandatorily. But the learned Sessions Judge did not consider those aspects of the case and passed the order only with the observation that there may not be any chance of absconding of the accused as he is a local businessman and is a local resident of Aalo township.

20. It is a settled principle of law that the bail order is considered as an interlocutory order. But, here in the instant case, as discussed above, it is seen that the learned Sessions Judge passed the order casually and granted bail to the accused/respondent No. 2 without any reasonable ground. The only ground of bail was that the respondent No. 2/accused is a local person and he has the business in Aalo area. The operative part of the order dated 18.07.2023, passed by the learned Sessions Judge in B.A. No. 13/2023 is extracted herein below:-

“Admittedly, the accused is a local of this area and is stated to be doing business within Aalo town. The applicant father is also resided within the jurisdiction of this court. Considering, all these facts, this court is of the view that the accused can be released on bail with some strict terms and conditions. Accordingly, it is ordered that the accused Dorik Doji shall be released on bail on execution of bail bond on the following terms and conditions:”

21. This Court, as relied by the learned Additional Public Prosecutor, in the case of **Chanambam Binoy Singh (supra)**, relying on the decisions of Hon’ble Apex Court reported in (1997) 4 SCC 551 (Modh Limay Vs. State of Maharashtra) and (1997) 4 SCC 241 (Krishan Vs. Krishnanaveni) has held in paragraph No. 11 of the of judgment as under:

“11. Having regards to the above well settled principles of law, in my opinion, there is no any legal impediment or bar in interfering with the impugned bail order which has been found palpably illegal and unjustified inasmuch as the same having

been passed without due application of mind in respect of all the relevant factors and also ignoring the relevant materials on the side of the prosecution. The submission made by the learned counsel of the petitioner for not interfering with the impugned order is rejected. Apart from right and liberty of the accused, the interest of the victim, her relative and also the larger interest of the public or the State are also to be kept in mind at the time of consideration of the bail application by the Learned Magistrate."

22. Further, in the case of **Thokchom Jadumani Singh (supra)**, which is also relied by the learned Additional Public Prosecutor, this Court has expressed the same view and it has been held that "*in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court.*"

23. In another case reported in **(2021) 2 GLR 63 (Munni Effa Vs. State of Arunachal Pradesh)**, the Division Bench of this Court has elaborately discussed regarding cancellation of bail and the paragraph Nos. 18, 19, 20 & 21 of the said judgment reads as under:

"18. In Prakash Kadam and Ors. Vs. Ram Prasad Gupta reported in (2011) 6 SCC 189, the Apex Court, while making distinction between cancellation of bail and consideration for grant of bail and also the factors on which bail can be cancelled, observed as under :

"18. In considering whether to cancel the bail, the court has to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisionsal court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

19. In *Abdul Basid Alias Raju & Ors. Vs. Abdul Kader Choudhury*, (2014) 10 SCC 754 the Apex Court distinguished between the concept of cancellation or setting aside an illegal or perverse order of bail and cancellation of bail on the ground of supervening circumstances. Relying on the earlier decision in *Puran Vs. Rambilas and Anr.* (supra), *Narendra K. Amin Vs. State of Gujarat*, (2008) 13 SCC 11 584 (Three Judge –Bench) and *Ranjit Singh- Vs. State of M.P.*, (2013) 16 SCC 797, the Apex Court held in paragraph 19 as under :

“19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused’s misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.”

20. In *Vikramjit Singh –Vs.- State of Madhya Pradesh* (1992) 3 SCC 62 the Apex Court observed that a co-ordinate Bench has no authority to upset the earlier order of bail of the High Court on the basis of the same materials and under the same facts and circumstances. Judgment of the earlier Bench became final so far the High Court is concerned. However, if the accused misuse the liberty of bail or new materials come to light then only it would be open for a coordinate Bench or the same Bench to cancel or review the earlier order of bail.

21. The broad principles, deduced from the aforementioned authorities may be summarized as under :

(a) Rejection of bail at the initial stage and cancellation of bail, once granted are not the same, and they need to be considered on different basis.

(b) overwhelming and very strong ground is required to cancel the bail once granted.

(c) Bail can be cancelled in the following two circumstances :

(i) When the accused mis-use the liberty of bail, or there is any other supervening circumstance rendering the liberty of bail non-conducive to fair trial or when some new facts comes to light.

(ii) When the order of granting bail suffers from illegality, impropriety or serious infirmity causing miscarriage of justice for not considering the relevant factors or for taking into account irrelevant factors.

(d) Cancellation of bail on the ground (c) (ii) is permissible only by a court superior to the court, which granted bail and not by the same court.”

24. Here in the instant case also, it is seen that the bail was granted very casually without any justified ground in spite of the fact that the allegation of sexual assault is brought against the accused. More so, it is seen that at the time of granting bail, the statement of the victim under Section 164 Cr.P.C. was also not recorded and no opportunity of hearing was given to the victim/informant side while passing the order of bail. It is a fact that notice was issued to the victim and physical presence of the informant is also recorded by the learned Sessions Judge, but there is no reflection in the order in regards to submission made by the victim/informant side, if any, nor the learned Sessions Judge took any steps to appoint an Amicus Curiae to conduct the case on behalf of the victim/informant so that the victim does not remain unrepresented. Thus, it is seen that the order of granting bail was palpably illegal and perverse which amounts to miscarriage of justice. Accordingly, in present circumstances of the case, a petition under Section 397(2) Cr.P.C. is maintainable and the bail order, which is palpably illegal and perverse, can be interfered with by this Court.

25. It is further seen that after the bail order, the informant/victim again filed an application for cancellation of bail on 27.07.2023 before the learned Sessions Judge, Aalo with the allegation that the accused followed the victim to her school campus on 21.07.2023, at around 8.00 a.m., which created a fear psychosis in the mind of the minor victim and which is also a violation of the condition put by the Court in the bail order. The learned Sessions Judge, Aalo, accordingly, heard the matter and also considered the reply submitted by the accused/respondent No. 2 and reject the prayer for cancellation of bail vide order dated 07.08.2023. However, the accused was warned not to communicate or tried to reach the victim or the witnesses as the case may be either by himself or through someone else.

26. Thus, it is the allegation against the accused/respondent No. 2 that after few days of his release on bail, he again followed the victim to her school campus and created fear psychosis in the mind of the victim and was very afraid of him as he once attempted to commit rape on her. Further it is the case of the petitioner that taking the privilege of bail, the accused may also influence or hamper the other witnesses and in such a situation, there may not be any just and proper investigation of this case. Thus, it is seen that the accused misused his liberty by threatening the victim or by creating a fear psychosis in the mindset of the minor victim which otherwise may also influence the other witnesses as the matter is still under investigation. Further there may be some incriminating materials in the statement of the victim, which may be recorded under Sections 161 & 164 Cr.P.C. by the I.O. and Magistrate during the period of investigation which was not produced before the learned Sessions Judge while passing the order and the order was passed without perusal of the statement of the victim.

27. In view of above also considering the submissions made by the learned counsels for both sides as well as the observation made by the Hon'ble Apex Court in the cases, as discussed above, and further for the ends of justice, this Court is of the view that the privilege of bail granted to the accused/respondent No. 2 vide order dated 18.07.2023 by the learned Sessions Judge, Aalo in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023, under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012, is liable to be cancelled.

28. In the result, the present petition stands allowed. The bail granted to the accused vide order dated 18.07.2023, passed by the learned Sessions Judge, Aalo, in B.A. No. 13/2023, in connection with Aalo WPS Case No. 11/2023,

under Sections 376/511/354/506 of the Indian Penal Code *read with* Section 8 of the POCSO Act, 2012, stands cancelled due to perversity and also due to supervening circumstances discussed above.

29. Accordingly, the respondent No. 2/accused is hereby directed to surrender before the learned Sessions Judge within a period of 7 (seven) days from the date of this order. However, the accused/respondent No. 2 will be at liberty to file a fresh application for bail and which may be disposed of by the learned Sessions Judge by passing a reasoned order.

30. With the above observation, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant