

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.15338 OF 2014

ORDER:

The present application is filed under Sections 439(2) Cr.P.C. seeking cancellation of bail granted by this Court to the petitioner in Crime No.19 of 2014 of Kakinada Port Police Station, East Godavari District vide Criminal Petition No.3932 of 2014 dated 09.04.2014.

The facts of the case are that the father of the informant was eking out his livelihood by doing fishing. The informant and her mother used to go to coolie works in a Prawn company at Sarpavaram. It is alleged that since last three years their neighbor by name Penupothu Ramu by expressing his love and promise to marry the victim, had sexual intercourse with the informant, who is a minor, on more than one occasion. Thereafter he refused to marry her. When the informant asked about the same, he threatened her with dire consequences. Basing on these allegations the above report came to be lodged on 19.02.2014.

By an order dated 09.04.2014, this court granted bail to the accused, who is second respondent herein, on his executing personal bond for Rs.10,000/- with two sureties for a like sum each to the satisfaction of Special Mobile Judicial Magistrate of First Class, Kakinada. It may be useful to extract the order passed by this Court, which is as under :

"The petitioner seeks for grant of bail. The petitioner allegedly committed offences under Sections 417 and 376 IPC as well as under Section 4 of the Protection of Children from Sexual Offences Act. The very allegation is that the petitioner had acquaintance with the de-facto complainant promising to marry the de-facto complainant and subsequently evaded to marry her. Thus, the learned counsel for the petitioner submitted that it is a case of consent. In view of the allegations and in view of the contention of the learned counsel for the petitioner, I consider it appropriate to enlarge the petitioner on bail.

Consequently, this Criminal Petition is allowed. The petitioner is enlarged on bail on a personal bond of Rs.10,000/- (Rupees ten thousand only) with two sureties in a likesum to the satisfaction of Special Mobile Judicial Magistrate of First Class, Kakinada.”

The order was passed in the month of April 2014 and the application for cancellation of bail was filed in the month of December 2014. Originally, Sri S.R. Sanku, learned counsel for the informant filed the application seeking cancellation of bail on the ground that the petitioner is involved in very heinous offence of rape and cheating and as the victim is a minor girl, consent even if given would not exonerate the petitioner with the offence of rape. It is further urged by him that after the incident the society has discarded the informant and she is facing unbearable torture and humiliation in the hands of general public and her family members. It is stated by him that on one occasion the victim tried to commit suicide, but timely intervention of elders saved her life. He also submits that the accused has been harassing the informant for lodging the report against him and he even went to the extent of assaulting her for initiating the process against him. He further submits that on one occasion the second respondent herein cut the dress of the victim girl and also made an attempt on her life. In this regard, the victim also lodged a report before the Superintendent of Police, East Godavari at Kakinada by getting it routed through the A.P. State Fishermen Development and Welfare Association, which is striving for well of fishermen community, to which the victim belongs. He placed on record the endorsement dated 15.11.2014 made by the Superintendent of Police directing the Dy.S.P., Kakinada to conduct a detailed enquiry and take action. As nothing turned out, the present application is filed.

On the other hand, the learned counsel for the second respondent opposed the application contending that the parameters for grant of bail are different from the parameters to be considered for setting aside an order granting bail. He submits that the order passed by this Court was not challenged and in the absence of any

circumstances showing interference by the accused in investigation or tampering with the witnesses, the present application warrants no interference.

After the matter got adjourned, Sri S.R.Sanku represented before this Court that he has given up the Vakalath.

On 24.02.2015 and 25.02.2015 the victim, her grandmother and a social worker appeared before this Court and presented their case. It is their case that within 51 days of arrest, the accused has been released on bail, which according to them is unfair and unreasonable. It is also stated by them that after his release the accused is not cooperating with the investigation and that he is demanding a dowry of Rs.15 lakhs for marrying the victim girl. Hence, plead that justice may be done to the victim girl.

As seen from the record, the present application is filed seeking cancellation of bail granted by this Court on 09.04.2014 in Criminal Petition No.3932 of 2014. It is also to be noted that the victim did not challenge the order granting bail in the month of April 2014. Eight months later, the present application is filed seeking cancellation of bail granted by this Court.

In **Dolat Ram and others v. State of Haryana**^[1], the Apex Court held as under :

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the

accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

In ***Padmakar Thukaram Bhavanagare and another v. State of Maharashtra***^[2] the Apex Court while considering the aspect of cancellation of anticipatory bail granted to the accused therein observed as under:

“It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. No such case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused Nos.6 and 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively.”

In ***Subhendu Mishra v. Subrat Kumar Mishra***^[3] the Apex Court held as under:

“.....very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the

concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

From the judgments of the Apex Court referred to above, it is clear that different yard sticks have to be adopted for cancellation of bail and interference with an order granting bail. The Apex Court also held that while dealing with an application of cancellation of bail, the Court should take into consideration the post bail conduct and supervening circumstances for deciding as to whether it requires cancellation of bail. Therefore, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Normally the grounds for cancellation of bail are interference or attempt to interfere with due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused while granting bail.

Though the petitioner/victim appeared in-person along with her grandmother and a N.G.O. representative and tried to contend that the informant/victim is a minor and that she was subjected to humiliation, but the age of the victim girl mentioned in various documents filed along with the petition show a lot of variance. In the petition filed for cancellation of bail her age was shown as 16 years. The letter given by the A.P. State Fishermen Development and Welfare Association pursuant to a representation made by victim girl, show the age of the victim as 18 years. The membership application in Fishermen Development and Welfare Association filed by the informant shows that her date of birth is 10.04.2000, meaning thereby that her age as on

the date of incident is less than 14 years. In the First Information Report given by the victim girl, her age was shown as 18 years. Probably this Court, while granting bail might have noticed the age mentioned in the First Information Report and granted bail. Now, a totally different theory is sought to be put forward with regard to age.

Be that as it may, the victim herein now places on record her complaints before the Superintendent of Police and the Deputy Superintendent of Police. The Superintendent of Police is said to have made an endorsement on 15.11.2014 directing the Dy.S.P. to conduct an enquiry and report the action taken by him. It is stated that since no action is taken, the present application for cancellation of bail is filed. A perusal of the said representation given by the A.P. State Fishermen Development and Welfare Association show that on 11.11.2014 the victim girl, who is aged about 18 years, is alleged to have informed the founder and Chairman of said Association about the injustice caused to her and for taking an appropriate action. Hence, a request was made to the Superintendent of Police to do justice to the victim girl. On 09.11.2014 the victim girl sent a representation to the Chairman, A.P. State Fishermen Development and Welfare Association, marking copies of the said letters to all the other authorities including the S.P. and Human Rights Commission. The said letter was alleged to have been enclosed along with a representation given on 11.11.2014. The representation dated 11.11.2014 was said to have been endorsed by S.P., directing the Dy.S.P., to conduct an enquiry and take appropriate action. Earlier the learned counsel for the respondent disputed the very endorsement made by the Superintendent of Police. Then the Public Prosecutor was asked to verify the endorsement of S.P., and the receipt of letter by Dy.S.P. made on the said letter. He, on instructions reported that till date no report is received by the Dy.S.P. If the representation made by Public Prosecutor is accepted, the allegation that the police are not probing into the matter and not looking into the complaints made by the

informant and the Fishermen Development and Welfare Association appear to be incorrect.

The averments in the said representation given on 09.11.2014 show that on the eve of Vinayakachavithi festival the accused is alleged to have again abused her, beat on her stomach and tore her dress with a knife. The contents of the said representation also disclose that while she was going to her employment, about 20 named persons, accosted her, made sarcastic and abusive remarks against her which has caused a lot of humiliation to the victim girl. The informant further stated that the second respondent is alleged to have torn her dress and threatened her. The Vinayakachaviti festival was celebrated in the month of August 2014. But if really such an incident happened in the month of August 2014, nothing prevented her from lodging the report immediately thereafter either with the police or with the A.P. State Fishermen Development and Welfare Association, who were taking care of the members of the said society. Strangely a representation is made to the S.P., by the said A.P. State Fishermen Development and Welfare Association in the month of November 2014. As stated above, the same was not received by the Dy.S.P., though the S.P., made an endorsement of forwarding it to Dy.S.P., on 15.11.2014 itself. Since the Public Prosecutor made a representation that such report was never received in the office of Dy.S.P., it would be appropriate to direct the office of S.P./D.S.P. to enquire into the allegations made in the representation and if the same are found to be true, necessary action may be initiated in accordance with law. As the investigation is still pending and having regard to the circumstances stated above, it would be appropriate to direct the second respondent to report before the Station House Officer, Kakinada Port Police Station, twice in a week i.e., every Tuesday and Saturday between 10.00 a.m, and 5.00 p.m., for a period of six weeks commencing from 24.03.2015 or till completion of the enquiry/investigation whichever is earlier instead of canceling the bail.

With the above direction, the above Criminal Petition is disposed of.

C. PRAVEEN KUMAR, J

Date:09.03.2015

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[\[1\]](#) 1995(1) SCC 349

[\[2\]](#) 2012 SCC 593

[\[3\]](#) 1999 CrI.L.J. 4063