

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1205 OF 2014

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., against an order dated 03.06.2014 in CrI.M.P. No.349 of 2014 in CrI.M.P. No.4788 of 2013 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad, wherein and whereunder the bail granted to the petitioner in Crime No.70 of 2011 of Bowenapally Police Station, Secunderabad, was cancelled.

The facts in issue are as under :

Basing on a report given by one Rameshwarlal Parihar, who is the father of the second respondent, the above case came to be registered initially under 'girl missing'. Subsequently, basing on the statement of the victim girl, the F.I.R. was altered to the offences punishable under Sections 363,376,346,348 and 506 IPC, Section 25 of the Indian Arms Act and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

The allegations in the charge-sheet would show that the accused, who is a native of Rajasthan State, married one Kanchan in the year 2004 and was blessed with a son. In the year 2006 he came down to Hyderabad for eking out his livelihood. He was doing the business of cashew-nuts, but having sustained loss in business, thought of earning easy money. As per his plan, he is alleged to have contacted Devakar and introduced himself as an associate of Dawood Ibrahim gang, threatened him and tried to extort Rs.5 lakhs from him. But the task force people arrested him and sent him to judicial custody vide Crime No.170 of 2010. After a period of about 3 months he was enlarged on bail. While he was residing in Mallikarjun colony, Bowenpally, the informant who also hails from Rajasthan came into

contact with the petitioner. His daughter by name Shiba Parihar who is aged about 16 years also came into contact with the accused and became close to him. It is alleged that the accused decided to kidnap her with a view to extort money from the informant. On 18.02.2011, while the victim girl was going to her School to attend the rehearsal for a cultural programme, the accused is alleged to have followed her, lured her to come with him for moving here and there as there was a lot of time to go to School and accordingly took her in an Auto to Dholari Dhani and from there he took her in a Scorpio Car to Maharashtra. There he took a room, kept her in the said room and raped her. From there, the accused is alleged to have taken the victim to Agra where he is alleged to have committed similar act. Thereafter he took her to Nainital, Haldwani of Uttarakhand and kept her there for one month. He purchased a two wheeler and took her to Gurunanaknagar, Bankharpur village Derabassi of Chandigarh where he confined her in a double room by threatening her with dire consequences. It is alleged that the accused committed sexual assault on the victim girl and tried to contact her father to extort money but could not succeed in his attempt. It is alleged that the accused took nude photographs of victim girl by threatening her with a pistol. It is alleged that when the victim opposed the acts of the accused, she was beaten. The averments in the charge-sheet also disclose that since one month the accused used to insist the victim girl to go to her parents' house and bring money as he is not having any money and that if she fails to do so he would kill her parents. He is alleged to have left her at Binakeer Railway Station of Rajasthan State with instructions to go to Andhra Pradesh and bring money from her parents. The victim is alleged to have informed the same to her father from a cell phone of her Aunty at Bikaner and thereafter the victim was traced by the brother of the victim at Bikaner railway station. Initially, a case was registered as 'girl missing' and later the same was altered to the above mentioned Sections basing on the statement of the victim girl. After his arrest, the petitioner herein

moved an application for bail vide CrI.M.P.No.4788 of 2013 before the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad. After hearing both sides and perusing the record the learned V Additional Metropolitan Sessions Judge granted bail to the petitioner. The relevant portion of the order reads as under :

“5. Upon considering material on record and also in view of argument of both sides that entire investigation is completed and also by taking into length of remand period I inclined to grant bail.

6. Hence petition is allowed and accused is ordered to be released on bail on executing a bond of Rs.10,000/- with two sureties each for like sum to the satisfaction of X A.C.M.M. Secunderabad.”

Challenging the same, the victim girl preferred CrI.M.P. No.349 of 2014 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad, seeking cancellation of bail. By an order dated 03.06.2014, the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad cancelled the bail granted to the petitioner and directed the petitioner to surrender before the X Additional Chief Metropolitan Magistrate, Secunderabad within a period of 10 days. Challenging the same, the accused preferred the present Revision.

While admitting this Revision on 13.06.2014, this Court disposed of the CrI.R.C.M.P., with a direction to the police not to arrest the petitioner till 27.06.2014. Later the interim order was being extended from time to time.

Learned counsel for the petitioner mainly submits that the learned Sessions Judge erred in cancelling the bail granted to the petitioner herein. According to him, the learned V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad took various circumstances into consideration while granting bail which warrant no interference. He submits that since entire investigation is completed and as there is no material to show that the petitioner has

either interfered with the investigation or tampered with the evidence, the order under challenge warrants to be set-aside.

On the other hand, the learned counsel appearing for the victim opposed the application contending that the allegations made against the petitioner are grave and serious in nature and as such the Sessions Judge ought not to have granted bail. He further submits that the period of detention cannot be a ground to grant bail when the allegations against the petitioner are serious in nature. In any event he submits that the petitioner herein threatened the informant by calling him to his cellphone No.92477718199 from a cell phone bearing No.9966343581 which belongs to the brother of the petitioner. It is further alleged that if the bail granted to the accused is not cancelled, there is every likelihood of he threatening the informant and the victim. He further submits that since the petitioner is a resident of Rajasthan there is every likelihood of he evading the process of law by leaving the State of Telangana.

A perusal of the averments in the charge-sheet would show that initially a case in Crime No.70 of 2011 of Bowenpally Police Station came to be registered as 'girl missing'. The petitioner herein who came in to contact with the victim girl is alleged to have abducted her on 18.02.2011 at about 9.30 a.m. Initially she was taken to Dolari Dhani, Hyderabad and from there to Ajantha Ellora of Maharashtra State in Scorpio vehicle where both of them stayed in a Hotel. Thereafter they went to Agra where they again took a Hotel room and stayed there. From Agra the victim was shifted to Nainital where both of them stayed in a Hotel for two days. From Nainital, the accused took her to Haldwani in Uttarakhand and later to Bankarpur village which is nearer to Derabasi, Chandigarh, where both of them stayed in a double room. Ultimately, she was left in a Railway Station at Bikaner in Rajasthan. The allegations in the charge-sheet show that the accused subjected her to sexual assault against her will during the

said period. But the allegation in the charge sheet make it clear that the victim was being shifted from one place to another place and both of them moved around in different parts of India for a period of two years. During this period the victim did not make any effort in either lodging a report or informing the neighbours. The learned Sessions Judge granted bail to the petitioner on the ground that the investigation was completed and the petitioner was in Jail for a sufficiently long time.

Coming to the plea of the respondent that the Court ought not to have granted bail in an offence which is quite grave and serious in nature, it is to be noted that the learned Sessions Judge in his order cancelling the bail, considered the plea taken by the respondent herein with regard to the gravity of the offence and also the period of detention, but did not cancel the bail on the said ground. On the other hand, the learned Sessions Judge refused to accept the said plea of the respondents for cancellation of bail on the said ground. It may be useful to extract that portion of the order passed by the learned Sessions Judge in CrI.M.P. No.349 of 2014 in CrI.M.P.No.4788 of 2013.

“8. At The outset I may point out that admittedly basing on the complaint of the defacto complainant police, Bowenpally PS registered a case against the R2/sole accused for the offence u/ss.363, 376, 346, 348, 506 IPC and also u/s.25 of Arms Act and Sec.6 of Protection of Children from Sexual Offences Act, 2012. Subsequent to registration of case accused apprehended and remanded to judicial custody. The case records further shows that accused was already in judicial custody nearly 90 days by the date of filing of bail petition i.e., CrI.M.P.4788/2013 and by taking into consideration of length of remand period and also stage of investigation this court granted bail on 03.01.2014. Though learned counsel for the petitioner argued that trial court has not considered the gravity of the offence and that bail liable to be granted is not sustainable since in bail order dated 03.01.2014 it is clearly mentioned that since the accused already in Jail for last 89 days and also for other grounds petition was allowed, it shows that this court has considered all the grounds including gravity of the offence and then only this Court granted bail. As such contention of the learned counsel for the petitioner in this regard is not sustainable. Furthermore, though the learned counsel for the petitioner further contended that this court has not recorded

reasons for granting bail. The same is also not maintainable since in bail order it is clearly mentioned reasons for granting such a bail.”

From the above, it is clear that the trial court did not take into consideration the plea of the respondent with regard to the period of detention and also the gravity of the offence as a ground for cancelling the bail. However, the Court cancelled the bail only on the ground of threat said to have been given by the petitioner by making a call to the cellphone of the informant from the cellphone of the brother of the accused, wherein he is alleged to have threatened the informant to withdraw the case. As seen from the record, the averments in the petition filed before the trial court for cancellation of bail is silent as to the date when the petitioner is alleged to have threatened the informant. Further, the averments in the petition do not even refer to lodging of any report or a complaint before the police pursuant to the alleged call received by him. For the first time in the month of January 2015 an allegation is made stating that the petitioner has threatened the informant on phone.

Learned counsel for the respondent relied upon a judgment of the Apex Court in **Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another**^[1] in support of his plea. It was a case where the accused in the said case was a history sheeter with 30 serious criminal cases pending against him. While dealing with a case of that nature, the Apex Court held that period of custody in Jail may be one of the factors to be considered, but cannot be the whole and sole factor in every case. The Apex Court also held that grant of bail depends upon the nature of offence, manner in which it is committed and its impact on society. Since the accused in the said crime was an habitual offender involved in offence of kidnapping, the court held that the period of custody of 7 months may not be relevant for grant of bail. Therefore, the judgment of the Apex Court relied upon by the counsel for the respondent may not be of any help to him.

One of the ground urged by the learned counsel for the petitioner is that the court, which has granted bail, cannot cancel the bail as it amounts to reviewing the order which is impermissible in view of Section 362 of Cr.P.C. I am afraid the said aspect cannot be accepted. In fact the judgment in **Abdul Basit alias Raju and others v. Mohd. Abdul Kadir Chaudhary and another**^[2] relied upon by the learned counsel for the petitioner answers his query. In the said case, the Apex Court held that the Court granting bail can cancel the bail on ground of accused's misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in S.362 Cr.P.C., it cannot review its order as to grant of bail on ground of it being unjustified, illegal or perverse. The Court held that such challenge to bail order on ground of it being illegal or contrary to law can be determined only by the court superior to the court which granted bail.

In **Prakash Kadam and etc. v. Ramprasad Vishwanath Gupta and another**^[3], the Apex Court while dealing with distinction between cancellation of bail and consideration for grant of bail opined as under :

“18. In considering whether to cancel the bail the court has also 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/Revisional 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 the bail. The 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.”

From the judgment referred to above, it is clear that the same

Court which has granted bail has also got power to cancel the bail, if the accused has misused the bail or if the allegations made against the accused are quite grave and serious. The judgment of the Apex Court in **Abdul Basit's case** (2 supra) clearly states that the bar under Section 362 Cr.P.C. operates as a bar to any alteration or review of the cases disposed of by the Court. The exceptions to the said statutory bar is clerical or arithmetical error save as otherwise provided by the Code. The Court held that in the absence of any express provision for review of order granting bail in Cr.P.C., the High Court becomes functus officio and Section 362 of the Code applies to review the order granting bail to the accused. The Court held that 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. Therefore, the argument of the learned counsel for the petitioner that order cancelling bail amounts to reviewing the bail cannot be accepted.

As stated earlier, in **Prakash Kadam case (3 supra)**, the Apex Court held that considerations for cancellation of bail is different from consideration of grant of bail. The Court held that 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. The Apex Court further held that 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. The court also held that 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/revisional court.

From the judgments referred to above, it is clear that cancellation of bail depends upon facts and circumstances of each case. As stated earlier, the learned Sessions Judge cancelled the bail granted to the petitioner only on the ground that the accused has threatened the

informant on telephone. The two other pleas raised by the informant for cancellation of bail viz., the gravity of the offence and also the period of detention, were rejected by the Sessions Court and the same has become final as the said findings were not challenged by the informant. Therefore, the only ground which is available to negate the bail granted to the petitioner is that the petitioner has violated the conditions of bail by telephoning to the informant from a cellphone belonging to the brother of the accused. As stated earlier, the said allegations, which are made in the petition filed before the trial court are silent as to the date and time when the said call was made and received by the petitioner/informant. Apart from that, the informant did not make any effort to inform the concerned about receiving of such call from the petitioner immediately thereafter. Therefore, the said aspect may not be a ground to cancel bail granted to the petitioner. However, the apprehension of the respondent and also that of the Public Prosecutor with regard to the accused evading the process since he is from a different State, cannot be brushed aside. Though the charge-sheet was filed in the year 2013 but having regard to the apprehension expressed by the learned Public Prosecutor and also by the learned counsel for the respondent, it would be desirable to impose the following conditions :

- i) The petitioner shall report before the Station House Officer, Bowenapally Police Station, Secunderabad, twice in a week i.e., on every Wednesday and Sunday between 10.00 a.m., and 12.00 noon till the completion of trial.
- ii) The petitioner shall furnish his full address either present or changed address if any from time to time and submit his passport if any.
- iii) The petitioner shall reside within the limits of Twin Cities and Ranga Reddy District till completion of the trial.
- iv) The petitioner shall attend before the Court of law regularly during the course of enquiry and trial without

v) The relaxation of any of the conditions in future can be sought before learned trial Magistrate to whom by this order power is conferred/delegated.

As a sequel thereto, Miscellaneous Petitions pending if any in this Revision, shall stand closed.

Date: 30.06.2015
GM

Date: .06.2015

- [\[1\]](#) (2012)9 Supreme Court Cases 446
- [\[2\]](#) (2014)10 Supreme Court Cases 754
- [\[3\]](#) 2011(2) ALD (CrI.) 268 (SC)