

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION Nos. 16477 and 16488 of 2014

COMMON ORDER:

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Heard learned counsel appearing for the petitioner, learned Public Prosecutor and learned counsel appearing for the accused in both the petitions.

Since the issue involved in both the petitions is one and the same, they are disposed of by this common order.

Both the petitions are filed under Section 439 (2) Cr.P.C. seeking cancellation of bail granted to accused No.1 and 2 in Crime No.412 of 2014 of Osmania University Police Station, vide orders dated 20.11.2014 passed in CrI.M.P.Nos.4114 of 2014 and 4172 of 2014 on the file of the V Additional Metropolitan Sessions Judge-cum-Mahila Court, Nampally.

The facts in issue are as under:

One Neelanjana Shakya, who is native of H.No.1, Nand Nagari, Kasipur District, New Delhi, lodged a report on 02.11.2014, alleging that she is a student studying M.A. English and was staying in Room No.23, Amrutha Preetham International Women's Hostel, EFL University. It is alleged that on the night of 31.10.2014 at about 00.30 hours, after having alcohol in her room, she went to meet her friend by name Arja, but his room was locked. On her way back, she met another friend by name Nithin (accused No.2), who offered her a joint. She went to his room bearing No.L-15, Basheer Hostel, where she also found accused No.1 in the room. After having a smoke she is alleged to have

become un-conscious. She woke up at about 10.00 a.m. on the next day and found accused No.2 groping her. Though she warned him not to do so, he did not stop. Thereafter, she left the room. On reaching her room she found her keys not with her and apprehending that they might have been dropped in Nithin's (accused No.2) room went back. At that time she is alleged to have asked Nithin as to what happened on the previous night as her Vagina was hurting and paining. He is alleged to have told her that nothing happened. The informant came back to her room, again called Nithin in the evening and asked him as to what happened. On her request, he is alleged to have stated that in the early hours accused No.1 had intercourse with her and thereafter he made a move and had intercourse with her. Being shocked about the same, she is alleged to have informed her friend Ms.Krishna Varma and other friends about the incident. They all went to their proctor Sujatha and informed her about the incident. The averments in the report also disclose that she never had any sex/intercourse earlier before and that the accused have stolen her virginity. Basing on these allegations a report was lodged on 02.11.2014. Accused were arrested and remanded to judicial custody. On 20.11.2014 the learned V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, after considering the material on record, granted bail to accused Nos.1 and 2. The present application is filed seeking cancellation of bail granted to accused Nos.1 and 2 in the said order.

Learned counsel for the petitioner mainly submits that as the conduct of the accused is reprehensible and the offence being grave in nature, the learned Sessions Judge ought not to have granted bail within a period of 17 days of their arrest, though investigation is still not complete. According to her, no reasons

are given for granting bail within a short period. She submits that the case on hand squarely falls within the meaning of rape as defined in clause (5) of Section 375 IPC. She relies upon the judgment of the Apex Court in **Puran vs. Rambilas and another**^[1], in **Narendra K.Amin (DR.) vs. State of Gujarat and another**^[2] and in **Lokesh Singh vs. State of Uttar Pradesh**^[3] in support of her plea.

On the otherhand, the learned counsel for the accused contends that there is no material to show that they have committed the offence. According to him, even as per the averments in the complaint, the informant is alleged to have gone to the room of accused No.2 in a drunken condition and fell down un-conscious after a puff, slept in the room of accused No.2 and left the room in the morning. According to him, no reasons are forth coming as to why she went to the boy's hostel in the mid night in a drunken condition and slept there. He further submits that the argument of the learned counsel for the petitioner that the order under challenge is bereft of any reasons is incorrect. According to him, as on the date of granting bail 21 witnesses were examined by the prosecution. The Court granted bail since all the material witnesses were examined by then. He further submits that the cancellation of bail would arise only when there is interference with the process of investigation or tampering with the evidence, but it is not the case of the petitioner herein that the accused have either tampered or interfered with the investigation.

Learned Public Prosecutor on instructions placed on record the entire case diary and submits that except receipt of F.S.L. report all other material witnesses were examined even by the

date of grant of bail.

Before going further it would be appropriate to refer to the cases cited by the counsel for the petitioner in support of her plea.

The counsel for the petitioner referred few sentences in para No.10 of the judgment of the Apex Court in **Puran case (1 supra)**, wherein the Apex Court held as under:

“It is, merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled.”

It is to be noted that the judgment referred to above was a case where the accused were charge sheeted for the offences punishable under Section 498-A and 304-B IPC and the Court passed an order ignoring the material on record.

In **Narendra K.Amin (DR.) case (2 supra)** the Apex Court dealt with cancellation of bail in a case registered for the offences punishable under Sections 302, 364, 365, 368, 193, 197, 201, 120-B, 420 and 342 read with 34 IPC and Sections 25 (1-B) (a) and 27 of the Arms Act, 1959. The counsel for the petitioner relied upon in Para No.25 of judgment, wherein the Apex Court held as under:

“25. The perversity as highlighted in Puran Case (1 Supra) can also flow from the fact that as noted above irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial Court seems to have been swayed by the fact that Sohrabuddin, husband of Kausarbi had shady reputation and criminal antecedents. That was certainly not a factor which was

to be considered while granting bail. It was the nature of the acts which ought to have been considered. By way of illustration, it can be said that the accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account. Another significant factor which was highlighted by the State before the High Court was that an FIR allegedly was filed to divert attention from the fake encounter. The same was not lodged by Gujarat Police. Once it is found that bail was granted on untenable grounds, same may be cancelled. The stand that there was no supervening circumstance has no relevance in such a case.

Lokesh Singh (3 supra) was a case where the accused were charge sheeted for the offences punishable under Sections 302 and 120-B IPC. The counsel for the petitioner relied upon the following observations made by the Apex Court which are as under:

“8. While dealing with an application for bail, there is a need to indicate in the order, reasons for *prima facie* concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. *Prima facie* satisfaction of the Court in support of the charge.

9. Any order de hors such reasons suffers from non-application of mind as was noted by this Court, in **Ram Govind Upadhyay v. Sudarshan Singh and others**^[4] and **Puran (1 supra) and in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another**^[5].

10. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for *prima facie* concluding why bail was being granted is not required to be indicated.”

From the judgments of the Apex Court referred to above, it is clear that the Court cannot grant bail ignoring the relevant material on record. The Apex Court also held that the bail cannot be granted on untenable grounds and the Court has to indicate in the order, reasons for *prima facie* concluding why bail was being granted particularly where an accused was charged with heinous offence. The Apex Court also held that while granting bail, the Court should taken into consideration the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering of the witness or apprehension of threat to the informant.

Therefore, the point for consideration in the case on hand is whether there any just grounds to cancel the bail granted to the petitioner accused.

In ***Sanjay Chandra v. Central Bureau of Investigation*** ^[6]

the Apex Court held as under:

“In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect

to the principal that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands, that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

In ***Subhendu Mishra v. Subrat Kumar Mishra***^[7] 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.”

In ***Kanwar Singh Meena v. State of Rajasthan***^[8], the Apex Court held as under:

“While cancelling bail under Section 439 (2) Cr.P.C. the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials 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. Such orders are against the well-recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc., would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact of the society.

From the Judgments of the Apex Court referred to above, it is clear that while cancelling bail under Section 439 (2) Cr.P.C. the Court has to see whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade or attempt to evade the due course of justice or misused the bail granted. The Apex Court also held that the High Court or the Sessions Court can cancel the bail even in cases

where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. From the above position of law it is clear that bail once granted should not be cancelled in mechanical manner. The Court has to see whether the accused is likely to tamper with evidence, evade process of law and whether he has violated the terms and conditions of bail.

It is also to be noted that the Apex Court has drawn a distinction between the applications filed for cancellation of bail already granted and challenging the order of granting bail. Though the prayer in the present application is for seeking cancellation of bail, but the counsel for the petitioner submits that she is challenging the very order granting bail for the reasons mentioned above. Therefore, the Court has to see whether the bail was granted by taking into consideration the irrelevant material and on un-tenable grounds. At the same time, the Court also has to take into consideration the parameters laid down in the judgments of the Apex Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra and others***^[9]. Keeping in view the above principles of law I shall now deal with the case on hand.

It is not the case of the petitioner that the accused have evaded the process of law, tampered with the evidence or violated the conditions of bail. It is the case of the petitioner that the accused ought not to have been granted bail.

The affidavit of the informant filed in support of the petition and also the averments made in the First Information Report by the petitioner herself would show that on the night of 31.10.2014 she left the women's hostel in drunken condition and went to boy's hostel to meet one person by name Arjab. While she was

returning she found accused No.2, who was living in Room No.L-15 in the same hostel. Since he offered a joint (puff of Marijuana), the informant went to his room and found accused No.1 in the said room. She had a puff and thereafter fell down un-conscious. At about 10.00 a.m. on the next day she woke up and found Nithin (accused No.2) groping her. She left the room in angry mood as accused No.2 did not stop in spite of her resistance. After going to the room she found the keys of her room dropped in Nithin's room and accordingly went back and asked him as to what happened in the previous night as there was pain in her private parts. Being satisfied with the reason given by him, she came back. Again in the evening she called him and at that time accused No.2 disclosed stating that initially accused No.1 had intercourse with her and thereafter he also had an intercourse with her. The affidavit which has been filed before the Court show that immediately after the incident her statement was recorded by the police on 02.11.2014 and was taken to Gandhi Hospital for medical examination.

It is also stated in the affidavit that the incident has weakened and demoralized her and she is trying to cope up with the trauma. It is her version that she is not in a position to come out of the trauma as the people have spread malicious gossip about her. It is her version that release of accused within 17 days of their arrest in a heinous crime, which is punishable with imprisonment for 20 years, has put her in panic. Though the petitioner in her affidavit says that one of her friend was assaulted by accused No.1, but no such material is placed before the Court in proof of the same. The affidavit does not even disclose the name of her friend, who was being assaulted in a similar manner.

The material on record discloses that the report about the incident was given on 02.11.2014 in respect of an incident which took place on the night of 30.10.2014. The accused were arrested on 02.11.2014 and on 15.11.2014 they were given to police custody for three days. After production in Court on 17.11.2014 they were released on bail on 20.11.2014. The remand report dated 03.11.2014 itself shows examination of nearly 21 witnesses by then. The victim was also sent to Gandhi Hospital for medical examination 02.11.2014 itself and samples collected from the body were also sent to the F.S.L. The victim as well as the circumstantial witnesses, who are the students of the E.F.L. University were examined by the date of order.

It is true that the learned Sessions Judge while granting bail to the accused did not discuss and given elaborate reasons for grant of bail, but at the same time, the order shows that the Sessions Judge has perused the record and found that all the material witnesses were examined by them. Since substantial portion of investigation was completed and as the accused were in jail since 17 days, the trial Court granted bail. The Court ought to have given some reasons, but at the same time it is to be noted that detail evaluation of evidence on record and elaborate discussion of the merits of the case cannot be undertaken while granting bail in view of the judgment of the Apex Court in Lokesh (3 supra). Any reasoning given may some time act prejudicial either to the accused or to the informant/prosecution.

The counsel for the petitioner mainly urged before the Court that this being a grave offence, the Court ought not to have granted bail within a period of 17 days of arrest and the Court cannot come to a conclusion that investigation is complete. It is

true that the learned Sessions Judge erred in stating that entire investigation is complete, as such the Public Prosecutor states that charge sheet is not yet filed as they are waiting for the receipt of medical reports. But the remand report dated 03.11.2014 which is placed before the Court would show that all the material witnesses including the victim, her friends, doctor who examined the victim and also the panch witness for confession and recovery were examined by then itself.

Since all the witnesses were examined and only medical reports are to be received the learned Sessions Judge might have stated that investigation is complete. Even otherwise, the statements of the circumstantial witnesses recorded by the police on 02.11.2014 show that their version of the case was based only on the information furnished by the victim. All of them in one voice stated that in the mid night of 31.10.2014, the victim left the Women's hostel to meet one Arjab, who stays in a boy's hostel. As his room was locked, she met accused No.2 on her way back, who took her to his room and then offered a smoke. He is alleged to have offered Marijuana and after taking a puff of it, fell down unconscious. The alleged incident of assault by accused Nos.1 and 2 was committed while she was un-conscious. In the morning at about 10.00 a.m. she got up, went to room and again returned back to collect her room keys. No complaint was made at that time and she did not even feel that she was sexually assaulted. In the evening when she again called accused No.2, he is alleged to have confessed about the assault, which lead to lodging of the report.

From the above, it is clear that the informant on her own did not give any report of being sexually assaulted till the said

information was alleged to have been furnished by one of the accused. Apart from that the Medical Report of the F.S.L. which is placed before the Court would show that Semen and spermatozoa were not detected on item Nos.1 to 12. Blood was not detected on item Nos.1,3 to 12 and no foreign hair was found on item No.1.

The Public Prosecutor on instructions stated that the F.S.L. report dated 30.01.2015 which is placed before the Court now, does not indicate any sexual assault or rape on the victim. It is true that the said report was not available to the trial Court at the time of granting bail, but 21 witnesses were examined by then and even the doctor, who examined the victim, was examined. The material on record show that the material objects which were seized from the victim girl does not anywhere indicate traces of semen, spermatozoa and foreign hair. Infact, the public prosecutor on instructions submitted that the wound certificate also does not anywhere indicate signs of sexual assault, but however the same is not placed before the Court. Having regard to the circumstances stated above, I am not inclined to cancel the bail granted to accused Nos.1 and 2. Since the investigation is still pending, the accused shall report before the concerned Station House Officer twice in a week i.e. on every Tuesday and Saturday between 10.00 a.m. and 5.00 p.m. till filing of the charge sheet. Further, the accused shall not leave the Country without prior permission of the trial Court.

Accordingly, the Criminal Petitions are disposed of.

Miscellaneous petitions, if any pending, shall stand dismissed.

C. PRAVEEN KUMAR, J

04.03.2015

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- [\[1\]](#) (2001) 6 SCC 338
[\[2\]](#) (2008) 13 SCC 584
[\[3\]](#) 2008 Law Suit (SC) 1536
[\[4\]](#) (2002) 3 SCC 598
[\[5\]](#) JT 2004 (3) SC 442
[\[6\]](#) (2012) 1 SCC 40
[\[7\]](#) 1999 CrI.L.J. 4063
[\[8\]](#) 2013 (1) ALD (CrI.) 85
[\[9\]](#) (2011) 1 SCC 694