

**IN THE HIGH COURT OF JUDICATURE
AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL PETITION No.2370 OF 2017

Between:

Karim Morani

.. Petitioner

AND

The State of Telangana & another

.. Respondents

DATE OF THE ORDER PRONOUNCED: 05-09-2017.

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local News Papers
may be allowed to see the Judgments? Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes
3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes

Justice A. Shankar Narayana

*** HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

+ CRIMINAL PETITION No.2370 OF 2017

% 05.09.2017

Karim Morani

.. Petitioner

v.

\$ The State of Telangana & another

.. Respondents

!Counsel for the petitioner : Sri S. Niranjan Reddy, Senior Counsel,
for Sri N. Naveen Kumar

^Counsel for the Respondent No.1 : Additional Public Prosecutor

Counsel for the Respondent No.2 : Sri Milind G. Gokhale,

<Gist :

>Head Note:

?Cases Referred:

1. (2011) 10 SCC 694
2. (1995) 1 SCC 349
3. (2014) 10 SCC 754
4. (2016) 1 SCC 152
5. (2004) 2 SCC 362
6. (2004) 11 SCC 165
7. (2016) 10 SCC 378
8. 2016 Cri. L.J. 558
9. 2014 (1) ALD (Cri) 226
10. (2016) 1 SCC 146
11. (2017) 2 SCC 178 = AIR 2017 SC 630
12. (2001) 3 SCC 462
13. (2001) 6 SCC 338
14. 2014 SCC Online Hyd 742
15. 2010 CRI. L. J. 1610
16. (2016) SCC On Line (SC) 1
17. (1977) 4 SCC 551
18. (1977) 4 SCC 137
19. (2013) 7 SCC 789
20. (2008) 13 SCC 584
21. AIR 1958 SC 376
22. AIR 1967 SC 1639
23. (1978) 1 SCC 118 = AIR 1978 SC 179

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA
CRIMINAL PETITION No.2370 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the Orders dated 30.01.2017, made in Criminal M.P.No.262 of 2017 in Crime No.33 of 2017 of Hayathnagar Police Station, on the file of IV-Additional Metropolitan Sessions Judge, Rangareddy District at L.B. Nagar.

2. By the aforesaid order, the learned IV-Additional Metropolitan Sessions Judge allowed Criminal M.P. No.262 of 2017 filed by the State and the *de facto* complainant together under Section 439 (2) of the Code, for cancellation of anticipatory bail granted to the petitioner herein in Crime No.33 of 2017 of Hayathnagar Police Station vide orders in Criminal M.P.No.262 of 2017, dated 30.01.2017.

3. Heard Sri S. Niranjan Reddy, learned Senior Counsel, assisted by Sri N. Naveen Kumar, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana; and Sri Milind G. Gokhale, the learned counsel for respondent No.2 - *de facto* complainant.

4. The averments made in the petition are that the petitioner is a business person, *inter alia*, engaged in the business of production

of films, as such he is well recognized producer in the Indian Film Industry, having produced several films and is a reputed person and well known amongst the film circles; respondent No.2 - *de facto* complainant claiming to be the resident of New Delhi and aspiring to be a film actress befriended the family members of the petitioner initially in order to get acquaintance with the petitioner; the *de facto* complainant designedly acted to seek active help of the petitioner for advancement of her career in films and when the same did not materialize, she embarked upon a calculated plan to make an unjust gain from the petitioner resorting to series of acts and could not succeed in her attempts; she started sending mischievous and false messages to the family members of the petitioner; she has, later, apologized from her 'WhatsApp message', dated 4.3.2016; after tendering apology, the *de facto* complainant revived her attempts to extract monetary gain, which was resisted by the petitioner; the petitioner, sensing the malicious motive of the *de facto* complainant, approached the Police Station, Juhu, Mumbai, and lodged a complaint against the *de facto* complainant on 29.3.2016; the *de facto* complainant remained silent for about nine months and started another attempt to malign the petitioner and resorted to a desperate act of lodging a false complaint with Hayathnagar Police Station on 10.01.2017, resulting in registration of the present crime.

5. The petitioner states that in the said complaint she alleged that the petitioner has sedated her and committed rape, took

her nude photos; he repeatedly committed rape on her by visiting her flat at late nights and also forced her to visit Hyderabad where he committed rape on her and continued the offence for a period of six months from July, 2015 to January, 2016.

6. The petitioner states that the complaint is hopelessly belated and is lodged with false and contradictory allegations and there are no allegations after 12.10.2015 and no complaint was lodged till 10.01.2017. The petitioner states that the complaint itself discloses that the *de facto* complainant is entertaining an idea to get married to the petitioner, though, she claims to be a student of B.B.A., and knows the family status of the petitioner and his position in the society.

7. The petitioner states that the complaint would disclose how the *de facto* complainant has systematically worked her way to get acquaintance with him behaving as if she is the friend of her daughter and niece.

8. The petitioner states that the 1st respondent - Station House Officer, Hayathnagar Police Station, without verifying the veracity of the allegations made in the complaint perfunctorily and mechanically registered First Information Report in Crime No.33 of 2017 against him for the offences punishable under Sections 417, 376, 342, 506 and 354C of IPC.

9. The petitioner also states when he learnt registration of First Information Report against him through the media, he approached the IV-Additional Metropolitan Sessions Judge at L.B. Nagar, Rangareddy District, and filed an application under Section 438 of the Code praying for anticipatory bail in Criminal M.P. No.262 of 2017 on 20.01.2017 and sent an *e-mail* dated 26.1.2017 to the 1st respondent narrating the entire facts, including criminal complaint lodged by him at Juhu Police Station, Mumbai, dated 29.3.2016 and copies of the screen shot of *SMS* messages sent by the *de facto* complainant dated 4.3.2016 and 5.4.2016, and he being innocent vide the said mail he had requested the 1st respondent to thoroughly investigate the allegations and the petitioner is ready to participate in the investigation and assist to find out the actual truth.

10. He states that the learned IV-Additional Metropolitan Sessions Judge took into consideration of all facts and after hearing parties at length pleased to allow the petition granting anticipatory bail on 30.01.2017 directing that in the event of his arrest he shall cooperate with the investigating agency and to attend before the investigating officer as and when required including to be present before the Court whenever required by the investigating officer for further investigation into the matter and he has been completely abiding the conditions imposed while granting bail and did not commit any violation of conditions of grant of bail.

11. The petitioner would state that even subsequent to grant of bail the *de facto* complainant again started sending abusive and intimidating messages to him and he reported the same to the 1st respondent vide *e-mail* dated 6.3.2017.

12. He would submit that the 1st respondent, aggrieved by the orders of granting anticipatory bail, approached the learned IV-Additional Metropolitan Sessions Judge, by filing a petition under Section 439 (2) of the Code in Criminal M.P. No.58 of 2017 in Criminal M.P. No.262 of 2017 in Crime No.33 of 2017 of Hayathnagar Police Station for cancellation of bail granted to him.

13. He states that the *de facto* complainant in the said application filed a petition under Section 301 of the Code read with Section 24 (8) of the Code, praying the Court to permit her to assist Public Prosecutor in the above matter and he filed a detailed counter opposing the petition filed for cancellation of grant of bail. The learned IV-Additional Metropolitan Sessions Judge, vide his orders dated 14.3.2017, allowed the petition filed for cancellation of bail granted to him directing him to surrender before the investigating officer on or before 22.03.2017, failing which the investigating officer shall proceed as per law.

14. The petitioner claims that the said orders are erroneous and unsustainable, and sought to quash the orders. The request for cancellation of grant of bail was made mainly on the premise that the

petitioner willfully suppressed his involvement in a criminal case pending against him with a *mala fide* intention to get anticipatory bail, but the petitioner states that the said stand is totally contrary to the record, and, therefore, the said petition is not maintainable.

15. The Court below failed to consider that there was no deliberate attempt on his behalf to suppress the fact of he being accused in 2-G trial and he was under the *bona fide* belief that the same was not relevant since the trial has been going on for more than five years in the said case and he, therefore, also did not seek an advantage of the redeeming facts that he was allowed to travel abroad several times during the course of the trial with the permission of the Court, which could have been weighed down appropriately.

16. According to him, the petition filed by him for grant of anticipatory bail would disclose that he did not plead anything as such that he is not involved in any criminal case and even the order granting bail would show that the Court below while considering grant of bail to the petitioner made a passing reference to one of the grounds for consideration of bail as referred in the judgment of the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra**¹.

17. The Court below ought to have seen that the order of grant of bail shall not be routinely interfered unless supervening circumstances warranting such cancellation of bail have occurred

¹ (2011) 10 SCC 694

with, as such the same would relate to rights of personal liberty of a person. He states that the Court below, without any reasoning, had held that the custodial interrogation of the petitioner was necessary for further and subsequent investigation, whereas the pleas and the reasoning of the 1st respondent in its application for cancellation of bail were entirely different. The police did not seek custodial interrogation and it only sought the presence of the accused for conducting potency test.

18. The petitioner states that once any accused is admitted to bail by a Court, the prosecution can approach the same Court praying cancellation, only when any new circumstances have arisen which were not earlier known and the prosecution in its petition except detailing the progress of the investigation failed to disclose any new circumstances have arisen warranting cancellation of bail. The petition filed by the prosecution would disclose that substantial investigation has been completed except mere formality of laying charge sheet, and, therefore, the cancellation of the bail petition filed by the prosecution is only to harass him and to make him the taste of suffering of imprisonment.

19. The petitioner also would state that subsequent to grant of anticipatory bail, the police had not caused any notice directing his presence in furtherance of the investigation, and, in fact, he himself had represented the police to cooperate and assist with the investigation to unearth the truth of the allegations made against him,

and, therefore, in the absence of causing notice requiring his presence, respondents filed the petition for cancellation of bail granted to him only for securing his presence is untenable.

20. He would plead that the Court below failed to appreciate that consideration for grant of bail and cancellation of bail are entirely different and unless there is any specific violation of conditions of grant of bail, bail granted could not be interfered with except in rarest of the rare cases and the Hon'ble Apex Court has categorically held that the bail granted shall not be cancelled on mere apprehensions of violation of conditions of bail without any material on record or proof to substantiate the same. The petitioner states that pursuant to grant of bail to him, it was the *de facto* complainant who had *addressed* threatening *SMS* messages which was reported by him to the 1st respondent vide *e-mail* dated 6.3.2017.

21. He would state that the *de facto* complainant, on one hand, alleges that he (petitioner) under sedation and threat had committed rape on her and, on the other hand, alleges that he had been making false promises for getting married to the *de facto* complainant and exploited her continuously.

22. Lastly, he claims that the complaint has been filed belatedly, one and a half year after the alleged incident which itself demonstrates *mala fide* intention of the complainant that the

complaint is only an afterthought to achieve her objects which are otherwise not permissible under law.

23. He claims that he is a reputed person and well recognized producer in the Indian Film Industry and if he is arrested on the frivolous complaint the same would affect his reputation in the society causing serious hardship and irreparable loss.

24. He states that he would cooperate with the investigation, if any pending, and undertakes to appear before the investigating officer as and when necessary and would not interfere with the same and would not influence the witnesses and would be at the disposal of the investigating officer as per the conditions imposed upon him. Hence, he sought to allow the application.

25. The learned Senior Counsel, Sri S. Niranjan Reddy, while advancing arguments, referring to the grounds mentioned in the above, mainly stresses three important grounds.

(1) First ground is, that there are no supervening circumstances warranting cancellation of grant of anticipatory bail and the Court below somehow, failed to see that the application before it was for cancellation of bail and not an appeal against grant of bail and the conduct subsequent to release on bail and the supervening circumstances alone were relevant for considering the request of the prosecution and not any other considerations that were relevant for adjudication.

(2) Second ground is that the failure to mention involvement of the petitioner in 2G trial was not deliberate attempt on his part to suppress the fact, but it was under the *bona fide* belief that the same was not relevant since trial has been going on for more than five years. He would submit that the orders made granting bail would show that the Court below while considering grant of bail to the petitioner made a passing reference to one of the grounds for consideration as referred in the ruling of the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre**¹.

(3) The third ground canvassed by him is that the Court below without any plausible reason arrived at an opinion that the custodial interrogation of the petitioner was necessary for further and subsequent investigation, whereas the grounds and the reasoning of the 1st respondent in its application for cancellation of bail were entirely different, as the application of the 1st respondent would show that it did not seek custodial interrogation, but only sought the presence of the petitioner for conducting potency test.

(4) Incidentally, it is submitted by the learned Senior Counsel that, in fact, the petitioner has been always ready and willing to cooperate with the investigating agency and the very fact that no notice was caused to him requiring his presence for furtherance of the investigation would make the petition for cancellation of bail filed by the 1st respondent liable to be dismissed.

(5) Incidentally, the conduct of the *de facto* complainant was commented referring to the messages said to have been sent by the *de facto* complainant attributing that the messages are threatening in nature, that too subsequent to granting of anticipatory bail to the petitioner.

(6) The conduct of the *de facto* complainant was also referred to in the context of the mutually inconsistent stands said to have taken by the *de facto* complainant stating on the one hand she alleged that the petitioner under sedation and threat committed rape on her, while, on the other, she alleged that by making false promises for getting married to the *de facto* complainant, exploited her continuously.

26. The learned Senior Counsel appearing for the petitioner placed reliance on the following rulings:

- (1) **Dolat Ram v. State of Haryana**²,
- (2) **Abdul Basit v. Mohd. Abdul Kadir Chaudhary**³,
- (3) **Bhadresh Bipinbhai Sheth v. State of Gujarat**⁴,
- (4) **Mehboob Dawood Shaikh v. State of Maharashtra**⁵,
- (5) **Samarendra Nath Bhattacharjee v. State of W.B.**⁶.

The learned Senior counsel also refers to the ruling of the Hon'ble Apex Court in **Dhariwal Industries Ltd. v. Kishore Wadhwani**⁷ in

² (1995) 1 SCC 349

³ (2014) 10 SCC 754

⁴ (2016) 1 SCC 152

⁵ (2004) 2 SCC 362

⁶ (2004) 11 SCC 165

the context of the extent of role of the informant or private party that it is limited during prosecution of a case in Sessions Court and the counsel engaged by informant or private party is required to act under the directions of Public Prosecutor, as contemplated under Section 301 of the Code.

These have been the main submissions made by the learned Senior Counsel in making a request to withhold the order of cancellation of bail, which is under challenge in the instant petition.

27. The learned Additional Public Prosecutor would mainly contend that it cannot be said that there was delay in lodging the complaint as submitted by the petitioner, as the petitioner had to overcome the shock and trauma in lodging the complaint. Second submission is that the offences alleged against the petitioner would reflect that the petitioner had committed heinous crime, and, therefore, the request herein made by the petitioner is not tenable.

28. While refuting the submissions made by the learned Senior Counsel that what was sought in the petition by the State in seeking request to grant cancellation of anticipatory bail granted to the petitioner was subjecting the petitioner only for potency test and not for custodial interrogation, and the Court below misconceived it opining that the petitioner's presence was required for custodial interrogation, the learned Additional Public Prosecutor would submit that cancellation is sought not only in the context of conducting

⁷ (2016) 10 SCC 378

potency test but also for interrogation in course of further investigation in the context of tracing out nude photos.

29. The learned Additional Public Prosecutor placed reliance on the following rulings:

- (1) **Ratheesh v. State of Kerala**⁸
- (2) **State of Andhra Pradesh v. Surender Kumar Joshi**⁹, rendered by a learned Single Judge of this Court.
- (3) **Sudhir and others v. The State of Maharashtra and others**¹⁰
- (4) **State of Bihar v. Rajballav Prasad**¹¹

30. The *de facto* complainant, who is respondent No.2 herein, has entered appearance, and Sri Milind G. Gokhale, the learned counsel for the *de facto* complainant, while reiterating the submissions made by the learned Additional Public Prosecutor and placing reliance on certain rulings would submit as hereunder:

31. The learned counsel for respondent No.2 - *de facto* complainant, Sri Milind G. Ghokale, initially, would refer to Section 375 of I.P.C. in the context of explaining the expression 'rape'. His submission is that the fifth description of Section 375 of IPC would aptly apply to the fact situation in the present case. According to him, respondent No.2 was intoxicated and was subjected to sexual intercourse by the petitioner, and, therefore, even consent on the part

⁸ 2016 Cri. L.J. 558

⁹ 2014 (1) ALD (Cri) 226

¹⁰ (2016) 1 SCC 146

¹¹ (2017) 2 SCC 178 = AIR 2017 SC 630

of respondent No.2 is viewed, still, the petitioner cannot be said that he has not committed the offence of rape.

32. The learned counsel, while referring to clauses (k) and (n) of Section 376 (2) of I.P.C., would submit that the petitioner was being in a position to hold control over respondent No.2 committed rape on her, and clause (n), according to the learned counsel, would apply for the reason that there has been commission of rape by the petitioner on respondent No.2 repeatedly as could be seen from the material placed before the Court. Therefore, it is his submission that a heinous crime was committed by the petitioner and he cannot now search out mitigating circumstances so as to get over the present situation of cancellation of bail granted to him. The learned counsel, incidentally, refers to Section 114A of the Evidence Act, whereunder presumption as to consent in certain situations is dealt with, which is substituted by the Criminal Law (Amendment) Act, 2013 (Act No.13 of 2013), which along with explanation reads thus:

“114A. In a prosecution of rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation:- In this section, “sexual intercourse” shall mean any of the acts mentioned in clause (a) to (d) of section 375 of the Indian Penal Code.”

33. He would also refer to substitution of proviso to Section 146 of the Evidence Act by the very same Amendment Act which, of course, at this stage is unnecessary to examine as the request herein is for cancellation of anticipatory bail earlier granted to the petitioner and the said proviso comes into vogue if the investigation reaches laying charge against the petitioner leading to trial and cross-examination of the victim - prosecutrix.

34. The learned counsel while referring to the rulings of the Hon'ble Apex Court places reliance in **J.K. International v. State (Govt. of NCT of Delhi)**¹², **Puran v. Rambilas**¹³, **Janapala Krishna v. State of A.P.**¹⁴ rendered by a learned Single Judge of this Court and yet another decision rendered by a learned Single Judge of this Court in **C.S.Y. Sankar Rao v. State of Andhra Pradesh**¹⁵. Last of these decisions was relied on by the learned counsel for the proposition that there is no specific bar in hearing *de facto* complainant or victim at the stage of considering applications for bail or cancellation of bail. The said decision was rendered in the context of application for impleadment filed by the *de facto* complainant that was allowed.

¹² (2001) 3 SCC 462

¹³ (2001) 6 SCC 338

¹⁴ 2014 SCC Online Hyd 742

¹⁵ 2010 CRI. L. J. 1610

35. The learned counsel also places reliance in **Mr. Tejas Udaykumar Sarvaiya v. The State of Maharashtra** (Anticipatory Bail Application No.105 of 2016) rendered by a learned Single Judge of the High Court of Judicature at Bombay, in the context of fact-situation reflecting therein that there was a promise to marry and thereby there was commission of rape and, therefore, stating that it was a typical case of rape filed on the ground that there was a promise to marry and, therefore, to view that sexual intercourse was forced on the girl and thereafter, there was a break-up. To the limited extent of that proposition, the learned counsel relies on it. In fact, the learned Single Judge held so relying on the ruling in **Tilakraj v. State of Himachal Pradesh**¹⁶, where the prosecutrix, aged 40 years, was in relationship with the accused and extracted paragraph No.20. Thus, to the limited extent of the said proposition, the learned counsel for the *de facto* complainant relied on this ruling.

36. Concerning maintainability of an application of this nature under Section 482 of the Code since questioned by the Additional Public Prosecutor and the learned counsel for the *de facto* complainant, in order to meet the said contention, the learned senior counsel relied on a ruling in **Janapala Krishna**¹⁴, rendered by a learned Single Judge of this Court referring to the rulings in **Madhulimaye v. State of Maharashtra**¹⁷, **Amar Nath v. State of**

¹⁶ (2016) SCC On Line (SC) 1

¹⁷ (1977) 4 SCC 551

Harayana¹⁸, Mohit alias Sonu v. State of U.P.¹⁹, Narendra K. Amin v. State of Gujarat²⁰, Talab Haji Hussain v. Madhukar Purshottam Mondekar²¹ and Ratilal Bhanji v. Assistant Collector of Customs, Bombay²², reiterated his earlier opinion expressed in Criminal R.C. No.1506 of 2014 dated 15.09.2014, that for cancellation of earlier bail order, the remedy is to file an application under Section 482 of the Code and not by revision.

37. The learned counsel for the petitioner has also placed reliance on the ruling of the Hon'ble Supreme Court in **Amar Nath¹⁸**. He placed reliance on the interpretation of the provisions of Section 397 in paragraph No.6 contending that the order summoning witnesses, adjournment of cases, passing order for bail, calling for reports and such other steps in aid of the pending proceeding would amount to interlocutory orders against which no revision would lie under Section 397(2) of the Code, but the orders, which are matters of amendment which affects the rights of the accused or a particular aspect of trial cannot be said to be interlocutory order so as to be outside the purview of the revisional Court. He would, therefore, submit that the remedy to question the order cancelling the order granting anticipatory bail is to request the Court to exercise the extraordinary power under Section 482 of the Code, but not by filing a revision either under Section 397(2) or (1) of the Code.

¹⁸ (1977) 4 SCC 137

¹⁹ (2013) 7 SCC 789

²⁰ (2008) 13 SCC 584

²¹ AIR 1958 SC 376

²² AIR 1967 SC 1639

38. To appreciate the submissions made by the learned senior counsel, the learned Additional Public Prosecutor and the learned counsel for the *de facto* complainant, it would be appropriate to refer to what has been alleged in the complaint lodged with the police concerned. Instead of referring to the allegations, it would be appropriate to extract the allegations levelled by the *de facto* complainant - respondent No.2 in her words:

“I am Shweta parashar a B.B.A. student and staying with my family in New Delhi. I had interest in acting since childhood and thus planned to go to Mumbai for an acting course and make a career in acting in the film industry.

I shifted to Mumbai in mid-2014 and joined the AnupamKher Acting School at Santa Cruz for a course in acting. I rented an apartment at Yari Road, which is near to the acting school for the sake of convenience. I had spoken to Yasmin Morani and Shirin Morani through a common friend when they had come to Delhi in 2014 and contacted them when I went to Mumbai.

I met Shirin Morani in Mumbai and became friends. Shirin Morani was getting married in December, 2014. She requested me to stay at her house and help her in wedding preparations, shopping and sangeet practice. I used to visit their house ‘Shagun’ and starting helping her in marriage preparations. At her house, I met her uncle Karim Morani who is a leading film producer.

After about two months, I bumped into Karim Morani in Juhu and he took my mobile number. I exchanged

phone numbers as I knew the family very well. March 22, 2015 he invited me for his birthday party too.

Karim Morani was producing the hindi movie Dilwale around that time. He had visited Rohit Shetty's office (Andheri west) in July,2015. He called me and asked if he can come over for tea at my house and I couldn't refuse him as he was my best friends (shirin morani) uncle. Karim Morani visited my flat and he was carrying a bottle of wine with him. He said that he is very happy today as the film is coming up well and asked me to celebrate the same with a toast of wine. I reluctantly took the wine and after a few sips, I felt dizzy, Karim Morani then forced himself upon me. I tried to resist, however in the state of dizziness, I could not do much and passed out. When I regained my senses after a few hours, Karim Morani had already left. I felt a sharp pain in my abdomen and realized that Karim Morani had raped me by sedating me with a substance in the wine which he offered to me.

I regained my composure and called Karim Morani. He intentionally said that he has not done anything but when I shouted on him and said that I am coming to his house to tell his family members about the incident, he said that he has taken my nude photos and if I inform anyone then he will ruin my life. He also said that he has contacts with the underworld and will get me eliminated. I was in a state of shock and could not believe what has happened with me. I did not report the incident to the police for the sake of my dignity and the reputation of my family and also out of fear that Karim Morani may harm me. My ordeal had just started. He began following me and calling me when I was alone in my flat he would come late in

the night and force me to have sex with him against my wishes. I was terrified and suffered in silence. On 12.09.2015, Karim Morani asked to come to Hyderabad where they were shooting. I initially resisted however when he threatened to circulate my photographs on social media, I was compelled to visit Hyderabad against my wishes. I stayed at Sitara hotel with Karim Morani and he repeatedly raped me in the hotel room. He again forced me to visit Hyderabad on 12.10.2015 and raped me in the night. I pleaded him that you are in the film industry and can easily befriend any girl, but he said that he will not leave me and shall marry me.

I suffered mental trauma and out of fear for my life and the honour of my family, I suffered silently.

I went into severe depression and on 13.01.2016 January, 2016 came back to Delhi. I even tried to commit suicide. I visited the doctor who put me on anti-depressant medicine and I took counselling sessions with psychologist and Psychiatrists.

I changed my number so that Karim Morani could not contact me. Everyday, I have been living in fear that he might land up in Delhi and harass me. I cannot sleep in the night properly as I have weird dreams.

Karim Morani has ruined my life and career. I am in depression and do not have the confidence of doing anything in life because of the trauma suffered at the hands of Karim Morani.

Karim Morani forcefully raped me continuously for approx 6months (July,2015 – January,2016).

Karim Morani had been making false promises for getting married to me and has been exploiting me continuously.

In the above facts, you are requested to kindly register an F.I.R. against Sh. Karim Morani under for offences of rape, illegal confinement and threat to life under the relevant provisions of law and cause investigation to be conducted so that he is punished for his misdeeds and no innocent girl like me falls prey to his evil designs in future.”

39. Concerning the complaint, learned senior counsel in an attempt to demolish the very case of the *de facto* complainant would project three aspects, which he considers to be significantly important. First, according to him is, the allegations contained in the complaint are mutually contradictory. Second, the First Information Report is belated. The complaint was made by the *de facto* complainant, more than one year after the alleged incident; and third, an intrinsic examination of the contents of the complaint would reflect that the complaint is filed as a measure of harassment and to vex the petitioner.

40. Touching the first point, the learned senior counsel would submit that the *de facto* complainant on one hand alleged that in the month of July, 2015, when the petitioner called her, and asked, if he could come over for tea at her flat, she could not refuse him, as he was her best friend's uncle and in fact, he visited her flat and was carrying a bottle of wine with him and expressing that he felt very happy that day as his film was coming up well asked her to celebrate the same with a toast of wine, she reluctantly took the wine and after a few sips, she felt dizzy, and then the petitioner forced himself upon her, and

when she tried to resist, however, in the state of dizziness, she could not do much and passed out; when she regained senses after a few hours, the petitioner had already left and she felt a sharp pain in her abdomen and realized that the petitioner has raped her by sedating with a substance in the wine which he offered to her. The learned senior counsel would submit that the *de facto* complainant having narrated certain other allegations, she has specifically mentioned that the petitioner told her that he will not leave her and will marry her. Thus, according to the learned senior counsel, the allegations that she was sedated by the petitioner and had sexual intercourse with her and continued the relationship, of course, threatening her that he would ruin her life stating that he had taken her nude photographs, in case, she informs anyone, she shouted at him that she would tell his family members and the petitioner again alleging that he will marry her, indicates that she was uncertain whether she was subjected to sexual intercourse by sedation or whether she was lured to submit herself for sexual intercourse on the promise of the petitioner to marry her. What all the learned senior counsel intends to submit is that such an incident, which the *de facto* complainant has now projected, did ever occur and she, herself with an oblique motive has come up with false allegations to harass the petitioner.

41. The learned senior counsel would submit the very fact that the *de facto* complainant has not complained just immediately after the incident she referred to in the first instance that was said to

have completed and there was no reason for her to shout at the petitioner and set out that the petitioner threatened her by informing her that he had taken nude photographs and would ruin her life is sufficient to disbelieve the complaint allegations. So, the mutually contradictory versions that are occurring, which according to the learned senior counsel, have been that on one hand the *de facto* complainant alleges that the petitioner imposed a threat on her that he would ruin her life and that he had taken nude photographs and on the other hand she alleges that the petitioner told her that he would not leave her and she shall marry him coupled with the delay in lodging the FIR, since the present complaint was lodged on 10.01.2017, it was almost one and half years after July, 2015, incident as alleged by her would completely belie the allegations levelled in the complaint.

42. In the direction of showing that the complaint filed by the *de facto* complainant is a counter blast to the complaint filed by the petitioner against him, the learned counsel refers to the allegations in the complaint dated 10.01.2017. The said complaint was lodged with the Senior Inspector of Police, Juhu Police Station, Mumbai, on 29.03.2016 against the *de facto* complainant.

43. The sum and substance of the said complaint is, the petitioner projected the *de facto* complainant coming into contact with their family, attending family functions and almost being treated as a member of their family, later, through his family coming with a proposal to help her by him in the industry with some known banner

which he ignored and even forgot about it, but, her behaviour in the family functions of the petitioner having found in a heavily intoxication condition and on occasions was found vomiting at the venue, has become not only disturbing, but shocking him as it was capable of maligning his name, image and reputation of his family besides having a negative impact on the children, on their family and thereafter, his developing suspicion and doubtful about her visits despite she was not invited for the parties and functions at their house and ultimately, she started to make extortion demands from him of Rs.1.00 crore through his family friends and relatives threatening to either commit suicide or to lodge a false complaint of rape against him, if he failed to succumb to her demand. He has referred to certain other details, and in the concluding paragraph, he requests immediate action according to law as he foresees that the *de facto* complainant having failed to succeed in her punitive attempts to extract money from him and threatening with a false complaint of rape and blackmailing him was also capable of attempting to cause physical injury and harm to her body, by attempting to commit suicide and falsely implicate him threatening also.

44. The learned senior counsel would submit that the allegations in the said complaint cannot be disbelieved as it was lodged on 29.03.2016 i.e., at least nine (9) months prior to lodging the present complaint by the *de facto* complainant. What all the learned senior counsel would intend to impress, based on the said complaint

is, only with a view to extract a sum of Rs.1.00 crore from the petitioner, the *de facto* complainant has come up with false allegations in the complaint alleging sedation associated with sexual abuse, alleged relation ship, alleged sexual acts at Hyderabad, alleged visits to Hyderabad associated with sexual abuse even at Hyderabad as her demand for extracting the amount did not yield fruitful result.

45. The learned senior counsel has referred to a text message dated 04.03.2016, which fell on Friday at 10.38 a.m., said to have sent by the *de facto* complainant to the petitioner. According to him, the *de facto* complainant has sought apologies for her acts and it was intended by her to apologize the entire family, thus, having come up with a story of confession of guilt on her part or levelling false allegations by then itself, which includes attempt to extract money from the petitioner and having kept quite for about nine months even after the complaint was lodged by the petitioner referred to in the above, the *de facto* complainant lodged the complaint and, thus, no other view is possible except to arrive at that the allegations in the complaint are palpably false and intended to harass the petitioner for extorting money.

46. The learned Additional Public Prosecutor and the learned counsel for the *de facto* complainant, *inter alia*, would contend that the said text message must have been created by the petitioner for the purpose of the present case and it is too premature to give any credence to such a message now introduced. Even concerning the

complaint lodged against the *de facto* complainant, it is their submission that there is nothing forthcoming whether any FIR was registered, and, if so, the penal provision and the offence alleged against the *de facto* complainant said to have committed.

47. It would be appropriate to mention at this stage itself that in an application for grant of bail or cancellation of bail order already granted, it is premature to draw inferences or probabilities in favour of one party and against the other, more particularly, unless the genuinity of the text message is established and the contents of the complaint dated 29.03.2016, said to have lodged by the petitioner. Further, the text message refers to relationship. Whether such a relationship did exist or not is a question, which can be answered only after a full-fledged trial takes place, in case the FIR leads to laying charge against the petitioner. When the text message and the complaint are excluded from the purview of examination, at this stage, in deciding whether the bail order can be cancelled or not, the other probability as to inordinate delay in lodging the complaint on which the petitioner is heavily resting can only be appreciated on completion of trial.

48. In order to support his submission that none of the grounds for cancellation of bail are occurring in the present case, the learned senior counsel relies on the observations in paragraph Nos.10 and 11 made by the Hon'ble Supreme Court in **Puran**¹³. While expressing that the concept of setting aside the unjustified illegal order or perverse order is totally different from the concept of cancelling the

bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation, the Hon'ble Supreme Court extracted the expression in **Gurucharan Singh v. State (Delhi Administration)**²³ in answering the submission of the learned counsel that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed, placing reliance in **Dolat Ram**². The Hon'ble Supreme Court observed in paragraph Nos.10 and 11 thus:

“10. Mr Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of *Dolat Ram v. State of Haryana* [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] . In this case it has been held that 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. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this Court has clarified that these instances are 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

²³ (1978) 1 SCC 118 = AIR 1978 SC 179

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 must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] . In that case the Court observed as under: (SCC p. 124, para 16)

“If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.”

49. The learned senior counsel while submitting that the learned IV-Additional Metropolitan Sessions Judge, Ranga Reddy District, while granting bail to the petitioner in Criminal M.P. No.262 of 2017 made a passing reference to one of the grounds for consideration of bail as referred in the judgment of the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre¹** and reliance on the observations in paragraph No.109, thus:

“109. A good deal of misunderstanding with regard to the ambit and scope of Section 438 CrPC could have been avoided in case the Constitution Bench decision of this Court in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] was correctly understood, appreciated and applied. This Court in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] laid down the following principles with regard to anticipatory bail:

(a) Section 438(1) is to be interpreted in the light of Article 21 of the Constitution of India.

(b) Filing of FIR is not a condition precedent to exercise of power under Section 438.

(c) Order under Section 438 would not affect the right of police to conduct investigation.

(d) Conditions mentioned in Section 437 cannot be read into Section 438.

(e) Although the power to release on anticipatory bail can be described as of an “extraordinary” character this would “not justify the conclusion that the power must be exercised in exceptional cases only”. Powers are

discretionary to be exercised in the light of the circumstances of each case.

(f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such an interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.”

50. In the context of the scope of power as to cancellation of bail by the Court which granted bail is not available as it amounts to review, the learned senior counsel places reliance in **Abdul Basit**³. The question before the Hon’ble Supreme Court was whether the exercise of jurisdiction by the High Court under Section 439 (2) of the Code is justified in that case. The learned counsel places reliance on the observations made by the Hon’ble Supreme Court in paragraph-26 thus:

“26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. 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. Even in the light of fact of misrepresentation by the

petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.”

A distinction is made by the Hon’ble Supreme Court between review/recall/quashment of bail order from cancellation of bail order.

51. In **Bhadresh Bipinbhai Sheth**⁴ the Hon’ble Supreme Court advertng to core issue therein, whether in the circumstances of the case the appellant was entitled to anticipatory bail or not, and, whether the High Court was justified in cancelling the anticipatory bail, held in paragraphs-14.1, 15, 17, 18, 21, 24, 25.3, 25.4, 25.5, 25.6, 25.10 and 26 on which the learned senior counsel places reliance. It would be appropriate to extract the expression of the Hon’ble Supreme Court, thus:

“14. The prosecutrix appeared in person and argued her case. She extensively took us through the counter-affidavit filed by her in opposition to the present proceedings on the basis of which she hammered the following aspects:

14.1. The prosecutrix was harassed by the appellant. The first act of sexual intercourse was against her wishes and was clearly a rape. After committing this rape, the appellant threatened her and started blackmailing her. On that basis, he took undue advantage of the hapless condition of the prosecutrix in which she was placed and committed subsequent acts of intercourse against her wishes which were nothing but commission of offences under Section 376 IPC.

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15. Ms Hemantika Wahi, learned counsel appearing for the State, supported the plea of the prosecutrix. Her submission was that once the charge under Section 376 IPC has been added which was a serious charge and the offence being non-bailable, the proper course of action was to direct the appellant to surrender before the trial court and apply for regular bail. Her submission was that having regard to the seriousness of this charge, it was not a case of anticipatory bail.

17. In the first place, it is necessary to remind ourselves that in the present proceedings, this Court is concerned not about the feasibility of framing of the charge under Section 376 IPC or merit thereof but to the grant of anticipatory bail to the appellant. Therefore, the arguments of the prosecutrix that such a charge is rightly framed and the submissions on behalf of the appellant attempting to find the loopholes and the weakness in the prosecution case, would not be of much relevance to the issue involved. At this stage, it cannot be said as to whether there was any physical relationship between the appellant and the prosecutrix and, if so, whether it was consensual and, therefore, no charge of rape was made out. The fact remains that a charge of rape has been framed. It would ultimately be for the trial court to arrive at the findings as to whether such a charge stands proved or not, on the basis of evidence that would be produced by the prosecution in support of this charge. With these preliminary remarks, we advert to the core issue, namely, whether in the circumstances of this case, the appellant was entitled to anticipatory bail or not and whether the High Court was justified in cancelling the anticipatory bail.

18. For this purpose, we would first highlight the admitted position which runs as follows: the allegations of rape go back to the years 1997-1998. No doubt, in the statement dated 19-3-2001 given to NGO Jyoti Sangh by the prosecutrix,

she had levelled the allegations of rape. Equally, no doubt, she had repeated these allegations in her complaint to ACP on 29-5-2001 as well. However, for some curious reasons, the allegations of rape did not find mention in her statement recorded by the IO on 31-5-2001 on the basis of which an FIR was registered. This possibility cannot be ruled out that the IO did not record the statement correctly and intentionally omitted to mention about the allegations of rape. Whether this, in fact, happened would be tested during the trial. However, the fact remains that when the FIR was registered on the basis of the statement recorded on 31-5-2001 and the charge-sheet was filed making out a prima facie case only under Section 506 Part II IPC, the prosecutrix did not say anything at that time. There was no protest even when charge was framed by the Magistrate concerned only under Section 506 Part II IPC. The objection in this regard was raised for the first time in the year 2008 i.e. almost 7 years after the framing of the charge and application was filed in the year 2010 for including the charge under Section 376 IPC as well on the ground that her complaint to the ACP given on 29-5-2001 be treated as FIR. The prosecutrix may have valid reasons for this delay. However, it is not for us to go into the same at this stage inasmuch as that is again a matter of trial and it would be for the Sessions Court to ultimately adjudge as to whether such delay was suitably explained and/or has any bearing on the merits of the charge. It is reiterated at the cost of repetition that we have to simply decide the question of feasibility of grant of anticipatory bail.

21. Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench judgment of this Court in *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] . The Constitution Bench in this case emphasised that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of

the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the “touch” or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner: (*Gurbaksh Singh case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] , SCC p. 586, para 26)

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] , that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a

procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

24. Another case to which we would like to refer is the judgment of a Division Bench of this Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] . This case lays down an exhaustive commentary on Section 438 of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in *Gurbaksh Singh case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] . In the very first paragraph, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations: (*Siddharam Satlingappa case* [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , SCC p. 709, para 1)

“1. Leave granted. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.”

25. The principles which can be culled out, for the purposes of the instant case, can be stated as under:

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25.3. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

25.4. There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of **innocence**. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

25.5. The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor, the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The

anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

25.6. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

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25.10. We shall also reproduce para 112 of the judgment in *Siddharam Satlingappa case* [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly

comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

26. Having regard to the facts of this case which have already been highlighted above, we feel that no purpose would be served in compelling the appellant to go behind bars, as an under trial, by refusing the anticipatory bail in respect of alleged incident which is 17 years old and for which the charge is framed only in the year 2014. The investigation is complete and there is no allegation that the appellant may flee the course of justice. The FIR was registered and the trial commenced in the year 2001; albeit with the charge framed under Section 506 Part II IPC, and during all these periods, the appellant has participated in the proceedings. There is no allegation that during this period he had tried to influence the witnesses. In the aforesaid circumstances, even when there is a serious charge levelled against the appellant, that by itself should not be the reason to deny anticipatory bail when the matter is examined keeping in view other factors enumerated above.”

52. In the context of the allegation of threat to witnesses should not be utilized as ground for cancellation of bail routinely cautioning the courts, the observations of the Hon'ble Supreme Court in paragraph-11 in **Mehboob Dawood Shaikh**⁵ are thus:

“11. Learned counsel for the appellant is correct on principles that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped in the bud and an irretrievable stage is not reached.”

53. The approach to be followed in an application for cancellation of bail by the High Court is emphasized by the Hon'ble Supreme Court in **Samarendra Nath Bhattacharjee**⁶. The learned counsel places reliance on paragraphs-6 and 13 thus:

“6. Being aggrieved by the order of granting bail to the appellant, the complainant moved an application purporting to be under Section 439(2) read with Section 482 CrPC before the High Court at Calcutta for cancellation of bail. In the said application it was contended at para 8 of the petition that the appellant was regularly threatening through unidentified persons the members of the family of the complainant and forcing them to withdraw the complaint failing which the

complainant and her family members would be abducted and even murdered.

13. This finding, in our opinion, could be construed as a finding accepting the allegation of the complainant which might prejudice the case of the defence, at any rate these findings are unnecessary while considering a petition for cancellation of bail. That apart, since the only ground on which the cancellation could have been ordered being the ground of intimidation which, in our opinion, is not satisfactorily proved, the High Court erred in cancelling the bail granted to the appellant.”

54. The learned Additional Public Prosecutor, on the other hand, would strongly resist the request herein contending that there is no legal infirmity in the order passed by the learned IV-Additional Metropolitan Sessions Judge, Rangareddy District at L.B. Nagar, in cancelling the order granting anticipatory bail to the petitioner for the reasons that there has been deliberate suppression of his involvement in earlier criminal proceedings which was of a serious nature and well known ‘2G case’ still pending and that conduct of the petitioner cannot be ignored and that the same was taken into consideration by the learned IV-Additional Metropolitan Sessions Judge, Rangareddy District at L.B. Nagar in passing the impugned order herein. The submission of the learned Additional Public Prosecutor is that the fact-situation herein warranting custodial interrogation of the petitioner is necessary as nude photos taken by the petitioner are to be confronted by the investigating agency during interrogation and that

the petitioner never made himself available to the investigating agency to face the interrogation.

55. Concerning the delay, on which much emphasis is laid by the learned counsel for the petitioner, the learned Additional Public Prosecutor would reply that the *de facto* complainant was subjected to such humiliation which placed her under dark and she had to overcome the shock and then only she lodged the complaint. It is also his submission in case the allegation is sexual abuse, delay cannot be given any importance and requires intrinsic approach as to the reasons why the delay in lodging the complaint did occur. Incidentally, he would also submit that it is a heinous crime and social stigma is attached, and, therefore, the delay occurred in lodging the complaint cannot be a ground to view the complaint with suspicion at this stage.

56. The learned Additional Public Prosecutor would also submit that the petitioner's presence is required to subject him to potency test.

These have been the submissions made by the learned Additional Public Prosecutor.

57. He places reliance in **Ratheesh**⁸, where the petitioner raped his cousin, PW.1, on 20.10.2002 and thereafter promised to marry her and said to have had sexual intercourse on three subsequent occasions as well on the promise to marry and PW.1 was later on found to be pregnant and has since delivered a child, the petitioner

refused to marry her and that lead to her lodging a complaint against him for the offences punishable under Sections 376 and 417 of the Code. The Hon'ble Apex Court refused to interfere with the conviction recorded, sentence of imprisonment and fine imposed as the three Courts have already gone into the evidence on record and arrived at a conclusion, which the Hon'ble Apex Court did not find to be perverse. The learned Additional Public Prosecutor only with a view to refer the alike fact-situation relied on the present ruling.

58. In **Surender Kumar Joshi**⁹, a learned Single Judge of this Court, while referring to the settled principles with regard to cancellation of bail advertent to that where certain facts which were not known to the investigating agency earlier have come to light during the course of investigation, a subsequent turn of events also may be a ground for cancellation of bail, observed in paragraph Nos.19, 20 & 21 thus:

“19. The law with regard to cancellation of bail has been well settled. The bail already granted can be cancelled when (i) where the accused misuses his liberty after release by indulging in any criminal act; (ii) interferes with the investigation; (iii) attempts to tamper with evidence or witnesses; (iv) threatens the witnesses or indulges in similar activities which would hamper further investigation; (v) where there is likelihood of the accused fleeing away from justice; and (vi) where full particulars have not been placed before the Court at the time of hearing bail application i.e., where the Court was misled due to suppression of material facts while granting bail.

20. Another important circumstance is where certain facts which were not known to the investigation agency earlier have come to light during the course of investigation, the subsequent

turn of events also may be grounds for cancellation of bail. A situation may arise where grave offence other than that alleged in the FIR is subsequently made out. For example, where the accused is granted bail when a case is registered against him for the offence punishable under Section 324 or 326 IPC, but subsequently the section of law is altered to Section 302 IPC after the death of the injured; or where a case is registered against the accused for the offence of kidnapping and he was granted bail, but during the course of investigation it came to light that the victim was wrongfully confined and raped. A situation may arise where during the course of investigation, specific overt acts attracting more serious nature of offence or criminal conspiracy to commit a major offence, though not referred in FIR or initial investigation, may surface and there may be reasonable grounds to believe those allegations. Thus, where in a case during the course of investigation, certain new facts have come to surface which were not available to the Court as on the date of granting bail to the accused, the prosecution may bring those new facts to the notice of the Court for cancellation of the bail granted earlier. Where it is alleged that the accused, who was earlier granted bail has received a major portion of stolen property or is in possession of the huge amount or gold, which is the subject matter of the crime or any incriminating material is in possession of the accused which was not known to the investigating agency as on the date of granting bail, then the prosecution may bring these facts to the notice of the Court. Thus, during the cause of investigation, it may be found that the accused has played key role in the commission of offence or the valuable property may be in his possession. However, the possibility of making false allegations only with a view to see that the bail granted to the accused is cancelled cannot be ruled out. Therefore, the Court has to carefully consider all the facts and circumstances of the case. Unless it appears to the Court that there is some basis, i.e., material to believe those allegations, the Court should be slow in disturbing the earlier order of bail or anticipatory bail. There must be some basis, i.e., some evidence, i.e., reasonable grounds to substantiate the allegations. The Courts must come

to a conclusion that cancellation of bail is necessary in the facts and circumstances of the case in the interest of justice and for fair conclusion of the investigation to unearth all the facts or the dimensions of the crime. In some cases, the arrest of the accused may become necessary to ascertain the facts or to recover the valuable property or incriminating material. Order granting anticipatory bail should not hamper the further investigation. Therefore, there is no difficulty to reconsider the order of anticipatory bail with the help of the material subsequently placed before the Court. There is nothing wrong in reconsidering the order of granting bail or anticipatory bail when certain new facts have been brought to the notice of the Court. But, however, the Court must not cancel the bail in routine manner. The Court must be satisfied that in view of the allegations made and the material placed before the Court, it is necessary to cancel the bail.

21. Having given serious consideration to the rival contentions in this case and having gone through all the material papers filed by both the parties, it appears that at this stage, the material placed by the prosecution may not be sufficient to substantiate the allegation that J.Aruna Reddy (A-1) induced K.Sanjeeva Reddy and N.Sreedhar Reddy to sell their lands or that the respondents are parties to the criminal conspiracy to eliminate K.Sanjeeva Reddy and thereby to cancel the anticipatory bail granted earlier to the respondents on those allegations. However, I am convinced that the prosecution has brought certain important new facts to the notice of this Court and it is specifically alleged that the first respondent got released the gold ornaments of A-1 from Muthoot Finance, Clock Tower branch, Secunderabad, by paying huge amount of Rs.60 lakhs with interest. Of course, this allegation is denied by the first respondent. But it appears that the records of Muthoot Finance, Clock Tower branch, Secunderabad, may substantiate the same. Moreover, a senior officer of the cadre of Assistant Commissioner of Police has made this allegation which gives an impression that the first respondent played a major role in this crime and may be in hand-in-glove with A-1 in cheating the innocent public. In the affidavit filed by the Assistant

Commissioner of Police, it is specifically alleged that the first respondent (A-10) is a strong supporter of A-1 and encouraged her illegal activities and cheating, who collected huge amounts from innocent public. Thus, it appears that the case of the first respondent can be separated from the case of the second respondent, since the nature and seriousness of the allegations made against both of them are differing. It is not in dispute that these aspects were not brought to the notice of this Court while passing orders on 18.08.2013. In the circumstances, it appears that the anticipatory bail granted to the first respondent herein has to be cancelled to enable the investigating agency to do effective and complete investigation. Accordingly, this criminal petition is allowed in part and the anticipatory bail granted to the first respondent by this Court by order dated 18.08.2013 passed in Criminal Petition No.8230 of 2013 is cancelled. The petition, insofar it relates to the second respondent, stands dismissed.”

59. In **Sudhir**¹⁰, while affirming the order passed by the High Court canceling the anticipatory bail granted by the Additional Sessions Judge, Jalgaon, restating the principle laid down in **Siddharam Satlingappa Mhetre**¹, the Hon’ble Apex Court held in paragraph Nos.11, 12 and 13 thus:

“11. In **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** [(2011) 1 SCC 694], in sub-para (viii) of para 112, this Court has held as under:

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused:

12. In **Bhadresh Bipinbhai Sheth v. State of Gujarat and Anr.** [2015 (9) SCALE 403], laying down the principles

regarding cancellation of anticipatory bail in sub paras (vi) and (ix) of para 23, this Court has observed as under:

(vi) It is a settled legal position that the Court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

xxx

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

13. Having considered the submissions made by learned Counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the Appellants and the fact that the investigation is held up as the custodial interrogation of the Appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the Appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same.”

Thus, it is clear that the learned Sessions Judge has power to entertain the petition for cancellation of anticipatory bail granted by him. Therefore, the submission of the learned senior counsel questioning

the power exercised by the learned Sessions Judge in cancelling the anticipatory bail granted by him is unacceptable.

60. In **Rajballav Prasad**¹¹, Hon'ble Supreme Court in the context of setting aside the order granting bail by the High Court held in paragraph Nos.29 & 30 thus:

“29. No doubt, the prosecutrix has already been examined. However, few other material witnesses, including father and sister of the prosecutrix, have yet to be examined. As per the records, threats were extended to the prosecutrix as well as her family members. Therefore, we feel that the High Court should not have granted bail to the respondent ignoring all the material and substantial aspects pointed out by us, which were the relevant considerations.

30. For the foregoing reasons, we allow this appeal thereby setting aside the order [*Rajballav Prasad v. State of Bihar*, 2016 SCC OnLine Pat 5639] of the High Court. In case the respondent is already released, he shall surrender and/or taken into custody forthwith. In case he is still in jail, he will continue to remain in jail as a consequence of this judgment.”

61. As to *locus standi* of the *de facto* complainant to question the anticipatory bail granted and to resist the present request made by the petitioner for quashment of cancellation of bail order granted, the learned counsel for the *de facto* complainant places reliance in **C.S.Y. Sankar Rao**¹⁵ wherein a learned Single Judge of this Court held that there is no specific bar in hearing the *de facto* complainant or the victim at the stage of considering application for bail or

cancellation of bail granted. The learned Single Judge observed so in the context of dealing with an application for impleadment of the *de facto* complainant in an application for cancellation of bail.

62. The learned counsel also places reliance in **J.K. International**¹² wherein the Hon'ble Supreme Court declared that in a quash petition, complainant at whose behest the proceedings were initiated, must on his request be permitted by the court to be heard before the proceedings are quashed. The offences alleged against the appellant therein were punishable under Sections 190, 301, 302 and 225 of I.P.C. The Hon'ble Supreme Court declared that fact of cognizance was taken is no bar to complainant's continued participation in the criminal proceedings initiated by him.

63. The learned counsel also places reliance in **Mr. Tejas Udaykumar Sarvaiya v. The State of Maharashtra** (Anticipatory Bail Application No.105 of 2016) for the settled proposition of law that a consent which is obtained by fraud or coercion, is not a consent and if a woman is put to a threat of killing her family or causing injury to her and then agrees to have sexual intercourse, then, it is coercion, and so also if a man suppressing a fact of previous marriage, promises a woman to marry her, and then she agrees to have sexual intercourse with him, then that can be consent obtained by fraud and in such cases though, it is a consensual sexual intercourse, it is a rape under Section 376 of the Indian Penal Code.

64. The ancillary ground raised by the learned senior counsel touching the conduct of the *de facto* complainant referring to the details hereinbefore that the allegations in the complaint are mutually contradictory, there has been inordinate delay in lodging the FIR and that the allegations have been levelled with a view to extort money from the petitioner starting from initially befriending the family members of the petitioner, designedly acting to seek active help of the petitioner for advancement of her career in films and when the same did not materialize, embarking upon a calculated plan to make an unjust gain from the petitioner resorting to series of acts and failing in her attempts, sending false messages to the family members of the petitioner, initially apologizing from her 'WhatsApp message' dated 04.03.2016, reviving her attempts to extract monetary gain would all relate to merits of the case, if the investigation reaches to charge. At this stage, they cannot be deliberated whether there was any physical relationship between the petitioner and the *de facto* complainant and if so, whether it was consensual, are all the facts, require a probe, ultimately to be done by the trial Court to arrive at the findings thereon and therefore, unnecessary to examine them at this stage.

65. The learned senior counsel, no doubt, would support his argument by advancing the submission that since exercise of extraordinary power is sought by invoking the provisions of Section 482 of the Code, there is no bar for this Court even to

examine the allegations in the complaint and the material placed intrinsically and record findings.

66. The complaint allegations have been extracted in the above in toto. The purpose of extracting the allegations is only to understand the background and to see whether they would render any assistance to support the stand taken by the *de facto* complainant even in an application for cancellation of anticipatory bail granted.

67. A perusal of the averments made in the affidavit filed by respondent No.1, which were referred to in the order under challenge, would show that the Investigating Officer, in his further investigation, recorded the statements of the relevant witnesses having collected the information, regarding tickets and travel made by the petitioner and the *de facto* complainant and found material that the statements of the drivers would show that they picked the *de facto* complainant from the airport and dropped her at Sitara Hotel, Ramoji Film City, and incorporated in Part - II Case Diary with all relevant details. Thereafter, the Investigating Officer expressed that the presence of the petitioner is required for potency test since the allegations relate to commission of rape by the petitioner basing on the call detail records which even at this stage *prima facie* establish that the petitioner and the *de facto* complainant stayed together in Ramoji Film City. In the said context, it is necessary to refer to the submissions made by the learned senior counsel, based on the alleged 'WhatsApp messages' dated 04.03.2016 and other 'SMS' messages said to have been sent by

the *de facto* complainant dated 05.04.2016 and during the period from July, 2015 to April 2016, which were annexed to the petition filed by the petitioner in Criminal M.P. No.262 of 2017 filed under Section 438 of the Code seeking anticipatory bail.

68. The truth or otherwise of the said messages can only be gone into and appreciated during trial, if investigation culminates into laying charge and taking cognizance for the offences by the Court. Further, the 'SMS' messages and 'WhatsApp Messages' to be acted upon even at this stage, a certificate as required under Section 65B(4) of the Evidence Act, 1872, is absolutely indispensable. Thus, the submissions made in regard to inordinate delay in lodging the complaint, the submission to view the complaint with suspicion on the ground that the allegations made by the *de facto* complainant are mutually contradictory and the complaint is motivated to extract money from the petitioner as the *de facto* complainant failed in her attempts to get assistance from the petitioner to gain entry into Indian Film Industry, are all difficult to examine at this stage.

69. Touching the second ground that the learned Metropolitan Sessions Judge has not properly appreciated the fact of non-mentioning of petitioner's involvement in 2G Spectrum Case, since according to learned senior counsel, there was no deliberate intention on the part of the petitioner to suppress the fact of him being an accused in 2G Spectrum's case trial as he was under the *bona fide* belief that the same was not relevant since trial has been going on for

more than five years in the said case and, therefore, he did not seek advantage of the redeeming facts that he was allowed to travel abroad several times during the course of trial with the permission of the Court which could have been weighed down appropriately. His submission is that the order granting bail by the very same learned Metropolitan Sessions Judge shows that while considering grant of bail to the petitioner made passing reference to one of the grounds for consideration of bail as referred by the Hon'ble Apex Court in **Siddharam Satlingappa Mhetre¹**.

70. The learned senior counsel has drawn attention to the observation made in paragraph No.5 relating to non-mentioning of petitioner's involvement in 2G Spectrum's case in C.C. No.1 of 2011. The relevant observations in paragraph No.5 are thus:

“5. **Point:** Though there is no reference to such criminal case, but it cannot be said that the said fact is suppressed wantonly and as rightly contended by the learned counsel for the respondent/accused it cannot be said it is intentionally suppressed. However, the said aspect is not stated in the petition. Though the anticipatory bail granted to the accused was not only on this ground, but also on some other grounds, but this court feels that the accused should have mentioned the said fact before the court.”

71. Referring to the said observations, the learned senior counsel would contend that the learned Sessions Judge felt, the failure to mention involvement of the petitioner in to 2G Spectrum's case

was unintentional and, therefore, the learned Sessions Judge was not right in ordering cancellation of the bail granted.

72. But, the learned Additional Public Prosecutor and the learned counsel for the *de facto* complainant would lay emphasis on the last two sentences of the afore-extracted portion. Their common submission has been that the learned Sessions Judge specifically observed that involvement of the petitioner in 2G Spectrum's case is not stated in the petition and the anticipatory bail granted to him was though, not only on some other grounds, but also the said ground, would make it abundantly clear that one of the criteria for granting anticipatory bail to the petitioner was conspicuous absence of petitioner's involvement in any other criminal cases. Per contra, the learned senior counsel while contending that the last two sentences of the last portion would show that the learned Sessions Judge arrived at the opinion that the petitioner should have mentioned the said fact in the anticipatory bail application and nothing more and it was only an information without any consequence attached thereto in cancellation of anticipatory bail granted in view of the fact that the learned Sessions Judge in the first sentence of the afore-extracted portion expressed that he was agreeing with the submission made by the learned counsel for the petitioner hereinbefore and non-mentioning of involvement of the petitioner in 2G Spectrum's case was not deliberate suppression.

73. It is true, even a cursory glance at the afore-extracted portion would reflect that the learned Sessions Judge was not making any definite observation, but, somehow, it appears that he was making such observations, perhaps, without either anticipating or visualizing the consequences thereof that it would give rise to two different interpretations, one, in favour of the petitioner and the other, in favour of the *de facto* complainant which they intend to take complete advantage thereof. But, one thing is certain that the observations made by the learned Sessions Judge clearly connote that while granting anticipatory bail to the petitioner, non-mentioning of his involvement in any criminal cases, was one of the grounds amongst other grounds considered, which cannot be sidelined. Therefore, it is difficult to agree with the submission of the learned senior counsel that failure to mention involvement of the petitioner in 2G Spectrum's case is of any consequence and it cannot be viewed as a ground to cancel the anticipatory bail granted. It is pertinent to observe that when the 2G Spectrum's case was going on for about five years preceding presentation of the petition for grant of anticipatory bail, it cannot be said, by any stretch of imagination, that the petitioner, if, a man of ordinary prudence, would not have failed to mention his involvement in 2G Spectrum's case in his petition for grant of anticipatory bail. The ground now taken by the petitioner to overcome the said hurdle that he was under the *bona fide* belief that his involvement in 2G Spectrum's trial was not relevant since the trial

has been going on for more than five years is nothing but a lame excuse pleaded by him.

74. Had the petitioner did mention his involvement in 2G Spectrum's case in C.C. No.1 of 2011, in his petition for grant of anticipatory bail, it cannot be ruled out that the learned Sessions Judge would have had a chance to pass a different order. It is no doubt true, he was not imprisoned on conviction, but it is true, that he was imprisoned by way of judicial remand in the said case. This apart, the order dated 30.01.2017 in Criminal M.P. No.262 of 2017 granting bail to the petitioner would clearly reflect that the learned Sessions Judge recorded that the petitioner has no record of previous imprisonment or conviction or chance of fleeing from justice or that there is likelihood of committing similar type of offences or that he has committed any offence. Therefore, failure to mention his involvement in 2G Spectrum's case in the petition cannot be said that it was immaterial without vital significance when viewed the consequences that flow. This observation is so made since the present application is laid under Section 482 of the Code.

75. The scope and ambit of anticipatory bail explained by the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre**¹ was referred to in the above by extracting paragraph No.109. In paragraph No.111, the Hon'ble Supreme Court ruled that no inflexible guidelines or straightjacket formula can be provided for grant or refusal of anticipatory bail in the context of laying down the relevant

consideration for exercising the power under Section 438 of the Code.

Some of the factors and parameters that can be taken into consideration by dealing with anticipatory bail have been laid down in paragraph Nos.112 and 113. It would be appropriate to extract the same which are thus:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or other offences;
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

Parameter 'v', referred to above, was relied on by the learned senior counsel referring to the complaint lodged by the petitioner with the Station House Officer, Juhu Police Station, Mumbai, and the 'WhatsApp messages' said to have sent by the *de facto* complainant. While referring to 'WhatsApp messages' hereinbefore, it is observed that the truth or genuinity thereof can only be gone into during trial and it would be premature to rely on 'WhatsApp messages' in an application of the present nature as the investigation was at its inceptive stage when the application for cancellation of bail was

moved. Therefore, this decision is of any assistance to the petitioner in granting his request in the present application.

76. Turning to the submissions of the learned senior counsel that the learned Sessions Judge went wrong in viewing that the Investigating Officer sought custodial interrogation of the petitioner though, that was not the ground stated in the application for cancellation of bail and the ground agitated by the Investigating Officer was only to the extent of requiring the presence of the petitioner for undergoing a potency test. His submission has been that there was no notice caused on the petitioner at any point of time and, thus, there was no occasion for him to appear before the Investigating Officer and the very fact that he has sent message (SMS) to the Investigating Officer soon after he learnt through the media that the present crime was registered against him on the complaint of the *de facto* complainant, is sufficient to arrive at that he was always ready to cooperate with the investigating agency and, therefore, the learned Sessions Judge was not right in acceding to the request of the State as well as the *de facto* complainant and cancelling the anticipatory bail granted without there being any supervening circumstance.

77. In reply, the learned Additional Public Prosecutor and the learned counsel for the *de facto* complainant would contend that it is not as though, that only for potency test the petitioner's presence is required, but, certain obscene photographs said to have taken by the petitioner are required to be unearthed and the material that was

collected by examination of the witnesses, such as drivers of the cabs who have taken the *de facto* complainant and dropped her at 'Sitara Hotel' and the travel tickets, are all required to be put to the petitioner. It is true, in the petition for cancellation of bail the 1st respondent did not expressly make an averment to the effect that custodial interrogation of the petitioner was required and that on that basis, cancellation was sought. But, though, it was not directly stated, the very fact that the petitioner's presence is required for undergoing potency test associated with interrogation for the purposes aforementioned would all indicate that the investigating officer intended to interrogate the petitioner; what was weighed with the learned Sessions Judge was even for conducting potency test, custody of the petitioner was required and, therefore, the learned Sessions Judge taken the custodial interrogation as one of the grounds for cancellation of anticipatory bail. Certainly, it cannot be said that the said view expressed by the learned Sessions Judge is tainted with utter perversity to entitle the petitioner herein for quashment of the order under challenge herein.

78. Thus, viewed from any angle, the request to quash the order cancelling the anticipatory bail granted to the petitioner by the learned Sessions Judge cannot be acceded to in view of the foregoing account. Therefore, the present Criminal Petition is dismissed rejecting the request sought for by the petitioner. Consequently, the order dated 22.03.2017 passed by this Court in the present Criminal

Petition, staying the order under challenge shall stand vacated. Hence, the petitioner is directed to surrender before the Investigating Officer in Crime No.33 of 2017 of Hayathnagar Police Station, on or before 22.09.2017, failing which, the Investigating Officer shall proceed in accordance with law. It is made clear that the Investigating Officer shall proceed with the investigation independently uninfluenced by any of the observations made hereinabove.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand disposed of.

A. SHANKAR NARAYANA, J

September 5, 2017.

Note:

Furnish C.C. of Order by tomorrow
(B/O.) GBS/PV

