

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1266 of 2018**

- Bhuvneshwar Gan S/o Mohitram Gan Aged About 32 Years R/o Village- Karhi, Police Station- Bemetara, Civil And Revenue District- Bemetara, Chhattisgarh. (Because The Victim Is Minor, Hence She Is Preferred The Instant Cancellation Of Bail Application Through Her Natural Guardian Father), District : Bemetara, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through The Police Station- Bemetara, District- Bemetara, Chhattisgarh.,
- Amarchand Gayakwad S/o Shatruhan Gayakwad Aged About 32 Years R/o Village- Karhi, Police Station And Tahsil- Bemetara, District- Bemetara, Chhattisgarh.,

---- Respondent

For Applicant : Shri Kalpesh Ruparel, Advocate
 For Respondent No.1/State : Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****23/07/2019**

This revision has been filed against the order dated 25.8.18 passed by the learned Special Judge (POCSO), Bemetara whereby the learned court below has dismissed the application filed under Section 439 (2) Cr.P.C. for cancellation of bail dated 19.0318.

2. Before the trial court, charge sheet was filed against respondent No.2 under Section 354 IPC and Section 8 of the POCSO Act. Learned trial court on 19.3.18 allowed the bail application of

respondent No.2 and released him on bail.

3. Applicant is the father of victim (prosecutrix). He filed application under Section 439(2) Cr.P.C. seeking cancellation of bail of respondent No.2 on 23.4.18. Learned trial court after hearing both the parties, dismissed the application of the applicant vide order dated 25.8.18. Hence, this revision.

4. Learned counsel for the applicant submits that the order passed by the learned trial court is illegal because while deciding the bail application of the respondent No.2, no opportunity was given to the State counsel. The case diary was called on the same day in the early morning and no opportunity to prepare the case was granted to the State counsel. Learned court below, while on such serious allegation, granted bail casually on the allegation under Section 354 IPC and Section 8 of the POCSO Act. These type of cases against a girl/women are increasing day by day because they are very well aware that in such offences they get anticipatory bail and if they are not granted anticipatory bail they surrender and apply for regular bail which is also granted on the same day.

5. He further submits that the court below while granting bail to the respondent No.2 has not applied its mind and did not consider the case on merit. The Apex Court in the matter of **Madan Mohan Vs. The State of Rajasthan** passed in Cr.A. No. 2178 of 2017 arising out of SLP CrI. No. 8030 of 2017, has held that :

“15. Second and more importantly was that the Single Judge grossly erred in giving direction to the Sessions Judge to consider the bail application of

respondents No. 2 and 3 and allow it on the same day.

16. In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to “allow” the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions judge to decide except to follow the directions of the High Court and grant bail to respondents No.2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.

6. The High Court has no jurisdiction to direct the Sessions Judge to allow the application for grant of bail and no such direction had been issued by the high court then what was left for the Sessions Judge to decide except to follow the direction of the High Court and grant bail to respondents 2 & 3 and therefore, the present revision may be allowed.

7. On the other hand, State counsel supported the order impugned.

8. Heard counsel for the parties and perused the records.

9. After going through the records, it is clear from the order dated 19.03.18, that the High Court had given some direction and according to which, learned trial court decided the bail application of respondent No.2 and granted him bail. Applicant's main grievance is that accused/respondent No.2 surrendered on the same day and the court

has granted bail on that day itself.

10. For considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, then his bail may be cancelled even if he has not misused the bail granted to him. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no conducive to a fair trial to allow the accused to retain his freedom during the trial. There is no absolute rule that once bail is granted to the accused, then it can be canceled only if there is likelihood that he/she will misuse the bail. Not only this factor but several other factors also have to be taken into consideration while deciding to cancel the bail.

11. Learned trial court, after considering all the aspects of the case in detail, has granted bail and there is no ground as such, for cancellation of bail. Hence, the court rejected the application of the applicant under Section 439(2) Cr.P.C. The trial court granted bail vide order dated 19.03.18 and has not committed any error. I do not find any merit in this revision and this revision deserves only to be dismissed.

Sd/-
(Rajani Dubey)
Judge

