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Crl.M.P.No.4953 of 2022
in Crl.O.P.No.22659 of 2021

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RESERVED ON : 20.07.2022

PRONOUNCED ON : 23.08.2022

T.V.THAMILSELVI, J.

The State represented by the Assistant Commissioner of Police, Kotturpuram Range, Kotturpuram, Chennai, filed this application for cancellation of the anticipatory bail granted in favour of the respondent / Accused (A1) and the same was contested by him. The case of the prosecution is that initially a complaint was registered in CSR No.52 of 2021 dated 29.03.2021. Based upon that FIR was lodged in Crime No.4 of 2021 under Section 354, 354 (B), 354 (C) & 506 (i) IPC on 09.06.2022 altered to under Section 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST (POA) Act, 1989 on 26.03.2022 against nine accused.



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2. The case of the prosecution is that the defacto complainant / victim, aged about 30 years was a Ph.D., student in the department of Chemistry in IIT, Madras. She has joined in IIT on 14th July, 2016 and she was subject to harassment sexually, physically and mentally at the hands of the accused since past five years till date. The victim stated that she came into contact with A-1 accused Mr.Kingshuk Debsharma who was originated from West Bengal and spoke with her in Bengali. Subhadeep Banerjee / A2 used to pass sarcastic remarks against her and she came to know A1 & A2 were close friends. In spite of her warning A1 tried to sexually advance towards her. However, he expressed regrets over the incident later. In the year 2018, Dr.Ravindran / A4 had arranged a Coorg tour where Krishna Mahato / A3 restrained the victim in a room in the presence of A1 and A1 also sexually harassed her and A4 in mastermind and he started to damage her character by sending messages. In the year 2019, A1 tortured the victim by pulling her top and she was blackmailed by A1 to come nude in Whatsapp Video Call. She admitted to have given a complaint but it ended in vain. She was being blackmailed by the accused by using her photo and hence, the complaint.



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3.The petitioner submits that based upon the earlier complaint FIR was lodged under Section 354, 354 (B), 354 (C) & 506 (i) IPC. This Court granted anticipatory bail in Crl.O.P.No.22659 of 2021 dated 06.12.2021 in favour of the A1/respondent with certain conditions. The Para No.6 of the order is extracted hereunder :

"6.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned XVIII, Metropolitan Magistrate, Saidapet, Chennai, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, out of which, one surety shall be a blood surety for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that :

(a) the petitioner is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the Madras High Court Advocate Clerks Welfare Association, Chennai, within a period of two weeks from the date of receipt of a copy of this



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order and shall produce the said receipt before the Court below;

(b) the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(c) the petitioner is directed to report before the respondent police as and when required for investigation;

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial ;

(e) the petitioner shall not abscond either during investigation or trial;

(f) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions has been imposed and the petitioner released on bail by the learned Magistrate / Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560];

(g) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC."



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4.The petitioner also submits that the defacto complainant not whispered anything about her caste and in the due course of investigation, the Sections was altered to 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST (POA) Act, 1989 on 26.03.2022. The respondent/A1 was not complied with the conditions imposed by this court. Under such circumstances, the respondent/A1 was arrested by Special Team of Police headed by Sub Inspector of Police, Mr.Karthikeya Pandiyan and produced before the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24 Parganas District, West Bengal. At the time, the Sub Inspector of Police, Mylapore has filed a petition for transit. On the other hand, bail petition was filed on behalf of the respondent/A1 before the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24 Parganas District, West Bengal, stating that the accused in now ready to furnish bond in terms of the order passed by this Court. Further, bonds were furnished by the registered surety. The learned Additional Chief Judicial Magistrate, Diamond Harbour, West Bengal, has accepted the surety and released the respondent/A1 on 28.03.2022 and hence, the petitioner prayed



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to cancel the bail on the following grounds.

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- (a) The respondent/A1 has not complied with the conditions granted by this Hon'ble Court in Para 6 of the order.
- (b) Further the Section 354, 354(B), 354(C) & 506 (i) IPC in Crime No.4 of 2021 has been altered to 376, 354, 354(b), 354(c), 506(i) IPC r/w. 3(1) (w) of the SC/ST Act, 1989.
- (c) Since Section 3(1) (w) the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 has been registered against the accused, there is specific bar of the application of Section 438 of the Code of Criminal Procedure, 1973 under Section 18 of the SC/ST Act, 1989 may be considered.
- (d) Further prayed that the accused has committed heinous offences against woman belonging to the Scheduled Caste which creates impact on the society at large, his custodial interrogation is necessary to unearth the truth.
- (e) Based upon all these grounds, the petitioner prays to cancel the bail.



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5. Pre contra, the learned counsel for the respondent has filed a counter affidavit and contended that present Investigation Officer Assistant Commissioner of Police, Metro Wing, CBCID, Chennai, has issued 41 (A) notice to him based upon that he appeared before the CBCID and gave entire explanation to the CBCID team and also contended that the allegations levelled against him is highly cooked up and concocted story of the defacto complainant. Further more, the alteration report copy in respect of altered the Sections also not served to him only when the petitioner moved cancellation of bail before this Hon'ble Court, at the time only the petitioner served the copy to his counsel. Further, he also contended that the complaint itself reveals that he has not intentionally insult the defacto complainant but later, in order to harrass him the Section was altered to 376, 354, 354(b), 354(c), 506(i) IPC r/w. Section 3(1) (w) of the SC/ST Act, 1989 and the same is not sustainable in law. Further, after getting the anticipatory bail order the petitioner altered the Section without getting any prior permission from this Hon'ble Court. The petitioner failed to follow the guidelines of the Hon'ble Apex Court in ***"Sushila Aggarwal and Other Vs. State (NCT OF***



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DELHI) and Another". The respondent/petitioner submits that he deposited conditional amount of Rs.10,000/- on 04.01.2022 as he received a bail order copy on 27.12.2021. Due to Christmas vacation after re-opening he deposited amount on 04.01.2022, thereby, he complied condition within two weeks. Hence, it reveals that he has not failed to comply the condition in time as alleged by the petitioner. He further submits that he was arrested by Special Team of Police headed by Sub Inspector of Police, Mr.Karthikeya Pandiyan and produced before the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24 Parganas District, West Bengal for the purpose of to obtain Transit Warrant and clearly indicates that the petitioner and police officials violate the order of Hon'ble High Court in Crl.O.P.No.22659 of 2021, dated 06.12.2021 and thereby they should punish contempt of Court act because the order of Hon'ble High Court clearly indicateds that the respondent herein was ordered to be released on bail in the even of arrest or on my appearance before the learned XVIII, Metropolitan Magistrate, Saidapet, Chennai on condition that the petitioner (respondent herein) shall execute bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties out of which on surety shall be a



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blood surety for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed, there is no time limit stated in the order copy to execute the sureties and the above order clearly shows that the Special Team Officer has power to receive the surety but said Karthikeya Pandiyan has not given any respect to the order of Hon'ble High Court and arrested the petitioner and the police officers were brutally handled the petitioner without giving any respect and removed his clothes in front of his parents and also seized the petitioner cell phone and laptop from the respondent/petitioner which is clearly violation of human rights, in this regard already the respondent/petitioner lodged human rights complaint before the National Human Rights Commission, New Delhi vide Case No.1593/25/19/2022 and the same is still pending. Thus he submits when the anticipatory bail order was passed by this Hon'ble Court, it was not open for either the SHO of the Investigating Officer to keep in the custody of the petitioner. They should obey the directions given otherwise it is amount to contempt. He was produced before the learned Additional Chief Judicial Magistrate, Diamond



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Harbour, South 24 Parganas District, West Bengal, after the perusal of this Hon'ble Court's, anticipatory bail order, the learned Additional Chief Judicial Magistrate, refused to issue Transit Warrant and directed the police to receive the sureties and the same was accepted and the police officer released him and all the records are in the custody of the police officer. Further more, the police officer not raised any objections before the Magistrate at the time of execution of surety and after the execution of surety bond the said police officer received Memo vide No.109/2022, dated 28.03.2022 from the above Court and submitted to the XVIII, Metropolitan Magistrate, Saidapet, Chennai. Apart from that his mobile phone also seized by police without any legality. Suppressing all the fact they approached the Court for cancellation of the bail as such is not maintainable in law. Further he submits that he was joined as a Ph.d. scholar in the year 2016 and almost entire research programme was completed. At this juncture, she gave a false allegations against him. Further, he submits that already IIT formed a Complaint Committee against the sexual harassment and the said committee conclude that the complaint averments are vague, thereafter, she permitted to submit her thesis before the IIT, thereafter, she left the institute, but the



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petitioner and others were not able to complete their programme. He further submits that the complainant not contained any specific valid allegations and it is also false to say that from the year 2017 onwards and she was harassed by this petitioner and others and thereafter, nearly lapse of four years she filed a complaint by getting direction under Section 156 (3) of CRPC before XVIII, Metropolitan Magistrate, Saidapet, Chennai, even in the complaint she has not stated anywhere that he abused the defacto complainant's caste and raped her but later only she developed the case. It is pertinent to mention that same complainant sent one congratulation mail to the respondent dated 07.05.2020 just prior to her alleged complaint to CCASH, where the complainant heartily thanked the petitioner for various academic assistances. It is submitted that the respondent's guide and co guide who are in the FIR also granted bail by this Hon'ble court in Crl.O.P.No.7776 of 2022 dated 20.04.2022 and in that Hon'ble High Court quoted that the lab consisting of many scholars, hence sexual harassment incident couldn't happen in the lab. Further submits that as on day only four persons including the respondent granted anticipatory bail others has not obtained any bail but in this regard the petitioner has not taken any steps on the other



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hand the petitioner police harassed the respondent only without any reason.

The respondent submits that without filing guidelines of the Hon'ble Apex Court the petition as such is not maintainable in law and hence, pray to dismiss the same.

6.It is admitted fact that the respondent was granted anticipatory bail by this Hon'ble Court in Crl.O.P.No.22659 of 2021 for the offences under Sections 354, 354(B), 354(C), 506(i) of IPC on 06.12.2021. Now the contention of the petitioner specifically is that in due course of investigation, they came to know that the defacto complainant is belongs to SCST caste and other incidents reveals that during the course of investigation, the Investigating Officer / petitioner altered the Section to under Sections 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST (POA) Act, 1989. Due to the alteration of the major offences the respondent is charged with offences under Sections 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST (POA) Act, 1989, where the Special Act not provided with the Provisions of Anticipatory Bail and hence, the earlier anticipatory bail order granted in favour of the respondent is not sustainable



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due to alteration of the major offences. That apart, the petitioner also contended that the granting of anticipatory bail order the petitioner was directed to deposit conditional amount of Rs.10,000/- and the same was not complied in time. Accordingly, he prays to cancel the bail granted in favour of the respondent.

7.On perusal of the record, it reveals that the respondent has complied the conditional deposit amount within two weeks from the date of receipt of the order. He received order copy on 27.12.2021 and deposited the amount on 04.01.2022. Due to Christmas vacation after re-opening he deposited that amount. As per the alteration report the respondent was charged under Section 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST Act, 1989. It is true that in the SCST Act the respondent is not provide with remedy for anticipatory bail. But as per the anticipatory bail order granted in the event of arrest he was ordered to release on bail. Accordingly, when the Sub Inspector of Police arrested and produced the respondent before the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24 Parganas District, West Bengal, after perusal of this



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Court order he directed the police to receive the surety. Accordingly, the surety was accepted and he was released. During the course of investigation, if the Sections are altered the respondent ought to be given the notice of alteration report but in this case the respondent/A1 submits that he was not given alteration report at the time of arrest. There is no proof attached on the side of the petitioner with alteration report was served to the accused. Further the Investigating Officer not obtained any permission from this court as per ratio laid down in (2019) 17 SCC 326.

8. Further more, the sexual harassment said to be happened from the year 2016 onwards nearly after four years FIR was lodged so there is a lesser possibility of tampering the evidence. Moreover, the respondent also appeared before CBCID police, the CBCID police issued 41 (A) notice so his conduct reveals that he is co-operating with the investigation. Though the petitioner obtained anticipatory bail order for the lesser offences but due to alteration of major offence the petitioner is not entitled to seek cancellation of the bail, bail is for occurrence not for offence ratio laid down in (2001) SCC CRI 1674 is extracted hereunder :



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“6.9 The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder .”

9.As discussed above, the alleged occurrence was said to be happened in the year 2016, so there is no possibility of tampering the evidence. Further more, under Section SCST Act, there is no provisions for getting anticipatory bail. But on seeing the offence charged under Sections 376, 354, 354 (B), 354 (C) & 506 (i) IPC and Section 3(1) (w) of SC/ST Act, 1989, shall be punishable with imprisonment which shall not be less than six months but it may extend to five years with fine. With regard to offence under Section 376 IPC bail can be cancelled, if the accused triable under Section 376 (A) (B) or Section 376 (D) (A) or Section 376 (D) (B) and in such cases this Court may direct any person who has been released on bail under this chapter arrested and committed him to custody.



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10.In the instant case, the respondent charged under Section 376 IPC, as he already obtained anticipatory bail for other IPC offences, mere alteration of the major offences alone is not sufficient to cancel the bail when the Investigation Officer not able to satisfy the Court that the accused attempted to tamper the evidence.

11.As discussed above, the alleged occurrence starts from the year 2016, as per the complaint, after the lapse of four years FIR was lodged so there is lesser possibility of tampering the evidence. Apart from that the accused appeared before the CBCID police and gave the statement and his conduct reveals that he is co-operating with the investigation.

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Index : Yes / No

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Pre-delivery order in
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