

ARAVIND KUMAR, J.

1. Leave granted.

2. The present appeals by way of special leave arises from the order dated 06.04.2023 passed by the learned Single Judge of the High Court of Judicature at Rajasthan, Jaipur Bench in S.B. Criminal Miscellaneous 2nd Bail Application No.219 of 2023 whereby the applications filed by the first Respondent in the respective appeals under Section 439 of the Code of Criminal Procedure, 1873 (for short 'the Cr.P.C.') has been allowed and have been granted bail on furnishing a personal bond for a sum of Rs.1,00,000/-

(Rupees one lakh only) with two sureties of Rs.50,000/- each for their presence in connection with the FIR No.94 of 2022 registered on the complaint of the appellant by Police Station Mandawar, District Dausa, Rajasthan for the offences punishable under Section 376D, 384, 506 of the Indian Penal Code (for short 'the IPC'), Section 326 of POCSO Act and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC/ST Act) and Section 66 of the Information Technology Act, 2000.

Brief Background:

3. The appellant (original complainant) is the uncle of minor girl got registered an FIR No.94 of 2022 on 25.03.2022 with the jurisdictional police alleging gang rape, threat of making video of rape recorded viral and extortion which came to be registered for the offences punishable under Section 376D, 384 and 506 of the IPC read with Section 326 of POCSO Act and Section 66D of IT Act. The said FIR was registered against Vivek, Deepak and Netram.

4. It is the case of the prosecution that minor girl "XXX" aged 15 years and six months was studying in Class-X had got acquainted with a boy named Vivek and he seduced the minor girl and took her to Samleti Palace Hotel, Mandawar Road, Mahwa on February 24, 2021 and he along with his friends Deepak and Netram gang raped her after drugging and took videos of the incident. It was alleged that all of them had threatened her not to disclose the said incident as otherwise they would eliminate her father and brother make the video viral. It was further alleged in the complaint that accused persons proclaimed and they would not be harmed as they were powerful and as such the minor girl got scared and under the threat of video being circulated, she gave gold ornaments of her mother to said Vivek as instructed by him. It was also alleged that again Vivek had raped her under the threat of video being made viral and was extracting money from her. It was alleged that she was raped 4- 5 times in the same hotel and she became weak and sick. Though enquires were made by her father and mother she had not revealed anything out of fear. It was also alleged that on 2nd May, 2021 the marriage of his elder brother's daughter took place and entire family was busy and at that point of time they forced the minor girl

to permit Vivek and his companions to enter the house by putting pressure on her and the jewellery kept for the marriage was taken away by Vivek and his accomplice. It was alleged in this regard an FIR No.142 of 2021 was registered by the mother of minor girl with the Police Station, Raini. It was alleged that during the course of investigation the accused Vivek was interrogated and he confessed to have taken away the jewellery and thereafter they had continued to threaten the minor girl not to disclose about the rape as otherwise they would destroy her entire family. It is stated that on 24 th March, 2023, the minor girl had disclosed about the incident of 24.02.2021 after much persuasion and as such complainant sought for strict action being taken against the accused persons.

5. After investigation the charge-sheet came to be filed against Netram and Vivek only. However, the jurisdictional court took cognizance against Deepak @ Dileep Kumar @ Dipu by order dated 09.06.2022 for the offence punishable under Section 376(2)(n), 376DA of the IPC and Section 516 of POCSO Act and thereafter the case has been registered and accused has been summoned. It is also pertinent to note at this juncture that order taking cognizance by the jurisdictional court against Deepak was challenged before the High Court which came to be dismissed and same was challenged before this Court and later withdraw the petition.

6. The applications for grant of bail filed by the respondents in the respective appeals came to be dismissed by the special court vide order dated 27.06.2022 and 11.01.2023 by the High Court. In the background of the bail application having been rejected the first respondent in the respective appeals have preferred Criminal Miscellaneous Bail Applications under Section 439 of the Cr.P.C. before the High Court of Judicature of Rajasthan. By impugned order dated 06.04.2023 the High Court granted the relief in their favour and enlarged them on bail after taking into consideration the statement of the prosecutrix (victim) recorded during the course of trial and by taking into consideration the possibility of time being consumed for trial. The complainant being aggrieved by the grant of bail has preferred these appeals by special leave.

Contentions of the Appellant (for the Complainant)

7. It is contended that offences alleged against the accused are heinous offences punishable with minimum sentence for life and attracts minimum sentence of 20 years. He would contend that victim in her statement recorded under Section 161 of the Cr.P.C. as well Section 164 of the Cr.P.C. has categorically stated that all the accused persons have committed gang rape and same has been reiterated in her deposition which has remained unshattered and therefore, prima facie, case for conviction has been made out. It is contended that one of the accused (Deepak) is son of a sitting MLA and the chances of tampering with the evidence during the trial if enlarged on bail is writ large; it is evident from the investigation that entries in the hotel register of the date of incident are missing; the CCTV footage of the hotel on the date of incident has been deleted; school records of the victim has been manipulated; telephone number of Deepak obtained by the police is a wrong

number; name of Deepak had surprisingly disappeared from the charge-sheet though victim girl had specifically stated in all her statements before the investigating officer the role of Deepak and though his name appeared in FIR.

8. He would also contend that there has been threat posed to the father of the minor girl, who is an ordinary police constable to withdraw the complaint and other witnesses are also being threatened and none of these aspects has been considered by the High Court and as such it has resulted in an erroneous order being passed for granting bail. Hence, he seeks for cancellation of the bail which has been granted by the High Court.

Contentions of the Respondent Counsel:

9. Ms. Meenakshi Arora, learned Senior Counsel appearing for the respondent would support the impugned order passed by the High Court and would contend that fact of the complaint having been lodged after a lapse of one year after the date of alleged incident was a glaring defect in the prosecution theory; she would also contend that during the course of investigation it was found from school records where victim was studying was present at the school on the date of incident and prima facie complaint looks frivolous; in the data record of telephone related to the accused Dileep @ Deepak obtained during investigation revealed he was found to be 40 to 80 KM away from the place of incident on the date of incident and prima facie it reveals he has been falsely implicated; the first respondent (Deepak) had no connection with or relationship with the prosecutrix and no call was ever made by him to the prosecutrix or vice versa. It is also contended that accused Vivek was known to the prosecutrix as is evident from various calls made by Vivek to her and during the course of the trial in her deposition she admitted that she was getting calls from Vivek and Netram but there was no connection whatsoever between the prosecutrix and respondent No.1 - Deepak. She would also contend that between the date of incident i.e. 24.02.2021 and the date of registration of FIR No.94 of 2022 on 25.03.2022 there was yet another FIR No.142 of 2021 registered by the mother of the victim regarding theft of jewellery against Vivek and there was no whisper of rape against respondent (Deepak) or others and the investigating officer is said to have recovered the jewellery from the accused Vivek. This chain of events would indicate that first respondent – Deepak had no remote connection to the alleged incident of rape and he has been roped in to settle political scores. It is in these circumstances the investigating officer had found no material which can be imputed to point the guilt of the first respondent (Deepak) and as such he had filed a closure report while filing the charge-sheet against other two accused. She would also contend that first respondent (Deepak) is innocent of the alleged offence and, hence, she has prayed for rejection of the appeals.

10. Learned counsel appearing for Netram Special Leave Petition (Crl.) No.6200 of 2023 has contended that there has been delay of 13 months in lodging the FIR; he would also contend that during the course of trial prosecution has made certain admissions which would depict there being a hole in prosecution theory, hence, he has sought for dismissal of the appeal.

11. Learned counsel appearing for the State, by reiterating the contentions urged in the counter affidavits filed in the respective appeals, has prayed for the bail granted in favour of Netram being

set aside or in other words, the appeal being allowed and has sailed along with the complainant. Whereas in the counter affidavit that has been filed opposing the bail in Special Leave Petition (Crl.) No.6199 of 2023 against the order granting bail in favour of respondent – Deepak, the State has virtually supported the defence of the accused Deepak and the material collected during the course of investigation, to stave off the claim of the complainant. Hence, he has prayed for dismissal of the appeals.

DISCUSSION AND FINDINGS:

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of 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 have an order of bail. We may also profitably refer to a decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528 where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circum-

stances, the following factors also before granting bail; they are:

(a) The nature of accusation and the sever-

ity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Pu-

ran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducting to allow fair trial. This proposition draws support from the Judgment of this Court in Daulat Ram and others v. State of Haryana reported in (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and xxx v. State of Telangana (2018) 16 SCC 511.

14. This Court in Daulat Ram’s case has held that the cancellation of the bail has to be dealt on a different footing in comparison to a proceeding for grant of bail. It has also been held that there can be supervening circumstances which may develop post the grant of bail and are non-conducive to the fair trial, making it necessary to cancel the bail and this principle has been reiterated time and again and more recently in the Judgment of Ms. X v. State of Telangana (supra).

15. This Court in Vipin Kumar Dhir v. State of Punjab 2021 SCC Online SC 854 has added caveat to the above principles and has further held that bail can also be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.

16. No doubt each case would have unique facts peculiar to its own and the same would hold key for adjudication of bail matters including cancellation thereof. There may be circumstances where interference to or attempt to interfere with the course of administration of justice or evasion or attempt to evade to due course of justice are abuse of concession granted to the accused in any manner.

17. The offence alleged in the instant case is heinous and would be a onslaught on the dignity of the womanhood and the age old principle of

(where women are respected Gods live there) would recede to the background and the guilty not being punished by process of law or accused persons are allowed to move around freely in the society or in spite of there being prima facie material being present they are allowed to move around

freely in the society before guilt is proved and are likely to indulge in either threatening the prosecution witnesses or inducing them in any manner to jettison the criminal justice system, then the superior court will have to necessarily step in to undo the damage occasioned due to erroneous orders being passed by courts below.

18. This Court in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 has held as under:

“9. Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued — the court ought to take note of the facts on record rather than ig-

noring them. In any event, the discretion to be used shall always have to be strictly in accordance with law and not de hors the same. The High Court thought it fit not to record any reason, far less any cogent reason, as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail, more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment — it is a heinous crime against the society and as such the court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of a very serious nature.”

19. Similar is the opinion of this Court in *Prashanta Kumar Sarkar v. Ashish Chatterjee* and another (2010) 14 SCC 496 has held as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

20. Keeping the aforesaid analysis of law when we turn our attention to the facts on hand it would not detain us too long to arrive at a conclusion that High Court seems to have been primarily swayed by the fact that there has been delay in filing the complaint i.e. 13 months for granting bail in favour of accused persons viz, respondents in respective appeals. The allegation made in the complaint relates to gang rape of a minor girl who is aged 15 years six months, studying in Class X. The fact of her father being a police constable who is far below in the hierarchy of service cannot be lost sight of. One of the respondents against whom allegations have been made is the son of a sitting Member of Legislative Assembly – MLA. Yet another accused – Vivek seems to have criminal antecedents and the third accused is the Manager of the Hotel where the alleged incident of gang rape had occurred. On investigation, the charge-sheet came to be filed against two accused only, namely, Vivek and Netram, though in the complaint a specific allegation of rape has been made against Deepak he was dropped. It is in this background, at the instance of the complainant, the jurisdictional court took cognizance of the offence against Deepak vide order dated 09.06.2022 and this order was challenged before the High Court in Criminal Revision No.979 of 2022 which came to be dismissed vide order dated 13.07.2022 and the special leave petition filed challenging the same in Special Leave Petition (Criminal) No.9458 of 2022 came to be withdrawn on 03.02.2022. Thus, order of taking cognizance by the jurisdictional Sessions Court against Deepak has attained finality.

21. In this background, the contention or plea of delay being fatal to the prosecution when examined, it would, prima facie, indicate that in the complaint/FIR which has been registered on 25.03.2022 relevant to the incident dated 24.02.2021 the reason has been assigned namely constant threat posed by the accused persons as stated in the complaint itself. It is in this background it will have to be seen as to whether in the societal circumstances the minor girl was placed, her tender age, then prevailing circumstances and the purported video depicting her nudity and the constant threat being posed to victim of video of rape which had been recorded being made viral in the event of prosecutrix informing anyone of the incident are factors which cannot be brushed aside which resulted in delay in filing the complaint. In other words, delay by itself would not be fatal for all times to come and the criminality attached to the incident would not evaporate into thin air or get extinguished by virtue of such delay. It all depends upon facts that may unfold in given circumstances and same would vary from case to case. On the other hand, if the prosecution attempts to improvise its case stage by stage and step by step during the interregnum period, in such circumstances accused would be justified in contending that delay was fatal to stave off the proceedings initiated against such accused. Thus, it depends on facts that would unfold in a given case. In the aforesaid background the fact of delay in the instant case prima facie cannot be held

against the prosecution or in other words on the ground of delay in lodging FIR the genuineness of the complaint cannot be viewed with coloured glasses nor it can be held that by itself would be sufficient ground to enlarge the accused on bail.

22. The accused in the instant case, namely, Deepak was apprehended by the jurisdictional Sessions Court by executing the arrest warrant on 09.01.2023. He did not initially surrender after being charge-sheeted or participate in the investigation even after arrest warrant being issued by the trial court.

23. The fact that accused Deepak is the son of sitting MLA would disclose the domineering influence he would wield not only in delaying the proceedings but also in pressurizing the witnesses to either resile from their statement given during the course of investigation or pose threat to them from deposing against accused on their failure to act according to his dictates or induce them to testify as per his dictates or to help the defence of the accused.

24. The prosecutrix has made allegations against the concerned accused-respondents and it becomes amply clear from the plain reading of the complaint as well as the testimony of the prosecutrix that accused persons had indeed participated in the gang rape. She also states that she was threatened that if she were to inform any family member of the alleged rape incident, they would make the video of rape to go viral. During the course of investigation of the FIR registered for gang rape, it was found that entries maintained at Hotel Samleti Palace, relevant to the date of incident was specifically missing; the CCTV cameras at the Hotel though found, the CCTV footage of the date of incident was not available; Vivek had called the prosecutrix several times and had exchanged number of messages; Vivek and Netram were in regular touch on phone and after the incident, accused Deepak was dropped from the charge-sheet only on the ground that call details of his mobile provided to the investigating authorities did not disclose about his presence at the scene of the incident on that particular date and as such the charge-sheet was filed only against Vivek and Netram. The prosecutrix had also named Deepak having participated in the incident of gang rape in her statement recorded under Section 161 and 164 of the Cr.P.C. and had also named him in the FIR. It is only on the strength of the application filed by complaint under Section 190-193 of Cr.P.C., the trial court took cognizance against Deepak for the offences punishable under Section 376D and section 5 of POCSO Act and said order has reached finality, as already noticed hereinabove.

25. The complainant's grievance, through-out has been that Deepak had been threatening the prosecutrix and other witnesses and that there is every possibility of threat to their life in the event they depose to the truth, and such apprehension is justifiable, especially because accused is in a domineering position. The complainant underlines the influence and possibility of the clout being wielded on the witnesses which cannot be discounted. The fact that even after recording of the deposition of the prosecutrix other prosecution witnesses have not come forward to tender evidence though more than nine dates of hearing has passed, would lend credence to the apprehension of the complainant. The High Court seems to have erred in not considering these basic facts while considering the prayer for grant of bail by taking into consideration the well- established judicial pronouncements already noticed hereinabove. That the court framed charges, prima facie discloses the possibility and reasonable suspicion of the accused prima facie culpability.

26. The Courts have placed the liberty of an individual at a high pedestal and extended the protection to such rights whenever and wherever required. In the same breadth, it requires to be noticed that emphasis has also been laid on furnishing reasons for granting while balancing it with the requirement of a fair trial bail even though such reasoning may be brief.

27. In the aforesaid circumstances, we notice that the impugned order granting bail is not only bereft of material particulars which would justify grant of bail, but it seems that the High Court has got swayed on the ground of delay and the video having not been recovered during the course of investigation and has given a complete go by to the allegation made in the FIR and statement recorded under Section 161 and 164 of the Cr.P.C. as also the testimony of the prosecutrix before the jurisdictional court.

28. Hence, we are of the considered view, that order of the High Court requires to be set aside and accordingly it is set aside. We hereby direct that the accused/respondents shall surrender before the jurisdictional court within two weeks from today failing which they shall be taken into custody We make it clear that they will be at liberty to seek bail after the evidence/depositions of the remaining witnesses are recorded and in the event of such an application being filed, the High Court shall consider the same on its own merits and without being influenced by any of the observations made hereinabove. We also make it clear that the jurisdictional court shall not be influenced by any of the observations made hereinabove and are limited to present proceedings. The appeals are accordingly allowed.

.....J. [S. RAVINDRA BHAT]J. [ARAVIND KUMAR] NEW
DELHI;

August 23, 2023