

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL PETITION NO.9650/2021

BETWEEN:

THE STATE OF KARNATAKA,
THROUGH HANUR POLICE STATION,
HANUR TALUK.
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU.

... PETITIONER

(BY SRI.RAHUL RAI K., HCGP)

AND:

SIDDARAJU @ PAPANNI,
S/O MANTAI AH,
AGED ABOUT 22 YEARS,
R/AT SHAGYA VILLAGE,
HANUR TALUK – 571 439.

...RESPONDENT

(BY SRI.VINOD PRASAD, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER
SECTION 439 OF CR.P.C. PRAYING TO A.ALLOW THIS
CRIMINAL PETITION AND B.CANCEL THE ORDER OF BAIL

BY SETTING ASIDE THE ORDER DATED 29.07.2020 PASSED ON THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE CHAMARAJANAGAR IN CR.NO.81/2020. C.DIRECT THE ACCUSED/RESPONDENT BE ARRESTED AND COMMITTED TO CUSTODY.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard Sri. Rahul Rai K., learned High Court Government Pleader for the petitioner - State and Sri. Vinod Prasad, learned counsel for the respondent. Perused the records.

2. This petition is filed under Section 439(2) of Cr.P.C. with the following prayer:

"Wherefore, the Petitioner-State most respectfully pray that this Hon'ble Court may be pleased to:

- (a) Allow this Criminal Petition; and*
- (b) Cancel the Order of bail by setting aside the Order dated 29.07.2020 passed on the Learned Principal District and Sessions Judge, Chamarajanagar; in Crime No.81/2020*
- (c) Direct that the accused/respondent be arrested and committed to custody;*

(d) Pass such other order/s, deems fit by this Hon'ble Court in the interest of justice and equity."

3. The brief facts of the case are as under:

A complaint filed by Smt. Thayamma W/o Ningaia on 23.06.2020 contending that on 25.05.2020 when herself and her husband and the victim girl were sleeping in the house, at about 10.30 p.m., somebody knocked the door and her husband said the victim girl to find out who has knocked the door, at that juncture, the victim girl got up and opened the door. Then, three persons by name Siddaraju, Chennalinganahalli Sagar and an unknown person forcibly entered into the house and Siddaraju pulled the victim girl and dragged her out of the house closing her mouth. Immediately, herself and her husband raised alarm and also questioned Siddaraju and others as to why they are dragging away the victim. At that juncture, Siddaraju and others pushed her husband and abducted the victim girl in a cement colour car. The complainant and her husband complained about the said act of

Siddaraju to his parents. Further, since Siddaraju is a relative, they tried to settle the issue amongst them. Despite lapse of about a month, there was no information as to where, Siddaraju has taken away the victim girl and therefore, the complainant approached the police.

4. Based on the complaint, the Hanur Police, Chamaraja Nagar District registered a case in Crime No.81/2020 initially for the offence punishable under Section 363 of the Indian Penal Code, 1860 ('IPC' for short) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) read with Section 34 of IPC.

5. After thorough investigation, the Investigation Agency filed a charge sheet for the offences punishable under Sections 363, 376 read with Section 34 of IPC and Sections 4, 6, 8 and 12 of the POCSO Act against the respondent herein and others.

6. During the investigation, the accused was arrested and he was sent to judicial custody. The accused applied for grant of bail under Section 439 of Cr.P.C.

7. Learned District Judge by order dated 29.07.2020, has granted bail noting the fact that at the time of considering the bail application, initially the police have invoked only Section 12 of the POCSO Act and subsequent thereto, Sections 4 and 8 of the POCSO Act, were invoked. Learned judge noted that there is a suspicion with respect to paragraph Nos.11 and 12 of the order of the learned District judge, which has been observed as under:

"11. Be that as it may. At the time of registering the FIR, Section 363 IPC and Section 12 of the POCSO Act, 2012 r/w 34 IPC were invoked. However, after the lapse of about 15 days, the complainant police has sought permission from this Court to invoke provisions of Section 376 IPC and Section 4 and 8 of the POCSO Act. This aspect further leads to suspicion w.r.t the genuiness of the investigation, more so in light of there being a substantial delay of nearly one month in lodging the complaint. In fact, there was no impediment for the complainant or her husband

who are alleged to be eye witnesses to the kidnap incident per se, to lodge a complaint of kidnap atleast, at the first instance. However, as already discussed supra the complaint was lodged only on 23.03.2020.

12. *This Court is aware of the fact that offences punishable U.s.3 of the POCSO Act r/w Sec. 376 IPC and 363 IPC are heinous in nature. At the same breadth, it is imperative to note that facts and circumstances of each case are different and requires to be analysed independently, without being influenced by other factors. In the instant case, as discussed supra there is a substantial delay of nearly one month in lodging the complaint and nowhere it is forthcoming as to why the complaint was lodged after a substantial period of time. Therefore, without prejudice, to the forthcoming and without expressing any opinion of merits of the case at this juncture, this Court is of the opinion that it is a fit case for grant of regular bail. Nevertheless it is the duty of this Court to ensure that the accused appears before the Court regularly during trial and also that he would not meddle with the prosecution evidence/witnesses. Accordingly, I answer point No.1 in affirmative."*

8. The State has preferred this petition seeking cancellation of bail under Section 439(2) of Cr.P.C. with the following grounds:

"1.The impugned Order is not sustainable either in law or on facts and the same is liable to be set aside.

2. It is submitted that the Hon'ble Court has got carried away with the delay and had wrongly drawn inference that the delay raises suspicion.

3. The learned Sessions Judge, had also raised suspicion with respect of genuiness of the investigation solely on the ground of delay in lodging the complaint on the ground that the Informants/parents of the victim girl being eye witnesses to the incident of kidnapping, ought to have informed the police innmediately. Unfortunately while observing so, the learned Session Judge failed to appreciate the explanation given by the informant in the first information itself for the delay.

4. Further considering the fact that, the victim is a minor girl and her state of mind may not be of any help to the accused. The order impugned is highly erroneous and passed with a casual approach without understanding seriousness of the case.

3. It is needless to state that the Legislature has enacted POCSO Act as a special legislation keeping in mind special nature of the offence and Special Courts were also established with the child friendly atmosphere. However, the casual approach adopted by the Session Judge while enlarging the accused on the bail, is contrary to sprit and objective of statute. When the investigation had made out a prime facie case it was not proper on the part of the Learned Sessions Judge to enlarge the accused on bail solely on the ground of delay."

9. Reiterating the above grounds, the learned High Court Government Pleader contended that the learned Sessions Judge has granted bail to the respondent in a very casual manner without properly appreciating the facts and the offences alleged against the respondent herein and sought for allowing the petition.

10. *Per contra*, Sri. Vinod Prasad, learned counsel for the respondent vehemently contended that the order passed by the learned District judge is a discretionary order and unless the prosecution makes out a case under Section 439(2) of Cr.P.C., this discretionary order for grant of bail cannot be interfered with by this Court and hence, sought for dismissal of the petition.

11. In view of the rival contentions, this Court perused the materials on record meticulously.

12. The principles of law enunciated for cancellation of bail is no longer *res integra*. The Hon'ble Supreme Court in the case of ***State of Bihar Vs.***

Rajballav Prasad alias Rajballav Pd. Yadav alias Rajballabh Yada reported in **AIR 2017 SC 630** had an occasion to deal with practically similar aspects of the matter. In paragraph Nos.12 and 13 of the said judgment, reads as under:

“P.12 - We may observe at the outset that we are conscious of the limitations which bind us while entertaining a plea against grant of bail by the lower court, that too, which is a superior court like High Court. It is expected that once the discretion is exercised by the High Court on relevant considerations and bail is granted, this Court would normally not interfere with such a discretion, unless it is found that the discretion itself is exercised on extraneous considerations and/or the relevant factors which need to be taken into account while exercising such a discretion are ignored or bypassed. In the judgments relied upon by the learned counsel for the respondent, which have already been noticed above, this Court mentioned the considerations which are to be kept in mind while examining as to whether order of bail granted by the court below was justified. There have to be very cogent and overwhelming circumstances that are necessary to interfere with the discretion in granting the bail. These material considerations are also spelled out in the aforesaid judgments, viz. whether the accused would be readily available for his

trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. We have kept these very considerations in mind while examining the correctness of the impugned order.

13. We may also, at this stage, refer to the judgment in the case of Puran v. Rambilas & Anr.[5], wherein principles while dealing with application for bail as well as petition for cancellation of bail were delineated and elaborated. Insofar as entertainment of application for bail is concerned, the Court pointed out that reasons must be recorded while granting the bail, but without discussion of merits and demerits of evidence. It was clarified that discussing evidence is totally different from giving reasons for a decision. This Court also pointed out that where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.”

13. Applying the principles of law enunciated in the said decision to the case on hand, learned District judge

has failed to consider the provisions of Sections 29 and 30 of the POCSO Act while granting the bail.

14. As could be seen from paragraph Nos.11 and 12 of the order, the approach of the District judge while granting the bail is a casual approach.

15. His observation that the parents of the victim girl being an eye witness to the kidnapped incident, failed to lodge a complaint immediately, has raised suspicion about the case of the prosecution irrespective of the fact that the complaint is delayed complaint or not? Since the victim girl is a minor, the custody always was with the parents and Siddaraju being totally a stranger, abducting the victim girl from the custody of the parents cannot be lost sight off that too, at the stage of considering the bail application.

16. Further, the observation made by the Court that the Court is aware of the offence punishable under Section 3 of the POCSO Act being heinous in nature, the

Court has further observed that the fact and circumstances of the each case is to be appreciated independently. What is the independent analysis that has been made in the case on hand especially, when the victim girl has given a statement before the Investigation Agency and whereby the Investigation Agency has invoked Sections 6 and 8 of the POCSO Act against the petitioner is concerned.

17. In a matter of this nature, the statement of the victim girl would be sufficient enough *prima facie*, to appreciate the offences alleged against the accused. Further, the consent if any is also not a fresh consent as held by the Hon'ble Supreme Court in the case of ***Independent Thought Vs. Union of India and Another*** reported in **(2017) 10 SCC 800** wherein, the Hon'ble Supreme Court has considered the effect of amendment to the Indian Penal Code Vise-Vice the provisions of POCSO Act.

18. Thus, this Court is of the considered opinion that the discretion exercised by the learned District judge

while admitting the respondent on bail under Section 439 of Cr.P.C., in the considered opinion of this Court is improper exercise of discretionary power vested on him and therefore, a case is made out for cancellation of bail as is contemplated under Section 439(2) of Cr.P.C.

19. Accordingly, pass the following:

ORDER

1. The Criminal Petition is ***allowed***.
2. The order passed by the Principal District and Sessions Judge, Chamarajanagar in Crime No.81/2020 dated 29.07.2020 is hereby set aside.
3. Respondent is directed to surrender before the trial Court forthwith.
4. However, this cancellation of the bail order shall not come in the way of the petitioner to approach before the trial Court with a successive bail petition if there are any positive changed circumstance in his favour.

5. The trial Court failed to consider the effect of the presumption available to the prosecution under Sections 29 and 30 of the POCSO Act before granting the bail.

**Sd/-
JUDGE**

VBS