

Kalavati W/O Kallappa Malagar vs The State Of Karnataka And Anr on 31 August, 2023

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NC: 2023:KHC-K:6895
CRL.P No. 200436 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T.

CRIMINAL PETITION NO.200436/2023

BETWEEN:

KALAVATI
W/O. KALLAPPA MALAGAR
AGE: 43 YEARS, OCC: HOUSEHOLD,
R/O. SATALAGAON,
TQ. INDI,
DIST. VIJAYAPURA-586101.

...PETITIONER

(BY SMT. NEEVA M. CHIMKOD, ADVOCATE)

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

AND:

1. THE STATE OF KARNATAKA THROUGH
INDI RURAL POLICE STATION,
TQ. INDI ,
DIST. VIJAYAPURA-586101,
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH- 585107.
2. TRIMURTHY S/O. BASAYYA MATHAPATI
AGE: 33 YEARS, OCC: AGRICULTURE,
R/O. SATALAGAON,

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TQ. INDI,
DIST. VIJAYAPURA-586101.

...RESPONDENTS

(BY SMT. ANITA M. REDDY, HCGP FOR R1;
SRI MAHIBOOB MAKASHI &
SRI ZAMEER PASHA, ADVOCATES FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.P.C., PRAYING TO ALLOW THE PETITION AND THEREBY CANCEL THE BAIL ORDER DATED 10.02.2023 PASSED BY ADDITIONAL SESSIONS JUDGE FAST TRACT SPECIAL COURT-I AT VIJAYAPURA IN CRL.MISC.NO.150/2023 ENLARGING THE RESPONDENT NO.2 ON BAIL IN CRIME NO. 190/2022 REGISTERED BY INDI RURAL P.S., AND BY DIRECTING THE CONCERNED POLICE TO ARREST AND COMMIT HIM TO CUSTODY.

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

ORDER

1. Heard learned counsel for petitioner, learned High Court Government Pleader for respondent No.1 - State and learned counsel for respondent No.2-accused.
2. Petitioner-complainant has filed this petition under Section 439(2) of Cr.P.C., for cancellation of bail order dated 10.02.2023 granted by the Additional District and Sessions Judge/FTSC-I, Vijayapura (for short 'trial NC: 2023:KHC-K:6895 Court') in Crl.Misc. No.150/2023, wherein the trial Court granted bail in favour of respondent No.2-accused in Crime No.190/2022 of Indi Rural Police Station, for the offence under Section 376(2)(n) of IPC and Sections 4 and 6 and POCSO Act, 2012.
3. For the sake of convenience, the parties are referred to as per their status before the trial Court. The petitioner is complainant and respondent No.2 is accused before the trial Court.
4. Brief facts of the prosecution case are as under:

On 10.12.2022 the complainant lodged a complaint alleging that some unknown persons have kidnapped her daughter(victim) from the farmland bearing Survey No. 305/1, situated at Satalgaona Village, Taluka Indi, District Vijayapura on 09.12.2022. Hence, a case was registered for the offence under Section 363(3) of IPC. Later victim was traced with accused at Hingani Mala Ahadapsar Area of Pune City on 15.01.2023,

and thus the police brought NC: 2023:KHC-K:6895 victim back to Indi Rural Police Station, enquired her, recording her statement, in turn, she revealed that accused kidnaped her, took her to various places including Pune where on 4 to 5 occasions he committed aggravated sexual assault against her. Thus, victim was sent to medical examination, thereafter her statement was recorded by Judicial Magistrate under Section 164 of Cr.P.C.. During the course of investigation accused is arrested and remanded to judicial custody. Soon after the arrest, accused filed bail petition in Crl.Misc. No.150/2023 before the Additional Sessions Judge and FTSC-I Vijayapura, who in turn, granted bail in favour of accused on 10.02.2023.

5. Aggrieved by grant of bail to accused, complainant has filed this petition contending that the impugned order passed by the trial Court is arbitrary illegal and unconstitutional; the offences are heinous in nature, accused has kidnapped and abducted a minor girl from the lawful custody of complainant, and he has NC: 2023:KHC-K:6895 committed aggravated sexual assault on the victim knowing that she is minor; accused is aged about 35 years and he is already married and got two children, thereby cheated the victim girl making promise of marriage and committed the sexual assault on her. But, the trial Court without considering the statement of victim under Section 164 of Cr.P.C., has granted bail in favour of accused. It is further contended that, while granting bail, the investigation was not completed, and the learned trial Court has not considered the importance of Medical Certificate; no cogent reasons have been assigned by the trial Court, while granting bail. On all these grounds learned counsel for complainant prays to cancel the bail granted to accused.

6. Learned counsel for accused filed statement of objections contending that the application filed by the complainant is misconceived and motivated to cause harassment; accused never jumped the bail conditions imposed by the trial Court, he never threatened either the NC: 2023:KHC-K:6895 victim or the prosecution witnesses at any point of time. It is also contended that the trial Court soon after grant of bail, framed the Charge against accused and in all prosecution examined 30 witnesses. Now the Investigating Officer has to be examined and the trial Court has fixed the date for recording statement of accused under Section 313 of Cr.P.C., on 04.09.2023, and for arguments on 11.09.2023. It is contended that the trial Court considering merits of case has granted bail in favour of accused, by assigning cogent reasons, thus learned counsel prays for rejection of this petition.

7. The counsel relied upon the following decisions.

1. Ramesh Bhavan Rathod vs Vishanbhai Hirabhai Makwana (Koli) & Anr - (2021) 6 SCC 230
2. MAHIPAL v. RAJESH KUMAR @ POLIA AND ANOTHER - (2020) 2 SCC 118 NC: 2023:KHC-K:6895
3. NEERU YADAV v. STATE OF UTTAR PRADESH AND ANOTHER - 2016 (15) SCC 422,
4. X v. STATE OF TELANGANA AND ANOTHER - (2018) 16 SCC 511
5. STATE OF RAJASTHAN Versus.

BALCHAND ALIAS BALLAY - (1977) 4 Supreme Court Cases 308

6. DEEPAK YADAV Versus STATE OF UTTAR PRADESH AND ANOTHER -

(2022)8 Supreme Court Cases 559

8. Learned High Court Government Pleader contended that the complainant or the victim has not filed any complaint alleging that the accused has violated the bail conditions and threatened the victim or other prosecution witnesses. Further, the victim has not proceeded under Section 15 of Witness Protection Act against accused, alleging that accused is causing threat. Hence, he prays to pass appropriate order.

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9. Upon hearing the learned counsels for the parties and on perusal of the material available on record the following points would arise for consideration of this Court:

i. Whether the complainant has made out sufficient grounds to cancel bail granted in favour of accused?

ii. What order?

10. Admittedly, based on the complaint lodged by the, complainant case has been registered against accused in Crime No.190/2022. Now the investigation has been completed and the Investigating Officer has filed charge- sheet before the trial Court. The records reveal that in all 30 witnesses have been examined by the prosecution before the trial Court and now the Investigating Officer to be examined and the trial Court has fixed the date for recording of statement of accused under Section 313 of Cr.P.C., on 04.09.2023 and also the date has been fixed NC: 2023:KHC-K:6895 for final argument on 11.09.2023. At this juncture the complainant has filed this petition for cancellation of bail contending that in a heinous offence of these nature the trial Court without appreciating the fact, law, the gravity of offence, statement of victim, medical report, FSL report etc., has granted bail in favour of accused.

11. On perusal of material available on record, in the complaint PW1 has made a specific allegation that, the accused being a married person took the victim on a promise to marriage; subjected her to sexual act. Later the victim girl disclosed that with a promise to marriage the accused kidnapped her, took her to Pune, where he committed aggravated sexual assault on 4-5 occasions against her.

12. Admittedly, the victim is minor at the time of commission of offence. In the statement recorded under Section 164 of Cr.P.C., the victim has particularly stated that on 09.12.2022 at 12:30 noon accused kidnapped her

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NC: 2023:KHC-K:6895 in his Car, took her to Pune where he committed aggravated sexual assault at Hingani Mala, Ahadapsar Area of Pune City in a rented room and as per her statement she has stated that, finally on 09.01.2023 he committed aggravated sexual assault on her and the Police took her from Pune City on 15.01.2023 brought her to Indi Police Station.

13. On perusal of bail order, the trial Court in its order at Para 15 has opined as under:

"In the instant case, as per prosecution, almost all part of investigation has been completed. According to prosecution, certificate regarding the date of birth of victim girl and FSL report are required to be collected. It is to be noticed that accused has been in jail since the date of his arrest. Question of giving threat by accused to complainant did not arise as stated in her affidavit. It is not at all the case of prosecution that accused is required for personal interrogation. Only apprehension of the prosecution as well as Respondent No.2 is that if accused is released on bail, he would threaten

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NC: 2023:KHC-K:6895 the prosecution witnesses. Bail cannot be denied on the assumption that accused would threaten the prosecution witnesses if he is released on bail. Be that as it may. Said apprehension of prosecution as well as Respondent No.2 can be set right by imposing suitable conditions."

14. On perusal of the aforesaid findings, it appears that the trial Court has opined that the investigation has almost been completed and date of birth of victim girl and FSL report to be collected, the accused has been in judicial custody since the date of his arrest and the fact that no custodial interrogation is required, tampering of witnesses would not arise and therefore by imposing certain conditions granted bail.

15. In the case of Ramesh Bhavan Rathod vs Vishanbhai Hirabhai Makwana (Koli) & Anr reported in (2021) 6 SCC 230 wherein the Hon'ble Apex Court has held that the Court has to look into the seriousness and gravity of the offence committed and severity of

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NC: 2023:KHC-K:6895 punishment in the event of conviction. Whereas, in the instant case the Charge is framed, the prosecution in all examined 30 witnesses and the trial is almost completed and the investigating Officer alone to be examined by the prosecution.

16. Admittedly, it is mandatory duty of Court to record reasons, when bail is granted. The grant of bail under Section 439 of the Cr.P.C., is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail, as in the case of any other discretion which is vested in Court as judicial institution, is not unstructured. The duty to record reasons is significant safeguard which ensures that the discretion which is entrusted to the Court is exercised in a

judicious manner. Thus, the bail order which does not contain reasons for prima facie concluding that bail should be granted is liable to be set aside for non-application of mind.

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17. Having considered the principles laid down in the judgment referred supra and also the judgments referred by the learned counsel for the petitioner in the cases of Mahipal and Neeru Yadav, no doubt it is settled law that cancellation of bail is harsh order as it interferes with liberty of individual and hence it must not be lightly resorted to. The Hon'ble Apex Court in the case of X v. STATE OF TELANGANA has held that bail once granted should not be cancelled unless a cogent case, based on supervening events has been made out and the Court cannot exercise the powers under Section 439(2) of Cr.P.C.

18. Having considered the principles laid down in the judgments referred supra and also the factual aspect of the present case, it is the specific case of the complainant that her daughter was kidnapped by the accused and she was subjected to sexual act by the accused. Therefore, according to learned counsel for complainant, by considering the gravity of offence the trial

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NC: 2023:KHC-K:6895 Court ought not to have granted bail. On perusal of Para No.15 of the bail order impugned, trial Court considering the material fact that investigation was almost completed and considering the judicial custody of accused for long period, has granted bail.

19. On perusal of ratio laid down in the case of X v. STATE OF TELANGANA and the supervening event as has been made out and the fact that all the prosecution witnesses have been examined except the Investigating Officer and the fact that accused never threatened the victim or complainant or other prosecution witnesses since the date of grant of bail till date, the complainant failed to establish the grounds for cancellation of bail as enumerated under Section 439(2) of Cr.P.C.

20. The Hon'ble Apex Court in the case of Deepak Yadav has held that once bail is granted, the same should not be cancelled in a mechanical manner and in case of cancellation of bail, very cogent and overwhelming

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NC: 2023:KHC-K:6895 circumstances are necessary. Admittedly, in the instant case there is no allegation either from the complainant or from the prosecution that, the accused/respondent No.2 was attempting to interfere with the due course of administration of justice. There is no allegation that, the accused/respondent No.2 is attempting to evade the due course of justice and they are abusing the concession granted in his favour, in any manner. Admittedly, the bail was granted in favour of respondent No.2 on 10.02.2023 and till date, he has not jumped the bail conditions, not

absconded, misused bail and not tampering with the evidence or threatening the witnesses.

21. There is no gain saying that the bail should not be granted or rejected in a mechanical manner, as it concerns the liberty of a person.

22. 'Bail is the rule and jail is an exception', this cannon of the criminal jurisprudence was laid down by the Hon'ble Apex Court in case of State of Rajasthan vs.

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NC: 2023:KHC-K:6895 Balchand @ Baliay, in the year of 1978, wherein the Hon'ble Apex Court held that, detention of a person affects his right to life and liberty and the main objective of detention is to ensure easy availability of an accused for trial without any inconvenience. If the accused is available, when required for a trial stage, detaining the person is not compulsory.

23. In the instant case, the complainant sought to cancel the bail granted to accused on the ground that accused is involved in the heinous offence punishable under Section 376(2)(n) of IPC and Sections 4 and 6 of POCSO Act, 2012.

24. Admittedly, the prosecution has not filed any application for cancellation of bail. Therefore, the learned Sessions Judge considering the stage of investigation, detention of the accused in the judicial custody and considering the apprehension made by the complainant

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25. The learned counsel for complainant relied upon the decision reported in Criminal Appeal No.7143/2021 dated 14.01.2022 passed by the Co-Ordinate Bench of this Court, wherein this Court canceled the bail granted by the trial Court. In the said matter, the trial Court without considering the objections of victim and without issuing notice to victim had proceeded to dispose of the bail petition in single day. Therefore, considering the non- issuance of mandatory notice to victim, the co-ordinate Bench of this Court cancelled the bail granted in favour of accused. Therefore, this decision is not applicable to the case on hand. In that matter, the trial was not commenced, whereas, in the present case, trial is commenced and the prosecution examined in all 30 witnesses. Hence, at this juncture this Court do not find any merits in the contention of the complainant, and thus, answered point No. 1 in the negative. Accordingly, the

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NC: 2023:KHC-K:6895 petition filed by the mother of victim under Section 439(2) of Cr.P.C., seeking cancellation of bail granted in favour of accused, is liable to be rejected.

26. In view of foregoing discussion in point No.1, the petition is rejected.

Sd/-

JUDGE SBS