

# Mevindi Veerasha Alias Eranna A Alur vs Harihar Town Police Station on 5 July, 2024

**Author: M. Nagaprasanna**

**Bench: M. Nagaprasanna**

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Reserved on :27.06.2024

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Pronounced on :05.07.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3576 OF 2024

BETWEEN:

MEVINDI VEERESHA ALIAS  
ERANNA A ALUR  
S/O ANDAPPA  
AGED ABOUT 32 YEARS  
R/A NEAR NAGAPPA TEMPLE  
MEUNDI VILLAGE - 582 113  
TALUK MUNDARGI  
DISTRICT GADAG.

... PETITIONER

(BY SRI BASAVARAJ R BANNUR, ADVOCATE)

AND:

HARIHAR TOWN POLICE STATION  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
BENGALURU - 560 001.

... RESPONDENT

(BY SRI B N JAGADEESH, ADDL.SPP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO a. SET ASIDE THE ORDER ON APPLICATION FILED U/S 439(2) OF CR.P.C DATED 07.03.2024 PASSED IN SPL.CASE NO.714/2023 IN CANCELLING THE BAIL ORDER DATED 31.08.2023 OF THE PETITIONER PASSED BY THE COURT OF THE ADDL.DISTRICT AND SESSIONS JUDGE, FTSC-I, DAVANAGERE AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

#### ORDER

The petitioner is knocking at the doors of this Court calling in question an order dated 07-03-2024 passed by the Additional District and Sessions Judge, FTSC-I, Davangere in Special Case No.714 of 2023 cancelling the bail order dated 31-08-2023 granted in his favour.

#### 2. Facts, in brief, germane are as follows:-

A complaint comes to be filed before the Harihar Town Police Station against the petitioner and another Vasudev Hiremat alleging to have indulged in offences punishable under the IPC and Protection of Children from Sexual Offences Act, 2012 ('the Act' for short) on the daughter of the complainant. Pursuant thereto. crime is registered in Crime No.146 of 2023 arraigning the petitioner as accused No.2 for offences punishable under Sections 363, 376 (2)(n), 506 of the IPC r/w Sections 4 and 6 of the Act. The petitioner moves an application before the concerned Court for grant of regular bail as he was taken into custody. On 03-10-2023 the Harihar Town Police lay a charge sheet in Crime No.146 of 2023 against the petitioner and another. The petitioner is arraigned as accused No.2 for different offences. Against the petitioner what was alleged was offence punishable under Sections 363, 506, 114 of the IPC r/w Section 17 of the Act. It was, therefore, kidnapping and abetment of commission of the offence against the petitioner, while against accused No.1 all the offences are alleged.

3. The crux of the charge against the petitioner was that accused No.1 is known to the family of the complainant. On 13-06-2020 accused No.1 kidnapped the daughter of the complainant and committed sexual assault. This goes on for a long time. Every time sexual assault happened against the daughter of the complainant, accused No.1 used to come in the Scorpio vehicle along with the petitioner and take the victim. This was the gist of the complaint. The petitioner was not alleged of commission of rape under Section 376 (2)(n) of the IPC or Sections 4 and 6 of the Act. The allegation against him is abetment to the said offence and kidnapping. The petitioner was, on the said ground, enlarged on bail by an order of the concerned Court on certain conditions.

Alleging that the conditions have been violated, the prosecution moves an application before the concerned Court seeking cancellation of bail under sub-section (2) of Section 439 of the Cr.P.C. The concerned Court cancels the bail in terms of its order dated 07-03-2024. It is, therefore, the petitioner is before this Court in the subject petition.

4. Heard Sri Basavaraj R. Bannur, learned counsel appearing for the petitioner and Sri B.N. Jagadeesh, learned Additional Special Public Prosecutor appearing for the respondent.

5. The learned counsel appearing for the petitioner would vehemently contend that bail once granted could not have been cancelled, on the ground on which it is cancelled that the petitioner involved in other two cases, in violation of conditions of bail. The further allegation is that the petitioner has threatened the witnesses. Both these grounds, on which the bail is cancelled is contrary to law is his submission. He would submit that all the three crimes are registered by the very same complainant at different Police Stations. The moment the petitioner sought and got bail in Crime No.146 of 2023, a crime is registered for offences punishable under Sections 504 and 506 of the IPC. Since they were non-

cognizable offences, another crime comes to be registered in Crime No.188 of 2023. The learned counsel would submit that deliberately to get the bail cancelled the said crime is registered against the petitioner.

6. Per contra, the learned Additional Special Public Prosecutor, refuting the submissions of the petitioner, would contend that the petitioner has also indulged in horrendous acts.

He has assisted accused No.1 in kidnapping the girl not once but on many occasions and abetted the crime of rape on a minor. Bail was granted to him, but he came out and started to threaten the witnesses. Therefore, the prosecution was constrained to move the matter for cancellation of bail. He would seek dismissal of the petition and affirmation of the order of cancellation of bail.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute; they are all a matter of record. The act of commission of sexual offence leads to registration of crime in Crime No.146 of 2023. The petitioner applies for grant of bail in the said case. Bail is granted on 31-08-2023 on certain conditions. It reads as follows:

"O R D E R The application filed by the accused No.2 U/s 439 of Cr.P.C., is hereby allowed. Accused No.2 is to be enlarged on bail on his executing personal bond for a sum of Rs.1,00,000/- with one solvent surety for the like-sum, and subject to following conditions:-

1. Accused No.2 shall not tamper or threat the prosecution witnesses.

2. Accused No.2 shall not go near the house of the victim and her college and also shall not speak with the victim.
3. Accused No.2 shall attend before the I.O. as and when called for by him for further investigation.
4. Accused No.2 shall furnish his residential proof to this Court.
5. Accused No.2 shall attend before the Court on all the dates of hearing regularly.
6. If the accused No.2 violated any of the above conditions, the bail granted to him automatically shall stand cancelled.

Sd/- ADJ, FTSC-I, Davangere."

(Emphasis added) Long after grant of bail, an application is moved by the prosecution under 439(2) of the Cr.P.C. for cancellation of bail. The reason given in the application is that when the complainant was on the move in Dharwad Taluk, accused No.2 comes and abuses her with filthy words and threatens her with dire consequences if she would not withdraw the case. That is one instance and the petitioner again gets involved in another crime in Crime No.12 of 2024.

Quoting these two instances and the fact that the petitioner has violated bail conditions, the order impugned comes to be passed cancelling the bail. The order reads as follows:

".... ....

6. The learned Public Prosecutor has filed this application to cancel the bail order granted against the accused No.2 as he has violated the condition No.1 and 6 of bail order dated 31-08- 2023. It is the submission of learned Public Prosecutor that, even though this Court has imposed condition on the accused No.2 that, he shall not tamper or threaten the prosecution witnesses and if he violated any condition of bail order, the bail granted to him, would automatically stand cancelled. In spite of it, the accused No.2 has given threat to the complainant stating that, how she would give evidence against him in this case and also gave life threat to her stating that, she should withdraw the case filed against him. In this connection, she has filed a complaint initially at Annigeri Police Station and on perusal of complaint given by the complainant, it appears that, when the complainant stood in Mevundi village nearby the side of road, the accused No.2 came there and abused her in filthy words and also gave life threat to her stating that, she should withdraw the case filed against them etc. So, prima facie it appears that, the accused No.2 has violated the condition No.1 of bail order dated 31-08-2023 and in this connection, FIR has been registered against him.

7. It is the submission of counsel for the accused No.2 that, even though the alleged incident as stated in the application is taken place at Mevundi village, the complainant has not lodged a complaint within the jurisdiction of Gadag Police Station limits, but she has lodged a complaint at Annigeri Police Station. This itself would clearly go to show that, in order to take revenge against

the accused, this false case has been filed by taking the help of the police known to her. Further he argued that, already he has issued a legal notice to the IO and other persons in respect of false investigation done in this case and also regarding the amount received from the accused persons by the police people. In spite of it, the IO has not conducted fair investigation in this case and it is the apprehension of police that, the accused may take legal action against them, as such, by instigating the complainant, this application is filed, only to harass the accused No.2. In this case, the accused No.2 has also produced some documents in support of contents of objection.

8. Here in this case, the complainant appeared through her counsel by filing an application U/s 301 of Cr.P.C., and produced the copy of FIR and copy of complaint.

9. On perusal of the same, it is clear that, the sister of victim of this case has filed a complaint against the accused Nos. 1 to 5 of this case and two others stating that, accused Nos. 1 and 2 have committed forcible sexual intercourse of her and also they have made video of sexual assault committed on her. After committing of sexual intercourse, they have threatened her saying that, if she disclose this incident to anybody, they would viral the video and also take away the life of her family members. Even the accused Nos. 1 and 2 have repeatedly committed forcible sexual intercourse on her many times and other accused persons have also committed sexual assault on her. Further she stated that, the accused Nos. 3 to 5 of this case and other two persons have abetted the accused Nos. 1 and 2 for committing sexual assault on her etc.

10. It is the submission of learned Public Prosecutor and as well as the counsel who appeared on behalf of complainant that, in view of this complaint lodged by the younger sister of victim of this case against the accused persons, already accused No.2 to 5 of this case have been arrested by Gangavathi Police in Cr.No.12 of 2024 and all of them are in judicial custody. By going through the contents of the complaint lodged by the sister of victim before Gangavathi Police Station dated 14-01-2024 and also in view of submission of learned Public Prosecutor and the counsel for the complainant, I am of the opinion that, prima facie the accused No.2 appears to be a habitual offender. Moreover, the complaint lodged by the complainant against the accused No.2, after releasing him on bail by this Court also reveals that, he has violated the condition No.1 of bail order dated 31-08-2023. That apart, he has already been arrested by Gangavathi police in connection with similar offences of this case committed by him. Moreover, in this case also the accused No.2 to 5 continuously absent from 31-01-2024, in view of they have been arrested in Cr.No.12 of 2024 of Gangavathi Police Station, as such this Court has already issued NBW against them. Hence, from over all discussions made above, it is clear that, there are reasonable grounds to believe that, the present application shall have to be allowed as the accused No.2 has violated the conditions of bail order dated 31-08- 2023. Accordingly, I proceed to pass the following:

ORDER The application filed by the learned Public Prosecutor U/s 439(2) of Cr.P.C., is hereby allowed.

Consequently, the bail granted to the accused No.2 dated 31-08-2023 is cancelled."

(Emphasis added) Facts apart, what shocks the Court is, the manner in which the concerned Court has dealt with the application for cancellation of bail. The reasons are found in paragraphs 9 and 10 supra. It records that the sister of the victim has filed the complaint against accused Nos.1 to 5. Accused Nos.1 and 2 have committed forcible sexual intercourse on her and they have also made a video of sexual assault committed on her. The petitioner is accused No.2. He is not alleged of Sections 4 or 6 of the Act. The allegation is not that he has indulged in any ingredient of said sections. What is alleged against the petitioner is, kidnapping and abetment, both obtaining under the IPC and Section 17 of the Act. The concerned Court proceeds on the footing that he has indulged in the offence under Sections 4 and 6 of the Act. On the said foundation, the further reasoning develops. Another reason found at paragraph 10 is to say the least preposterous. The Court observes that the petitioner has remained absent throughout from 14-01-2024 till the date of the passage of the order and he has violated condition No.1 of the bail order dated 31-08-2023. This again is blatantly contrary to the facts.

9. It is not in dispute that the petitioner was taken into custody on 12-01-2024 in Crime No.12 of 2024 and was released only on 18-06-2024 after the Court granted bail. Therefore, throughout from 14-01-2024 till 18-06-2024, he obviously could not have been present in the impugned proceedings, as he was in judicial custody. Based on these circumstances, the bail that was granted on 31-08-2023 comes to be cancelled. It is settled principle of law that when an accused is set on liberty by grant of bail, the bail should not ordinarily be cancelled, except in certain circumstances, those are explained by the Apex Court in the judgment in the case of HIMANSHU SHARMA V. STATE OF MADHYA PRADESH<sup>1</sup>, wherein the Apex Court holds as follows:

"10. While cancelling the bail granted to the appellants, the learned Single Judge referred to this Court's judgment in Abdul Basit [Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257] . However, we are compelled to note that the ratio of the above judgment favours the case of the appellants. That apart, the judgment deals with the powers of the High Court to review its own order within the limited scope of Section 362CrPC. Relevant observations from the above judgment are reproduced below : (Abdul Basit case [Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257] , SCC pp. 761-64, paras 14-21) "14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity,

(ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency,

(vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last-mentioned case, one would expect very strong grounds indeed. (Raghubir (2024) 4 SCC 222 Singh v. State of Bihar [Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 : 1986 SCC (Cri) 511] )

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41]

16. In Gurcharan Singh case [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short "the old Code") and elucidated the position of law vis-à-vis powers of the courts granting and cancelling the bail. This Court observed as under : (SCC pp. 123-

24, para 16) '16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly, under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted [State (UT of

Delhi) v. Gurcharan Singh, 1977 SCC OnLine Del 103] by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.'

17. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas* [*Puran v. Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Narendra K. Amin v. State of Gujarat* [*Narendra K. Amin v. State of Gujarat*, (2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled [*State of Gujarat v. Narendra K. Amin*, 2008 SCC OnLine Guj 682] the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran* case [*Puran v. Rambilas*, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

18. Reverberating the aforesaid principle, this Court in the recent decision in *Ranjit Singh v. State of M.P.* [*Ranjit Singh v. State of M.P.*, (2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405] has observed that : (SCC p. 806, para 19) '19. ... There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.'

19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by



the same court.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."

(emphasis in original)

11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

- (a) the accused has misused the liberty granted to him;
- (b) flouted the conditions of bail order;
- (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;
- (d) or that the bail was procured by misrepresentation or fraud.

In the present case, none of these situations existed."

(Emphasis supplied) The Apex Court holds that, for grant of bail and cancellation of bail, the considerations are entirely different. What is necessary to be seen, in an application seeking cancellation of bail are, clauses (a) to (d). What the Apex Court has observed supra, alas, none of those circumstances exist in the case at hand. The concerned Court has proceeded to cancel the bail on 2 counts, both of which are contrary to the facts and the law.

10. The observation in the order is that the petitioner has been continuously absent from 31-01-2024. If the petitioner was in judicial custody throughout the period of proceeding before the concerned Court, it is understandable as to how the petitioner could be present. The dates are required to be noticed. A crime is registered in Crime No.12 of 2024 before the Gangavathi Town Police Station on 14-01-2024. The petitioner was enlarged on bail in the subject crime on 31-08-2023. The recording of the Court is that he has been continuously absent from 31-01-2024 till the date of passing of the order, while he is in custody from 14-01-2024 till 18-06-2024. Therefore, the period which the concerned Court notices that the petitioner is absent is contrary to records, as he could not be present before the Court. In the light of the aforesaid reason that the order being contrary to law, the same is required to be obliterated, as he has not violated any of the conditions granted in the order of bail dated 31-08-2023. The only condition projected is, that he was not present in the Court, for the impugned proceedings, which is also contrary to facts. Thus, setting the petitioner at liberty on 31-08-2023 needs to be restored.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal petition is allowed.

(ii) The order dated 07-03-2024 passed by the Additional District and Sessions Judge, FTSC-1 at Davangere in Special Case No.714 of 2023 stands quashed.

Consequently, the bail granted to the petitioner on 31-08-2023 stands restored.

(iii) It is made clear that all other conditions stipulated by the concerned Court while granting bail on 31-08-2023 to the petitioner, shall remain intact.

Sd/-

JUDGE bkp CT:MJ