

# State Of Karnataka vs Nagaraja on 23 February, 2016

**Author: A.V.Chandrashekara**

**Bench: A.V.Chandrashekara**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23rd DAY OF FEBRUARY, 2016

BEFORE

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

CRIMINAL PETITION NO.8267/2015

BETWEEN:

STATE OF KARNATAKA

BY YAGATI POLICE REPRESENTED BY

STATE PUBLIC PROSECUTOR,

BENGALURU-577 140.

... PETITIONER

(By Sri: B.J.ESHWARAPPA, HCGP)

AND

NAGARAJA

S/O ANANDAPPA,

CHIKKABASURU VILLAGE,

KADUR TALUK,

CHIKKAMAGALURU-577 548.

... RESPONDENT

(By Sri: PRAKASH M H, ADV.)

CRL.P FILED U/S.439(2) CR.P.C BY THE STATE FOR  
THE PETITIONER PRAYING THAT THIS HON'BLE COURT  
MAY BE PLEASED TO (1)SET ASIDE THE ORDER DATED  
10.06.2015 PASSED IN SPL.C(PCSOA) NO. 17/2015 BY THE  
I ADDL. SESSIONS AND SPL. JUDGE,

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CHICKKAMAGALURU, GRANTING BAIL TO THE  
RESPONDENT/ACCUSED FOR THE OFFENCE UNDER

SECTIONS 363,114,366A, 376 R/W 34 OF IPC AND SEC.4,6,17 OF POCSO ACT AND CANCEL THE SAID ORDER OF BAIL. DIRECT THAT THE ACCUSED BE ARRESTED AND COMMITTED TO CUSTODY.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 17.02.2016, AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, A.V.CHANDRASHEKARA, J., MADE THE FOLLOWING:

ORDER ON THE BAIL APPLICATION FILED  
UNDER SECTION 439(2), Cr.P.C.

The present petition is filed by the State represented by Yagati police station, Chikkamagalur District, requesting the court to cancel bail granted to the respondent-accused on 10.6.2015 in SPECIAL CASE (POCSO) NO.17/2015 by the I Additional Sessions and Special Judge at Chikkamagalur. Respondent will be referred to as accused in view of his ranking shown in the case filed by Yagati police.

2. The facts leading to the filing of the application under Section 439(2), Cr.P.C. are as follows:

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a) A case is registered against the accused in Crime No.1/15 by the respondent-Yagati police and after concluding investigation, charge sheet is filed for the offences punishable under Sections 363, 366, 366A, 376, 114 read with Section 34, I.P.C. and Sections 4, 6 and 17 of the Prevention of Children from Sexual Offences Act, 2012, (hereinafter referred to as POCSO Act, for brevity). Allegation made against the accused is

that he had assured CW-2, a girl aged about 17 years of marrying her, and on 26.12.2014 at 7 p.m., forcibly took her in an autorickshaw bearing No.KA-18-B-5650 belonging to the 2nd accused towards Chowdapur village and persuaded her to cooperate with him, and raped her and later on sent her to the house of CW-20, where she stayed on the night of 26.12.2014.

b) On the next day, i.e. 27.12.2014, the accused no.1 herein took her in the same autorickshaw and brought her towards Kadur and went to Birur, and at 10 p.m., dropped her in Chikabusur village. At that

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time, the parents of CW-2 asked her as to where she had gone. They scolded her for having left the house without telling them. Therefore, she had consumed some pills and became unwell. Hence, she was immediately shifted to Kadur Government Hospital, where she was treated.

c) It is alleged that accused nos.1 and 2 somehow persuaded the young girl of 17 years and the first accused had forcibly raped her. The allegation against the 2nd accused is that he had instigated 1st accused and helped him to rape the minor girl.

d) An application had been filed seeking regular bail before the special court at Chikmagalur during the pendency of investigation which was dismissed.

Admittedly, the accused was arrested on 17.01.2015 and enlarged on bail on 10.06.2015. Since the accused was in judicial custody for nearly 6 months and charge sheet had been filed and the 2nd accused being already

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released on bail, and the 1st accused being the only bread earner of the family, the learned judge has chosen to grant bail. The reasons so assigned by the learned judge are found at paragraph 9 at the impugned order.

3. Several grounds have been urged in the present petition filed under Section 439(2), Cr.P.C. It is contended that the learned judge has committed a serious error in granting bail to the accused, though the same judge had rejected his bail application on an earlier occasion during the pendency of investigation. It is argued that the learned judge has not at all considered the statement of the victim girl who had narrated about the incident, in her statement recorded by the magistrate under Section 164, Cr.P.C. The learned judge is stated to have ignored the fact that the victim girl was forcibly taken in an autorickshaw by accused nos.1 and 2 and first accused had assaulted her sexually. The maximum punishment contemplated

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could be imprisonment for life. The medical opinion given by the doctor is also ignored while granting bail, is

the contention.

4. Heard the learned HCGP representing the state and the learned counsel for the accused.

5. After going through the records and hearing both side, the following point arises for the consideration of this court:-

Whether it is just and reasonable to cancel the bail granted to the accused at this stage?

#### REASONS

6. What are the factors to be kept in mind while considering a bail application relating to a heinous offense have been indicated by the Hon'ble Supreme Court in the case of PRASANTA KUMAR SARKAR .v. ASHIS CHATERJEE AND ANOTHER ([2010] 14 SCC 496). Relying on the earlier decisions of the apex court in the case of STATE OF U.P. .v. AMARMANI

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TRIPATHI ((2005) 8 SCC 21), RAM GOVIND UPADHYAY .v. SUDARSHAN SINGH ((2002) 3 SCC 598), the Hon'ble apex court has indicated the following factors to be borne in mind while considering bail:

- 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, behavior, 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.

7. Of course, as rightly pointed out by the Hon'ble  
apex court in the case of [2009] 14 SCC 286 between

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MASR00R .v. STATE OF U.P. & ANOTHER, bail

should not be mechanically granted without advertting  
to relevant considerations. If bail is granted without  
such considerations, it would suffer from the vice of  
non-application of mind and therefore the order  
becomes illegal. But at the same time in the said case,  
caution is given to the courts while granting or refusing  
bail, not to make elaborate assessment of evidence and  
touching the merits of the case since it may prejudice  
the accused. But it is made clear that there is a need to  
indicate in such order the reasons for prima facie  
concluding why bail is granted, particularly where the  
accused is charged of having committed a serious  
offence. Paragraph 12 of the judgment in the case of  
MASR00R is relevant and it is extracted below:

'12. Normally this court does not interfere  
with the order of the High Court relating  
to grant or rejection of bail but in the  
instant case, having carefully gone  
through the impugned order, we are  
constrained to observe that the High Court

has completely ignored the basic principles which are to be kept in view

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while dealing with an application filed under Section 439 of the Code for grant of bail to the second respondent, warranting interference by this court.'

8. There is no second opinion about the seriousness of the allegations made against the accused in the present case by the victim girl aged 17 years. Records do disclose that her statement came to be recorded by the magistrate, Chikkamagalur, on 03.01.2015. The case diary had been made available by the prosecution to the learned special judge when the matter was argued relating to grant of bail. The statement of the victim under Section 164, Cr.P.C. is a vital piece of material and the same cannot be ignored lightly while considering the bail application. Serious allegation is made against both the accused in taking her forcibly in an autorickshaw belonging to the 2nd accused to a place near the tank of Chowdapur and subsequently to the house of 2nd accused, where she was raped by the first accused. It is also forthcoming that she was taken from Chowdapur to Kadur and on the next day at 10 p.m.,

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she was dropped in Kadur. She came to know that a complaint had already been lodged. She has specifically stated that both the accused threatened her parents not to lodge complaint since the first accused would marry

her. Being afraid of the threat held out to her, she took some pills and became unwell and was immediately shifted to Kadur Government Hospital. In fact, she wanted stringent punishment to be imposed on both of them.

9. The learned judge should have made at least some reference about the materials placed on record. He has not done so, and this is evident from the reasons assigned in the impugned order at paragraph 9. For the purpose of clarity, paragraph 9 is extracted below:

'9. The accused was arrested on 17.01.2015 and he was remanded to judicial custody. He has been in judicial custody from the date of his arrest. The bail application filed by the 1st accused before filing of the charge sheet has been rejected. Now after filing of the charge sheet accused No.1 has filed this bail application. The investigation relating to accused No.1 is already over. Accused No.2 has

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been released on bail. The facts that accused No.1 is the only bread earning member of the family, he has deep roots in the society and he hails from a respectable family are not disputed by the prosecution. I am satisfied that the presence of accused No.1 can be secured easily at the time of trial. The apprehension of the prosecution that if accused No.1 is released on bail, he may tamper with the prosecution witnesses and run away from the jurisdiction of the court can be set at rest by imposing reasonable conditions. Hence for the above reasons, Point No.1 is answered in the affirmative.'

It is forthcoming that the accused had already filed an application seeking bail earlier, which was rejected



when the investigation was still in progress. The learned judge has come to the conclusion that he could be released on bail as the investigation was over and he was in judicial custody for 6 months. The parity of granting bail to 2nd accused could not have been taken into consideration since there was no allegation that the 2nd accused too had sexually assaulted the victim girl.

10. In the case of KALYAN CHANDRA SARKAR .v.

RAJESH RAJAN ((2004) 7 SCC 528), the Hon'ble apex

court has held that whenever an earlier bail application

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is rejected, there is further onus on the court to consider the further application for the grant of bail by noticing the grounds on which the earlier bail applications have been rejected. It is made clear that after such considerations only, if the court is of the opinion that bail has to be granted, then the said court will have to give specific reasons as to why in spite of earlier rejection, the application for bail should be granted. The law laid down in the said case is found in paragraph 12 in the case of KALYAN CHANDRA SARKAR (supra) which is extracted below:

'12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons

why in spite of such earlier rejection the

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subsequent application for bail should be granted.'

11. Learned counsel for the accused has relied on a decision of the Hon'ble apex court in the case of DOLAT RAM (supra) in which it is reiterated that rejection of bail in a non-bailable case at the initial stage and cancellation of bail already granted, have to be considered and dealt with on different basis.' It is further held that very cogent and overwhelming circumstances are necessary for directing the cancellation of bail already granted. The said decision has been followed by the Hon'ble apex court in two subsequent decisions by a Bench of three Hon'ble Judges in the case of SUBHENDU MISHRA .v. SUBRAT KUMAR MISHRA AND ANOTHER (AIR 1999 SC 3026) and another Bench of three Judges in the case of SAMARENDRA NATH BHATTACHARJEE .v. STATE OF WEST BENGAL AND ANOTHER (AIR 2004 SC 4207). The law laid down in the case of DOLAT RAM is

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found in paragraph 4 at page 350 and it is reproduced below:

'4. Rejection of bail in a non-bailable case at an initial stage and cancellation of bail so granted have to be considered and dealt with on a different basis. Very cogent and overwhelming circumstances are necessary for an order

directing the cancellation of bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying cancellation of bail. However, bail once granted should not be granted in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost of by the High

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Court when it decided to cancel the bail, already granted. The High Court, it appears to us, overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance, and the cancellation of bail already granted.'

12. It is true that the accused in the present case has been enjoying the benefit of bail granted to him by the learned special judge from 10.6.2015 and the present application for cancellation of bail came to be filed by the prosecution only in the month of December 2015. But the learned judge has not at all assigned reasons as to whether there were any altered circumstances to take a different view from that of the one already taken earlier while rejecting the bail application when investigation was still in progress. Whether the materials produced along with the charge sheet were not sufficient to make out a prima facie case,

is not forthcoming. The reasons like investigation was over and the accused was in judicial custody for 6  
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months are 'not cogent reasons' to grant bail subsequently. Apart from this, the materials placed on record inclusive of the statement of the victim girl recorded under Section 164, Cr.P.C. have not at all been taken into consideration in any manner.

13. Though elaborate discussion on the material placed on record is not required, at least there must be some indication of having considered all the relevant materials to grant bail. One cannot forget that the case on hand relates to an offence committed on a girl aged 17 years and she will be a 'child' for all practical purposes. The provisions of POCSO Act, 2012, are stringent and special courts have been established to deal with such offences against children, whether girls or boys. Apart from this, presumption available under Section 29 of POCSO Act will have to be raised when the charge sheet is filed. The learned judge has not kept in  
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mind the gravity of the offence, nature of allegation and the punishment contemplated therefor.

14. It is true that the prosecution has not made any allegation against the accused that he has violated the

bail conditions imposed on him while granting bail on 10.6.2015. Suffice to state that the judge has not kept in mind the important factors to be considered while granting or rejecting bail in a case of this nature. The respondent herein cannot be considered as similarly placed with the 2nd accused who is already enlarged on bail. On the other hand, the learned judge should have taken up the case for trial at the earliest since he was in judicial custody. Granting bail on the ground of charge sheet being filed and accused being in judicial custody for 6 months in a case of this nature are wholly incorrect and improper.

15. Taking into consideration all these factors and no cogent and valid reasons being assigned to grant bail to

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the accused, though his earlier bail application was rejected, this court is of the opinion that bail granted to the respondent-1st accused is liable to be cancelled. In the light of the facts of the case and special court being established to take up cases of this nature, directing the concerned court to dispose of the matter at the earliest and imposing few conditions on the accused would meet the ends of justice.

16. In the result, the following order is passed:

**ORDER**

The petition filed under Section 439(2), Cr.P.C. by the State is allowed. Bail granted to the respondent-1st accused by the learned I Additional Sessions and Special Judge Chikkamagalur, in

Special Case (POCSO) No. 17/2015 stands cancelled.

The respondent shall surrender before the court without undue delay and the learned judge to frame appropriate charges and dispose of the case within two months from the date of surrender, without fail.

Registry to send a copy of this order to the concerned court for reference and compliance, at the earliest.

Sd/-

JUDGE vgh\*