

# **Mrs Bratati @ Pinky vs The State Of Karnataka on 20 August, 2019**

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.8543 OF 2018

BETWEEN

Mrs. Bratati @ Pinky  
W/o. Hrishikesh Sahoo,  
Aged about 29 years,  
Presently R/at No.232,  
53rd B Cross, 17th D Main,  
3rd Block, Rajajinagar,  
Bengaluru-560010.

...Petitioner

(By Sri. A.D.Ramananda, Advocate)

AND

1. The State of Karnataka,  
By Women P.S., East Zone,  
Bengaluru-560080.

2. Mr. Hrishikesh Sahoo,  
S/o. Jagannath Sahoo,  
Aged about 43 years,  
S.R.S. Residency,  
Flat No.306, 6th Cross,  
Kasavanahalli, Sarjapur,  
Bengaluru-560035.

...Respondents

(By Sri. I.S.Pramodchandra, SPP II for R1,  
Sri. Hashmath Pasha, Senior Advocate for  
Sri. Syed Muzakker Ahmed, Advocate for R2)

2

This Criminal Petition is filed under Section 439(2) Cr.P.C praying to cancel the bail granted by this Hon'ble court vide order dated 18.08.2018 to the 2nd respondent in Criminal Petition No.5515/2018 vide annexure D in the pending Criminal Proceedings in Spl.C.No.356/2017 in Crime No.19/2017 for the offences punishable under Section 498A, 376, 354, 506 of IPC and Section 5 (M)(L) read with Section 6 of POCSO Act registered by the Women Police Station, East Zone, Bengaluru City (1st Respondent).

This Criminal Petition coming on for orders, this day, the Court made the following:

ORDER

On 18.08.2018, the accused was admitted to bail by subjecting him to three conditions. One of the witnesses i.e., CW.2 in Spl.C.C.No.356/2017 has made this petition under Section 439(2) of Cr.P.C. for canceling the bail.

2. Yesterday I heard the arguments of Sri. A.D.Ramananda, and Sri. Hashmath Pasha, learned senior counsel for accused respondent no.2. A.D.Ramananda is an advocate and cited as a witness in Spl.No.356/2017. He is an interested person. To meet the ends of justice, in the interest of victim child, he is permitted to argue, of course not in the capacity of advocate.

3. Sri. A.D.Ramananda argues that the valuable right given to the victim under law, child has been infringed. The accused obtained bail by giving false information to this court. Bail was granted in the background of the fact that the accused was in custody for over 1 year 7 months. Actually the accused was responsible for the delay. The prosecution did not produce him before the court. For these reasons the charge was not framed and trial did not commence. The accused has taken advantage of this for securing the bail. Even when he was in custody he used to threaten the child and the petitioner using his influence with the police. The victim of the incident is the daughter of the accused. The way she was sexually abused by the accused has not been considered while granting bail. On earlier occasions this court rejected the bail and in view of the decision of the Honb'le Supreme Court in the case of M/s Gati Ltd., Vs. T.Nagarajan Piramiajee and another, the bail petition should have been heard by the same judge who rejected the bail on the earlier occasions. He further submits that in view of Criminal Law (Amendment) Act, 2018, the informant or any person authorized should have been notified at the time of hearing bail application. This procedure was not followed. For all these reasons, the petitioner being the mother of the victim child is entitled to seek cancellation of bail.

4. The learned senior counsel for respondent/accused argues that when this court passed an order on 18.08.2018 granting bail to the accused, it took note of the fact that the earlier applications for bail had been rejected. It was only after noticing the fact that trial was being delayed, this court came to conclusion that bail should be granted. There is no allegation that the accused has violated the bail conditions. This being the case, there is no case for canceling the bail. The petitioner only refers to some threats said to have been given by the petitioner before the disposal of criminal petition No.5515/2018. They are totally irrelevant now because after admitting the accused to bail

on 18.08.2018, there is no single complaint against the accused that he has violated any of the conditions. In these circumstances, bail cannot be cancelled. If at all there is delay in framing charge, it was not because of lapse on the part of the accused. He was in custody. If he was not produced before the court by the police, he cannot be blamed for the delay. The ground thus put forth by the petitioner for canceling the bail is totally baseless and cannot be considered for canceling the bail.

5. The learned State Public Prosecutor-2 (SPP-2) also made a submission that so far no complaint has been received against the accused that he has made any attempt to threaten the witness or tamper with the prosecution evidence.

6. If the order dated 18.08.2018 passed in CrI.P.5515/2018 is perused, it can be noticed that on behalf of accused, two grounds were put forward for seeking bail under changed circumstances. They were firstly that accused no.2 and 3, who are the parents of the main accused, i.e., respondent no.2 herein, were discharged from the case and secondly that even after lapse of more than a year, trial had not commenced. The first ground urged on behalf of respondent no.2 accused was not considered to enlarge respondent no.2 on bail. However noticing that respondent no.2 was in custody for over 1 year 7 months and that there was no progress in the trial, he was enlarged on bail. Even Sri. A.D.Ramananda fairly submitted that there is no complaint about violation of bail conditions by respondent no.2/accused after he was admitted to bail. The points that he urged relate to a time before passing the order in CrI.P.No.5515/2018. If according to the petitioner, respondent no.2 was threatening the petitioner and the victim, it cannot be a reason for canceling the bail now because there is no complaint as such against respondent no.2 that he has violated any of the conditions imposed on him while admitting him to bail on 18.08.2018.

7. It is very much urged by Sri. A.D.Ramananda that in view of Criminal Law (Amendment) Act, 2018, the informant should have been notified at the time of deciding the criminal petition No.5515/2018. On this point of argument, Sri. A.D.Ramananda has placed reliance on the judgment of the High Court of Judicature at Bombay, in the case of Shyamrao Vithoba Pillare Vs. State of Maharashtra - Criminal Application (Apl) No.1146/2018, argued that the victim and the petitioner should have been notified. But it was the submission of Sri. Hashmath Pasha that the alleged incidents of rape are said to have taken place in between the dates 20.06.2006 and 21.03.2017. The Criminal Law (Amendment) Act, 2018 was given into effect on 11.08.2018. It does not have retrospective effect. He also argues that by Criminal Law (Amendment) Act, 2018 certain amendments were brought to Section 376 of IPC and the entire case of the prosecution does not come within the scope of the offences described under Sections 376 (a) (b) (d) of IPC.

8. With regard to these points of argument, it is to be stated that the judgment of the Bombay High Court cannot be made applicable here. The reason is that amendment was brought to Criminal Procedure Code by enacting Maharashtra Amendment Act of 2017. As the facts in that judgment disclose the accused therein was being tried in the court of Chief Judicial Magistrate for the offences under Section 354(b), 294, 509 and 506 of IPC. By bringing an amendment to Criminal Procedure Code, the forum of trial was shifted to Sessions Court. The accused took objection that the Sessions Court cannot hold the trial as the Act did not have retrospective effect. In that context it was held by

the Bombay High Court that change in forum introduced by Maharashtra Act No.40 of 18 had retrospective effect and the counter arguments in that regard was rejected. Therefore it is clear that the amendment brought to Crl.P.C. by Maharashtra Act was in a different context. The question actually involved here is whether Criminal Law (Amendment) Act, 2018 can be made applicable to the offences which according to prosecution took place between the dates 20.06.2006 and 21.03.2017. In my opinion this amendment has a prospective effect. Therefore this ground is not available for the petitioner for seeking cancellation of bail.

9. It is true that the child's right is involved in this case. If the accused was not produced before the court on several dates by the prosecution agency, he cannot be blamed for not framing the charge and commencement of trial. Therefore this ground is also not available. There are no allegations against the accused that he has violated the bail conditions. There is no scope for canceling the bail. The allegations made against him relate to the period when he was in custody and therefore they cannot also be considered. I do not find any merit in this petition. Accordingly petition is dismissed.

10. It appears that the accused has challenged the constitutional validity of Sections 29 and 30 of POCSO Act. Relating to this matter, already W.P.Nos.10001 and 10002/2018 have been filed and Rule has been issued in those writ petitions. In my opinion writ petition No.48367/2018 should be tagged with W.P.Nos.10001 & 10002/2018 for hearing. Therefore the Registry is directed to take necessary action in this regard.

Sd/-

JUDGE sd