



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

RESERVED ON : 17.02.2022

PRONOUNCED ON: 22.03.2022

PRESENT

The Hon'ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). Nos.20452 and 19866 of 2021
and
CRL.M.P. (MD)No.2243 of 2022

Crl.O.P. (MD)No.20452 of 2021:

The State rep.by,
The Inspector of Police,
Thadikombu Police Station,
Dindigul District.
(Crime No.766 of 2021)

... Petitioner/Respondent

Vs

Jothimurugan

... Respondent/Accused No.1

P.Suganthi

... Petitioner / Intervenor
In Crl.MP(MD)No.2243 of 2022

For Petitioner : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

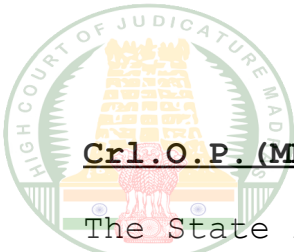
For Respondent : Mr S.Vineyak, Advocate.
for Mr.S.Paul Murugesh

For Intervenor : Ms.U.Nirmala Rani, Advocate.

PETITION FOR CANCELLATION OF BAIL Under Sec.439(2) of Cr.P.C

PRAYER :-

For Cancellation of Bail granted in Crl.M.P.No.1750 of 2021,
dated 04.12.2021, in connection with Crime No.766 of 2021 on the
file of the petitioner police station.



Crl.O.P. (MD)No.19866 of 2021:

The State rep.by,
The Inspector of Police,
Thadikombu Police Station,
Dindigul District.
(Crime No.767 of 2021)

... Petitioner/Respondent

Vs

Jothimurugan

... Respondent/Accused No.1

For Petitioner : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For Respondent : Mr S.Vineyak, Advocate.
for Mr.S.Paul Murugesh

PETITION FOR CANCELLATION OF BAIL Under Sec.439(2) of Cr.P.C

PRAYER :-

For Cancellation of Bail granted in Cr.M.P.No.1752 of 2021, dated 04.12.2021 in connection with Crime No.767 of 2021 on the file of the petitioner police station.

COMMON ORDER:

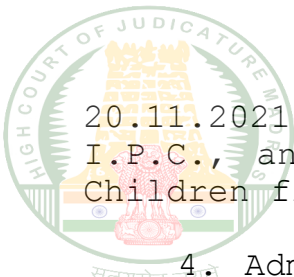
"Judges play - at all levels - a vital role as teachers and thought leaders. It is their role to be impartial in words and action, at all times. If they falter, especially in gender related crimes, they imperil fairness and inflict great cruelty in the casual blindness to the despair of the survivors."

It is apt to begin with the concluding words of the Hon'ble Supreme Court in **Aparna Bhat and Others Vs. State of Madhya Pradesh and another** reported in **AIR 2021 SCC Online SC 230**.

2. The above two Criminal Original Petitions have been filed under Section 439(2) Cr.P.C., seeking orders to cancel the bail granted in Cr.M.P.No.1750 of 2021 and Cr.M.P.No.1752 of 2021, dated 04.12.2021 in connection with Cr.Nos.766 and 767 of 2021, on the file of the petitioner police station.

3. The respondent is the first accused in both the crime numbers and in Cr.No.766 of 2021 registered on 19.11.2021, he is charged for the offences under Sections 109, 506(i) I.P.C., and Sections 7, 8, 9(f), 10, 16 and 17 of Protection of Children from Sexual Offences Act, 2012 and in Cr.No.767 of 2021 registered on

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20.11.2021, he is charged for the offences under Section 1(i) I.P.C., and Sections 7, 8, 9(f), 10, 16 and 17 of Protection of Children from Sexual Offences Act, 2012

4. Admittedly, the respondent, after registration of the above two cases, surrendered before the Court of Judicial Magistrate, Polur, Thiruvannamalai District on 23.11.2021 and that the petitioner police had taken the petitioner in police custody for three days. It is not in dispute that the respondent/first accused has filed bail applications in Cr.M.P.Nos.1750 and 1752 of 2021 and the learned Sessions Judge, Fast Track Mahila Court, Dindigul, has passed the impugned common order dated 04.12.2021 granting bail by imposing certain conditions.

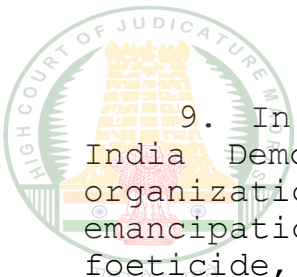
5. It is also not in dispute that the respondent has filed the petitions in Cr.M.P.Nos.1788 and 1789 of 2021 seeking modification of the conditions and the learned Sessions Judge, vide order dated 14.12.2021 has modified the conditions by directing the accused to appear and sign before the said Court instead of appearing and signing before the AWPS, Vadamadurai. Subsequently, the respondent has filed applications in Cr.M.P.Nos.38 and 39 of 2022 seeking relaxation of the conditions imposed and the learned Sessions Judge, vide order dated 07.02.2022 has totally relaxed the conditions imposed on the first respondent. It is also not in dispute that in the meanwhile, the petitioner has laid the charge sheets for the offences 109, 506(i) I.P.C., and Sections 9(f), 10, 16 and 17 and 18 of Protection of Children from Sexual Offences Act, 2012 and the cases were taken on file in Spl.S.C.No.3 of 2022 and Spl.S.C.No.4 of 2022, on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul and the same are pending.

6. The petitioner police, not satisfied with the granting of bail and taking note of the subsequent conduct of the respondent, has filed the above two Criminal Original Petitions, seeking cancellation of bail.

7. When the above two petitions are pending, one Tmt.P.Suganthi, General Secretary of All India Democratic Women's Association, Chennai, has filed an intervening petition and my learned Predecessor Judge, after considering the submissions made by the learned Counsel for the said intervenor, has directed the Registry to take the petition on file, subject to the maintainability and accordingly, Crl.M.P.(MD)No.2243 of 2022 was taken on file.

8. Since the learned Counsel for the respondent/accused has raised serious objections about the *locus standi* of the intervenor and since the said petition was taken on file subject to the maintainability, let us consider the maintainability aspect at first.

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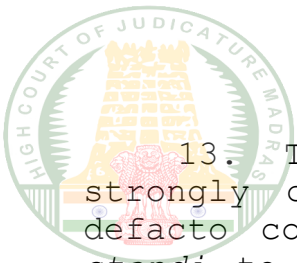
9. In the intervening petition, it has been stated India Democratic Women's Association (AIDWA) is a nation wide organization committed to the cause of equality of women and their emancipation, that AIDWA fought against social evils like family foeticide, infanticide, child sexual abuse, sexual assaults and harassments, domestic violence, honour killing etc., that AIDWA was the one of the petitioners in the landmark case of Vishaka and Others Vs. State of Rajasthan, which led to the enactment on sexual harassment of women at workplace, that AIDWA has sought reforms in rape law, especially child sexual abuse in Sakshi Vs. Union of India before the Hon'ble Supreme Court and the Hon'ble Supreme Court has directed the Law Commission of India to make recommendations, that AIDWA played the lead role through their sustained campaign for bringing legislation on " Protection of women from Domestic Violence Act 2005", that they made effective interventions in incidents of violence in almost all the districts through their legal aid centres and that due to their untiring efforts, many victims could see the light of justice.

10. It is their further case that the victim has a right to intervene in bail applications and Section 439(1A) of Cr.P.C., provides that the presence of the victim or any person authorised by the victim shall be obligatory in cases of sexual assault, that though the same was also extended to POCSO by the recent judgment of the Delhi High Court in 2020 SCC Online Delhi 1389, the victims were kept in the dark, that as per the provisions of POCSO Act and POCSO Rules, the victim is entitled to take assistance from a legal practitioner especially for representing the victim for bail proceedings and that since the victims of the present case are not before this Court, AIDWA has sought leave of this Court that they may be permitted to intervene in the petitions for cancellation of bail.

11. In the intervening petition, the intervenor, in an attempt to prove their credibility, cited their work at Madurai wherein AIDWA alone had brought the large scale sexual abuse of children studying in a Government High school at Madurai by the Headmaster himself, to the notice of the authorities, filed three Public Interest Litigations at the investigation stage and provided them a fair trial and that the High Court appointed the Counsel for the organization to protect the children throughout the trial and appointed their members as the support persons for each child.

12. The learned Counsel for the intervenor would submit that many statutes were enacted recognizing the rights of the NGOs or Women's movements like them to champion the cause of the victims and to present the daily changing dimensions of the case at hand and put forth the stark realities of the victims involved in the incident, they have to be heard and this Court has powers to do so in the interest of justice and as "Parent Patriae " ie., the guardian of

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13. The learned Counsel for the respondent/accused would strongly contend that the said third party who is neither the defacto complainant nor the relative of the victim has no *locus standi* to intervene in the applications for cancellation of bail, that the said AIDWA being a small political outfit and for illegal enrichment and only at the instigation of the police and the defacto complainants, the above petition came to be filed., that there is absolutely no provisions in the Cr.P.C., or in any other enactments enabling a third party to get himself impleaded in the criminal proceedings, that Section 301 Cr.P.C., enables the private party to assist the prosecution and that too for submitting the written arguments with the leave of the Court and that therefore, the intervenor being a third party, cannot be allowed to intervene and the same is liable to be dismissed as not maintainable.

14. The learned Counsel for the respondent/accused has relied on a decision of this Court in ***P.S.Saravanabhavanandam and another Vs. S.Murugaiyyan and another*** reported in **1986 LW (Cr1)165**, wherein this Court has held that there is no provision in the Cr.P.C., which enables a third party to get himself impleaded in the proceedings before the criminal Court and that when a party cannot be impleaded in a criminal proceedings, he cannot be permitted to come in under the guise of intervenor and the relevant passages are extracted herein:

15. *There is no provision in the Criminal P.C. which enables a third party to get himself impleaded in the proceedings before the criminal court. As already observed, we have only S. 301 Cr.P.C. which enables the private parties to assist the prosecution and also submit written arguments with the leave of the court. According to S. 301 Cr.P.C., such assistance is to be given at the inquiry, trial or appeal in a criminal case. The question that arises is whether private parties can be allowed to intervene in the anticipatory bail petition with a view to represent matters before the court, when there is no provision for intervention in the Criminal P.C. By 'intervention' it is understood that a party who is possession of facts may appear before the court as an intervener and make his submissions on the matter in issue.*

16. *In such cases, such a party is shown as intervener in the proceedings before the court. When a party cannot be impleaded in a criminal proceeding, as held by this court, in the decision referred to above, he cannot be permitted to come in under the guise of an intervener. But, at the same time bearing in mind the wholesome observations of the Supreme Court extracted above, the right of a party to represent matters before the court cannot be whittled down*



into a strait jacket formula of locus standi, which is unknown to criminal jurisprudence. It is open to any party to make his representations in the bail proceedings pending before this court before the inquiry or trial starts.

15. The learned Counsel for the intervenor has relied on the judgment of this Court in **Sathyavani Ponrani VS. Samuel Raj and another** reported in **2010(2) MWN (Cr1.)273**, wherein this Court held as follows:

"53. To participate in a criminal proceeding one need not be a victim alone. The word 'victim' will have to be given a wider interpretation to mean not only the victim but any one who is associated or assisting the victim or who sets the criminal law into motion or even in a given case a third party with Public interest. In a case where the Victim is no more it cannot be said no application can be filed by any body seeking to invoke the proviso to **Section 24(8)** of the Code of Criminal Procedure. Moreover when a victim is not capable of prosecuting a case then he has to be represented by another person. Lord Denning, in the notable case of the Attorney-General of the Gambia v. *Pierra Sarr N' Fie*, spoke thus:

"...the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him"

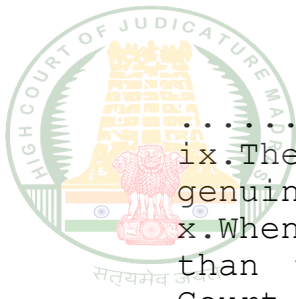
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56. A reading of the above said judgment would clearly show that in a given case even a third party could be permitted to file appropriate application to cancel the bail. Therefore the definition of victim would mean a person who represents the victim like a natural guardian or other guardian or a guardian of a person of unsound mind or even a third party, when the victim is so poor, illiterate and dependent to the extent of requiring support from others and not able to prosecute on his own.

16. In the said judgment, this Court, on considering the constitutional provisions and the judgment of the Hon'ble Supreme Court and High Courts, summed up its conclusions and the relevant portions are extracted hereunder:

"71. On a consideration of the above said principles and after analysing the provisions vis-a-vis the various judgments, the following conclusions are arrived at:

i. **Section 301 Cr.P.C.** is not a bar for entertaining an application to intervene in an application filed under **Section 437** or **438 Cr.P.C.** ii. **Section 301** and proviso under **section 24(8)** are mutually complimentary and not conflicting with each other and therefore there is no bar for engaging a lawyer to assist the prosecution.



.....
ix. The word 'victim' would also include a legitimate and genuine person representing a victim.

x. When an application is filed by any other person other than the guardian seeking to represent the victim, the Court has to consider the bonafides, legitimacy and genuineness of the representative capacity while deciding such an application.

....."

17. The learned Counsel for the intervenor has then relied on a judgment of the Hon'ble Supreme Court in *Aparna Bhat and Others Vs. State of Madhya Pradesh and another* reported in AIR 2021 SCC Online SC 230, wherein some public spirited individuals concerned about the adverse precedent set by the imposition of certain bail conditions in a case involving a sexual offence against a woman, has preferred the appeal, challenging the judgment of the Madhya Pradesh High Court that imposed bail conditions. The appellants brought to the notice of the Hon'ble Supreme Court various decisions and orders, where the observations made by the judges in offences against women including the cases under the POCSO Act were extraneous and the Hon'ble Supreme Court, after discussing elaborately has issued certain directions for the bail Courts and the Hon'ble Supreme Court expressed its appreciation for the submissions made on behalf of the appellants and the intervenors.

18. The learned Counsel for the intervenor has also relied on the judgment of the Hon'ble Supreme Court in ***R.Rathinam VS. State by DSP, District Crime Branch***, reported in AIR 2000 SC 1851. In the said case, 75 Advocates practicing in various Court situated in Tamil Nadu have filed two petitions addressed to the Hon'ble Chief Justice of Madras High Court for cancellation of bail granted to certain persons, that the Division Bench constituted by the Hon'ble Chief Justice, by observing that neither the State nor any aggrieved person on the side of the victim had moved the High Court for cancellation of bail, held that those petitions filed by the Advocates are not maintainable. Challenging the above orders of the Division Bench, the first among those 75 Advocates has moved a Petition for Special Leave before the Hon'ble Supreme Court. The Hon'ble Supreme Court has set aside the order passed by the Division Bench and directed the Division Bench to hear the objections afresh and dispose of them in accordance with law and the relevant passages are extracted hereunder;

"It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any members of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the

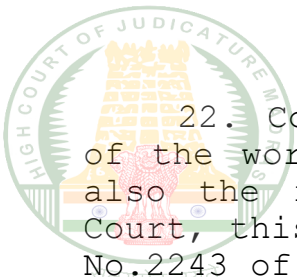


need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open for the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law."

19. The learned Counsel for the intervenor would submit that Section 439(1A) of Cr.P.C., provides that the presence of the victim or any person authorised by the victim shall be obligatory in cases of sexual assault and that the Delhi High Court in **Reena Jha and another Vs. Union of India and Others** reported in **2020 SCC Online Delhi 1389** has directed that the provisions of Practice Directions dated 24.09.2019 shall *mutatis mutandis* also apply to the offences under POCSO Act.

20. The learned Counsel for the intervenor has produced the copy of the Practice Directions issued by the High Court of Delhi, dated 24.09.2019 wherein it has been stated that Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) w.e.f. 21.04.2018 vide which, amongst others, it has been mandated that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code and that the High Court or the Court of Session shall, before granting bail, give notice of such application to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

21. But this Court is informed that no such Rule or circular has been issued applying the above amended provisions to the POCSO Act. But, whatever it is, as already pointed out, the Hon'ble Supreme Court has permitted the group of Advocates to apply for cancellation of bail and allowed some NGOs to challenge the extraneous conditions imposed in the bail orders and moreover, this Court in **Sathyavani Ponrani's case**, has specifically held that a third party can be permitted to file appropriate application for cancelling the bail and that Section 301 Cr.P.C., is not a bar for entertaining an application to intervene in an application for bail or anticipatory bail.



22. Considering the above legal position and also taking into account the nature of the work and service rendered and their good track records and also the fact that the defacto complainants are not before this Court, this Court is inclined to permit the petitioner in C.M.P. (MD) No.2243 of 2022 to intervene in the matters now under consideration. Accordingly, the permission is granted to the petitioner in C.M.P. (MD) No.2243 of 2022 to intervene in the Criminal Original Petitions.

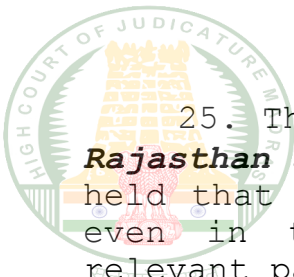
23. It's time to consider the principles governing the cancellation of bail. Section 439(2) of the Code Of Criminal Procedure, 1973, reads as follows:

"439(2): A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

24. The learned Counsel for the first respondent would submit that once a bail is granted to any person, the same cannot be cancelled in a mechanical manner without there being supervening circumstances, which are not conducive for fair trial and that therefore, the present petition for cancellation is legally not maintainable and he relied on a decision of the Hon'ble Supreme Court in **State (Delhi Administration) Vs. Sanjay Gandhi** reported in **(1978)2 SCC 411**, wherein the Hon'ble Supreme Court has held as follows:

"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."

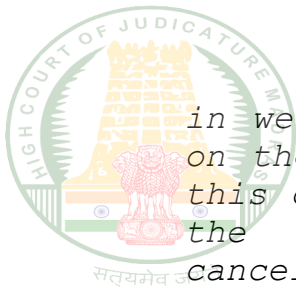
Therefore the power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process."



25. The Hon'ble Supreme Court in **Kanwar Singh Meena vs Rajasthan and another** reported in **2012(12) SCC 180**, has specifically held that the High Court or the Sessions Court can cancel the bail even in the absence of the supervening circumstances and the relevant passage is extracted hereunder:

"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result

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in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail."

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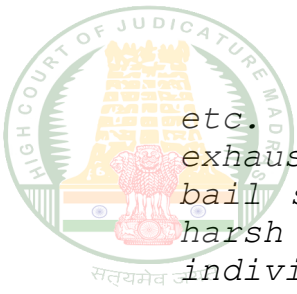
26. It is pertinent to note that cancellation of bail is now not limited to the occurrence of supervening circumstances for a Court to cancel the bail. The Hon'ble Supreme Court in **Ash Mohammad vs Shiv Raj Singh @ Lalla Babu & another** reported in **2012(4) Crimes 144 (SC)**, has stated that a Court, before granting bail ought to consider the factors which would justify the grant of bail, in juxtaposition with the social concern involved in releasing an accused on bail.

27. In **Myakala Dharmarajam vs The State Of Telangana and another** in Criminal Appeal Nos. 1974-1975 of 2019, dated 07.01.2020, the Hon'ble Apex Court has held that while exercising powers in the matter of cancellation of bails, it is necessary to examine whether the orders passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in miscarriage of justice and the relevant passages are extracted hereunder:

"6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7. In Raghbir Singh v. State of Bihar this Court held that bail can be cancelled where (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,

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etc. The above grounds are illustrative and exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

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8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."

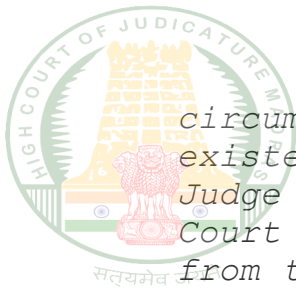
28. Very recently, the Hon'ble Apex Court in **Jeyaben Vs. Tejas Kanubhai Zala and another** reported in **2022 SAR (Cr1) 178** has reiterated the settled position of law that cancellation of bail and quashing and setting aside the wrong order releasing the accused on bail stand on different footings, that there are different conditions while considering the application for cancellation of bail for breach of conditions etc., and while considering an order passed by the Court releasing the accused on bail and that once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled.

29. It is also necessary to refer the judgment of the Hon'ble Supreme Court in **Puran Vs. Rambilas** reported in 2008(5) SCC 338, wherein the Hon'ble Supreme Court has held as follows:

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in **Gurcharan Singh v. State (Delhi Admn.)** reported in AIR 1978 SC 179. In that case the Court observed as under :-

16.....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 S. 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

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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-a-vis the High Court."

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30. Bearing the above legal position in mind, let us consider the case on hand.

31. The petitioner has filed the petitions for cancellation of bail on both the grounds of illegality of the order passed by the Sessions Court and the conduct of the first respondent subsequent to his release after bail was granted. The respondent, in his applications for bail, has raised the following grounds:

(i) The accused is running several colleges, in which more than 2500 students are studying in various courses like Nursing, Teacher Training, Catering and Arts and Science and he has secured good reputation in the teaching field of these institutions - since 6 colleges are facing examinations, the presence of the accused is necessary to run the said colleges;

(ii) The accused has received several awards from various organizations and he is holding several honourable posts in various firms;

(iii) The accused is an Advocate and a member of the Dindigul Bar Association;

(iv) The accused belongs to a reputed family;

(v) The parents of the accused are aged persons - his mother is a chronic cardiac patient and is taking continuous treatment in a private hospital at Chennai - his father who is having a wound in the left leg, is taking treatment.

(vi) The accused is having only 2 daughters and there is no male member in his family to look after the day-to-day affairs of his family and colleges;

(vii) The accused is an Income Tax assessee.

32. The learned Sessions Judge, after referring to the arguments placed by both the Counsels started his discussion in the penultimate paragraph of the order and the same is extracted hereunder:

"While so, considering both sides submissions and on perusal of the relevant records the accused are running several colleges and obtained several awards from the reputed organisations. Further the documents related to his parents, that is his mother was a Chronic Cardiac Patient and his father was taking treatment for his leg problem were filed by the Defence Counsel and perused. On perusal of complaint and F.I.R., in Cr.No.766/2021 of Thadikombu P.S., year was mentioned as 2016 instead of

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2021 that the other Complaint was lodged after lapse of 30 days from the date of alleged occurrence of this case”

33. The learned Sessions Judge has thereafter recorded his reasons for granting bail in the following lines:

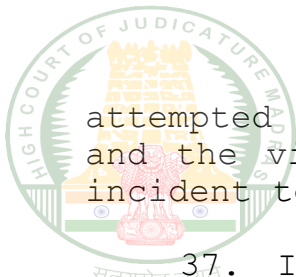
“ To sup up everything, the petitioner/accused is an Advocate and a reputed person in the Society has been reflected by the booklet submitted by the Defence Counsel and with regard to the ailments of the parents of the petitioner/accused also reveals from the Booklet No.2 and 3 circulated by the Defence Counsel. Apart from that he was in Police custody for 3 days and investigation also almost over and he is a Income-Tax assessee, to prove the same Income-Tax Returns also filed along with the Booklet. Hence, this Court is inclined to release the Petitioner/accused on bail with following stringent conditions”

34. It is pertinent to note that the learned Sessions Judge, in the entire order, running in 5 pages, has nowhere whispered about the nature of the offences alleged against the accused and the main objection of the prosecution that the accused being a correspondent of the educational institutions in which the victims are studying, there is every possibility of tampering the witnesses. As already pointed out, though the accused was charged for the offences under Sections 109 and 506(i) I.P.C., and Sections 7, 8, 9(f), 10, 16 and 17 of Protection of Children from Sexual Offences Act, 2012 earlier, he was charge sheeted for the offences under Sections 109, 506(i) I.P.C., and Sections 9(f), 10, 16 and 17 and 18 of Protection of Children from Sexual Offences Act, 2012.

35. Section 9(f) of the POCSO Act contemplates that whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution is said to commit aggravated sexual assault.

36. In both cases, the defacto complainants were studying first year B.Sc., in the Nursing College of the respondent. In Cr.No.766 of 2021, the case of the prosecution is that on 13.11.2021, after completion of awareness programme, the defacto complainant went to the office of the respondent for handing over the costumes, that though some other girls were present at that time, the accused has directed all other girls to leave that place and specifically directed the defacto complainant to remain there, that thereafter the accused after changing his dress in the rest room, hugged the victim girl and also placed his hands on her breast, that since the victim girl by removing his hands, placed her hands crossed on her chest, he had immediately placed his hands on her private parts, that the accused has threatened the victim girl that her original certificates are with him and he also attempted to remove the

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attempted to lay on the child and at that time, 6'0 clock 1 and the victim girl ran out of that place and informed about the incident to her friends.

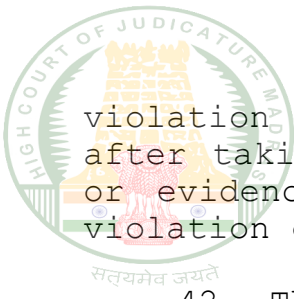
37. In Cr.No.767 of 2021, the prosecution case is that on 15.09.2021 at the time of welcome day function for the first year students, the accused, by placing his hands on the hips of the defacto complainant and attempted to misbehave and compelled her to take photographs, that on 30.09.2021, after the birthday function of the accused, he directed the victim girl to bring a soap and place it in his room, that the accused at that time, after taking photographs, had placed his hands on her breast and dragged and hugged her, that the accused placed his hands on her hip and lower abdomen portions and also bite her lips. It is further alleged that the accused had taken the victim girls and other girls in his Fortuner car to Kabi college at night times and got them snacks and that used to direct the girls to dance for the songs played by him and used to misbehave with the girls.

38. As already pointed out, the learned Sessions Judge has not even referred the charges levelled against the accused in the complaints. Moreover, the learned Sessions Judge has not recorded any *prima facie* finding that the complaints given by the students of the institutions run by the accused are false and that the accused has been purposely implicated.

39. As already pointed out, the accused had surrendered before the Judicial Magistrate Court, Polur on 23.11.2021 and was remanded to judicial custody and that he was granted bail on 04.12.2021 within a period of 12 days of his surrender. The learned Additional Public Prosecutor appearing for the State would submit that after registration of the cases, the accused had absconded and due to agitation of the students and the public, special teams were formed to secure the accused and that thereafter, with no other option, the accused had surrendered at Judicial Magistrate Court, Polur.

40. It is also not in dispute that the accused was released from the prison on the order date itself. The learned Counsel for the intervenor as well as the learned Additional Public Prosecutor appearing for the State would submit that the learned Sessions Judge, instead of imposing usual conditions of ordering two sureties, apart from taking a bond from the accused, he has directed the accused to deposit cash surety amount of Rs.20,000/- before that Court itself, instead of producing two physical sureties. Moreover, the learned Sessions Judge has not assigned any special reason for imposing the condition of depositing cash surety and thereby deviating from the imposition of usual condition of production of two physical sureties.

41. The learned Counsel for the intervenor would also contend that the accused was released from the jail at the night hours in



violation of the rule that no prisoner can be sent out of jail after taking head counts at 6pm. Admittedly, there is no material or evidence to show that he was released at the night hours in violation of the jail manual.

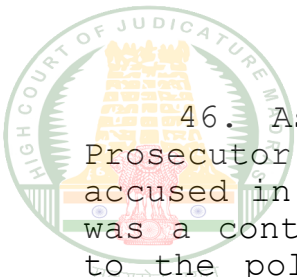
42. The learned Counsel for the intervenor would submit that their members had interacted with the protesting students on 19.11.2021 and the same revealed that more number of girl students were sexually abused by the accused, but out of fear, they are not coming forward to give complaints, that their District Committee received whats-app audio notes from two students, who sought help, that from their personal enquiry, the issues seems to be a large scale sexual abuse by the correspondent of the college on the students of the college and that granting of bail at the earlier stage instilled a fear in the minds of the defacto complainants and also other faceless victims.

43. The learned Additional Public Prosecutor appearing for the State would also submit that though some other girls came forward to give complaints and some other girls were reluctant to give complaints, since the accused was granted bail within a short period, the said girls have refused to give complaints.

44. As already pointed out, one important aspect is that the accused is the correspondent of some educational institutions in which the defacto complainants were studying at the relevant point of time. Most of the witnesses are students of the same educational institutions. As already pointed out, the main objection of the prosecution that there is every possibility of tampering with the witnesses, was not at all considered by the learned Sessions Judge.

45. The learned Sessions Judge, while imposing conditions, directed the accused to appear before the AWPS, Vadamadurai daily at 10.00a.m., until further orders. Even according to the accused, after releasing from the prison on 04.12.2021, he has not appeared before the Vadamadurai All Women Police Station on 05.12.2021 and 06.12.2021 and according to him, since there were so many criminal intimidation by some other parties and torture from the police and he was suffering from cardiac ailments, he has filed applications in Cr.M.P.Nos.1788 and 1789 of 2021 to modify the conditions. The petitioner has raised objections stating that the accused has miserably failed to give complaints before the police for the alleged so many criminal intimidation, that he has not filed any medical records to prove his cardiac illness and that he has purposely failed to comply with the directions of the Court. But the learned Sessions Judge, though not satisfied with the alleged ill-health of the accused, considering the life threat to the accused, modified the condition and directed him to appear before that Court daily at 10.00a.m., from the next day onwards, vide order dated 14.12.2021.

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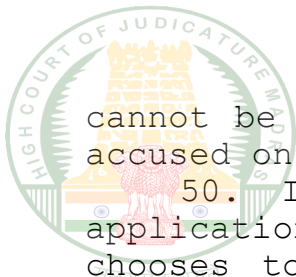
46. As rightly pointed out by the learned Additional Public Prosecutor appearing for the State, it is pertinent to note that the accused in his modification petition has specifically stated that he was a contesting candidate in the last Parliament Election and due to the political enmity, there is a life threat by his political enemies. As already pointed out, the learned Sessions Judge, being satisfied with his life threat, has chosen to modify the conditions. As rightly contended by the learned Additional Public Prosecutor appearing for the State, before the registration of F.I.Rs, the accused was moving freely and that he has not preferred any complaint before any police seeking protection nor gave any complaint against his political enemies for giving life threat. It is pertinent to note that though the bail order was passed on 04.12.2021, he has not complied with the conditions on 05.12.2021 and 06.12.2021 and thereafter by filing the modification petition, he has not chosen to comply with the directions.

47. It is fundamental that Justice should not only be done, but seems to have been done. This Court is in entire agreement with the submissions made by the learned Additional Public Prosecutor that the offences under POCSO Act are being seriously viewed by the Hon'ble Supreme Court and also the Society as a whole, due to the frequency in our Society. In the present case, the offences alleged against the respondent/accused are unpleasant and as rightly pointed out by the learned Additional Public Prosecutor, such misconducts are not expected from a Correspondent of the Educational Institutions, that too against his own students. The accused, being the Correspondent of the Educational Institutions, is to be considered as the custodian of the students of his institutions and more particularly the students studying in the hostels attached to the institutions. In the present case, both the victims were the hostelers. Molestation of students under his care and production is a very serious offence of grant concern and letting him out without full trial, would not only hamper the course of trial, many other students would also be put into same ordeal.

48. POCSO Courts are duty bound to send a right signal to the persons like the respondent and to the Society that the offenders under the POCSO Act are to be dealt with iron hands. But in the case on hand, the learned Sessions Judge by granting bail within 12 days, conveyed a wrong signal that the persons having influence and status can do anything and come out easily.

49. As already pointed out, the learned Sessions Judge has observed that the complaint was lodged after the lapse of 15 days from the date of alleged occurrence of the case in Cr.No.766 of 2021. Even assuming for arguments sake, that there is some delay on the part of the defacto complainant, it is settled law that the delay in launching the F.I.R., by itself is not a ground to doubt the prosecution and moreover considering the nature of the charges

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cannot be considered as fatal and a valid ground for enlargement of the accused on bail.

50. It is settled law that where a Court considering an application for bail fails to consider the relevant factors or chooses to consider irrelevant factors, then this Court can very well set aside the order granting bail. In the case on hand, as already pointed out, the learned Sessions Judge has not chosen to consider the relevant factors, but on the other hand, has considered the irrelevant factors or materials which have no relevance to the question of grant of bail.

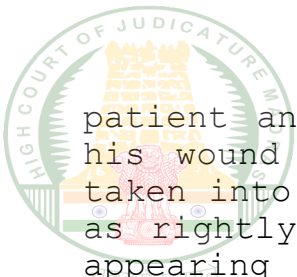
51. Very recently in **Kamala Devi Vs. State of Rajasthan and another** reported in **2022 Live Law (SC) 272**, the Hon'ble Supreme Court has held as follows:

"22. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide *Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh [(1978) 1 SCC 240]* ; *Prahlad Singh Bhati vs. NCT of Delhi & Ors. - [(2001) 4 SCC 280]* ; *Anil Kumar Yadav vs. State (NCT of Delhi) [(2018) 12 SCC 129]*.

While we are conscious of the fact that a Court considering the grant of bail must not engage in an elaborate discussion on the merits of the case, we are of the view that the High Court while passing the impugned orders has not taken into account even a single material aspect of the case. The High Court has granted bail to the respondents-accused by passing a very cryptic and casual order, de hors cogent reasoning. We find that the High Court was not right in allowing the applications for bail filed by the respondents-accused. Hence the impugned orders dated 9th September, 2019 and 17th October, 2019 are set aside. The appeals are allowed."

52. In the case on hand also, the learned Sessions Judge has not taken into account any one of the material aspects of the case. When the respondent is aged about 45 years, then his parents must be around 65 years or 70 years old. The learned Sessions Judge has given much importance that the mother of the respondent is a cardiac

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patient and his father is taking treatment from Ortho Doctor for his wound in the left leg. The learned Sessions Judge has also taken into account that the respondent is an income tax assessee and as rightly pointed out by the learned Additional Public Prosecutor appearing for the State that the said factum can be taken into account, while considering his request for availing some benefits in the prison as per the Prison Manual and by no stretch of imagination, the same can be considered as a reason or ground for granting bail.

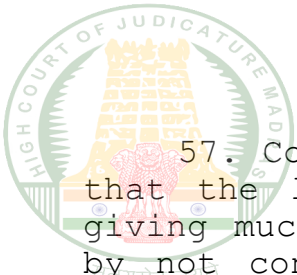
53. The next reason assigned was that the respondent is running 6 Colleges having 2500 students and he has won several awards from various organizations. This Court is at loss to understand as to how the so called status can be taken as a ground for granting bail and that too for POCSO offences. In the absence of any material to show that the respondent/accused was falsely implicated, the high status and position shown by the respondent/accused and accepted by the Sessions Court can only be considered as a reason for rejecting the bail, since the respondent has potential to influence and tamper the witnesses.

54. As already pointed out, the petitioner has already laid the final reports and the cases were taken on file and the same are pending before the Fast Tract Mahila Court, Dindigul. As rightly contended by the learned Additional Public Prosecutor, the very filing of the charge sheet is not sufficient enough to grant the bail. There is no doubt that the personal liberty of a person accused of offence is important, but it is also important for the Courts to recognize the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.

55. The Hon'ble Supreme Court in **Sudha Singh Vs. the State of Uttar Pradesh and another**, in **Crl.A.No.448 of 2021, dated 23.04.2021**, has held that Courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question and that it is necessary for Courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

56. In the case on hand, the learned Sessions Judge should have considered the impact that the release of the respondent on bail will have on the defacto complainants and other students of the said institutions and also to the Society at large. The failure of the learned Sessions Judge to consider about the seriousness of the allegations and the impact of the incidents on the affected students is highly deplorable. As rightly contended by the learned Additional Public Prosecutor, for conducting a free and fair trial and for the defacto complainants and other students to depose before the trial Court fearlessly, the accused should not be allowed to remain outside and roam here and there.

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57. Considering the above, this Court has no hesitation to hold that the learned Sessions Judge, without application of mind, by giving much importance to the irrelevant factors and materials and by not considering the relevant factors, has granted bail within short time and as such, the same are liable to be set aside.

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58. In the result, both the petitions are allowed and the common order granting bail by the learned Sessions Judge, Fast Track Mahila Court, Dindigul in Cr.M.P.Nos.1750 and 1752 of 2021, dated 04.12.2021 is set aside. The respondent is directed to surrender before the concerned Court within three days from today, failing which, the petitioner is directed to secure him. It is made clear that none of the observations made herein shall have a bearing on the main trial.

sd/-
22/03/2022

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

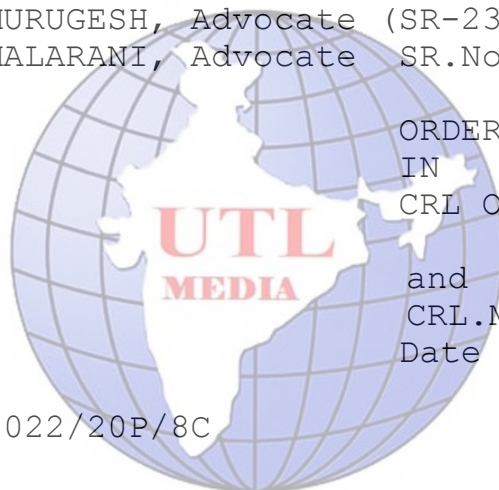
Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.
- 2 THE INSPECTOR OF POLICE,
THADIKOMBU POLICE STATION, DINDIGUL DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

- THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, VADAMADURAI.
- +2 CC to Mr.S.PAUL MURUGESH, Advocate (SR-2350[I] dated 23/03/2022)
+1. C.C. to M/S.NIRMALARANI, Advocate SR.No.2399.



ORDER
IN
CRL OP(MD). Nos.20452 and
19866 of 2021
and
CRL.M.P. (MD)No.2243 of 2022
Date :22/03/2022

SSL

MK/PN/SAR.IV/23.03.2022/20P/8C

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