

HIGH COURT OF MADHYA PRADESH

M.Cr.C.No.6190/2022

Gwalior Bench:Dated -31/03/2022

LAW LAID DOWN

1. Section 35(1) and (2) of POCSO Act mandates concluding of the trial within one year from the date of cognizance and statement of prosecutrix is to be taken within one month from the date of cognizance. Much legal sanctity and purpose lie behind it because it is beneficial legislation to protect the child from onslaught of lust and greed of accused. Therefore, trial Courts are expected to consider this aspect and must endeavour to conclude the trials on expeditious note.
2. When liberty of an accused is ensured by the Administration of Justice then it is the duty of the accused to ensure dignity of prosecutrix and her family members and to help the cause of justice while not causing delay in trial deliberately, otherwise he renders himself vulnerable for cancellation of bail.
3. The judgment of Apex Court in the matter of **Vipan Kumar Dhir Vs. State of Punjab and another, AIR 20021 SC 4865** relied and discussed.

(Anand Pathak)
Judge

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The Prosecutrix Vs. Dr. Piyush Saxena & Anr.

Gwalior Bench: Dated: 31/03/2022

Shri Padam Singh, learned counsel for the petitioner/complainant.

Shri Anurag Gohil and Shri Rajendra Singh Yadav, learned counsel
for respondent No.1.

Shri B.M. Shrivastava, learned PP for respondent No.2/State.

With consent heard finally.

1. Present application is preferred under Section 439(2) of Cr.P.C. by the petitioner/complainant seeking cancellation of bail granted vide order dated 20-01-2020 in M.Cr.C.No.43135/2019 by which this Court has granted bail to respondent No.1/accused. Accused/respondent No.1 is facing trial vide Special Case No.11/2019 for offence under Sections 376(2)(n), 376(2)(i), 354(A)(i)(ii), 354(D), 120-B, 201 of IPC and Sections 3,4,5,6,13,14 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”) and Sections 67,67(A),67(B), 66(D),66(E) of Information Technology Act.
2. As per the allegations as contained in the charge-sheet, accused molested the prosecutrix on various occasions as referred in the charge-sheet when she was minor.
3. It is the submission of learned counsel for the petitioner/complainant that while granting bail, this Court ordered that accused shall comply all the terms and conditions of the bond

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executed by him, he will cooperate in trial , would not move in the vicinity of complainant party and would not indulge himself in extending inducement, threat or promise to any other person acquainted with the facts of the case and will not seek unnecessary adjournments during trial etc. Condition No.7 categorically stipulated that applicant shall not cause any delay in trial and would cross-examine the prosecution witnesses whenever they appear before the Court for cross-examination, otherwise benefit of bail shall be withdrawn immediately.

4. Relying upon the conditions enumerated in the order of bail dated 20-01-2020, learned counsel for the complainant categorically mentions that accused did not comply the conditions, therefore, rendered himself for cancellation of bail. He referred condition No.7 as contained in the order dated 20.01.2020 granting bail to the accused and referred the proceedings (filed alongwith the application) to submit that after examination-in-chief of prosecutrix, applicant sought 13 adjournments in all to cross-examine her. On pretext or the other, adjournments were sought and prosecutrix was constantly called for cross-examination which caused debilitating effect over the prosecutrix.
5. It is further submitted that initially when cross-examination of prosecutrix was likely to be held then application was moved by the accused side for filing affidavits of other family members of

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prosecutrix also in one go so that accused can cross-examine the witnesses one by one and defence of accused would not be opened to other prosecution witnesses to improve upon. That application was allowed by the trial court vide order dated 22.06.2019 and therefore, alongwith prosecutrix, her father (PW-2), younger sister (PW-3) and mother (PW-4) filed their affidavits before cross-examination of prosecutrix. Still their cross-examinations did not take place except her father that too recently.

6. Learned counsel for the petitioner referred the fact that on 19.07.2019 examination -in -chief of father (PW-2) was recorded and his cross-examination after 9 adjournments was completed recently on 07.03.2022. Cross-examination of younger sister (PW-3) and mother (PW-4) are still awaited. Therefore, according to him, it is breach of conditions No.5 and 7 of the bail order. Accused is trying to procrastinate the trial some how.
7. Therefore, it is clear that he has not cooperated in trial and tried to create an atmosphere wherein complainant and her family members would get exhausted to come to the trial court and would ultimately give up. Surprisingly trial court has also given long dates of 2-3 months and apparently played in the hands of accused.
8. So far as misuse of liberty is concerned he referred the fact that after getting the benefit of bail, just in-front of the house of petitioner, a Restaurant (with non-veg food and liquor) was opened

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at the instance of accused in the name of his wife and this created constant harassment and embarrassment to the prosecutrix and her family members because till wee-hours antisocial persons inebriated condition used to visit. Some hooligans kept roaming around the house of prosecutrix and they tried to create disputes on parking issue or some similar pretext to entangle the complainant's family. They made complaint to the Superintendent of Police, Vidisha and on investigation, it was found that Restaurant is being run by the family members of the accused at his instance. Not only this, after complaint when Restaurant was closed by the accused, then in place of Restaurant, one Hospital was started in same building without permission and for that when complaint was made, then notice was issued by the Municipal Council for such illegality and irregularity because no such permission has been taken by the accused to start that hospital. Apparently purpose behind it to harass the complainant side so that they may give up the case and may come to the terms of accused.

9. Harassment and embarrassment of the complainant is also tried to be established by the counsel for the petitioner by referring different order-sheets of trial Court wherein prosecutrix appeared in morning as usual but cross-examination started in post lunch session or thereafter so that cross-examination could not be completed on that day and prosecutrix would have to visit again.

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This is against the spirit of Section 35(1) and (2) of POCSO Act wherein evidence of child is to be recorded within one month of cognizance and trial has to be completed within one year from the date of cognizance of offence. Here, matter is pending for more than 3 years and it has caused embarrassment and harassment to the complainant side constantly. In these circumstances, prosecutrix filed this application for cancellation of bail. Learned counsel for the petitioner placed reliance on the judgment of Delhi High Court in the matter of **Madhu Garg Vs. State & Ors. 2009 Cri.L.J. 1067** and Patna High Court in the matter of **Kaisar Jahan Vs. State of Bihar and another, (2009) 3 ECrC 400** to bolster his submission wherein the High Court enumerated the circumstances on which bail can be cancelled in exercise of power under Section 439(2) of Cr.P.C.

10. Learned counsel for the accused/respondent No.1 opposed the prayer and submitted that some dates were taken by the accused to cross-examine the prosecutrix, but those dates were taken prior to the date of release of accused and due to technical snag he could not appear through video-conferencing from the prison where he was confined. Thereafter much delay has not been caused, he remained present on all dates and he did not cause any delay. Since cyber report was not available therefore, accused sought adjournments for cross-examination because he had to ask some

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cyber related questions. He is a doctor and COVID warrior and he himself seeks early conclusion of trial and does not want to delay it. He also performed community service by way of plantation as per the directions of this Court.

11. Learned counsel for the accused relied upon the judgment of **Dolat Ram and others Vs. State of Haryana, 1995 SCC (Cri) 237** to submit that bail once granted should not be cancelled 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. Further reliance has been placed on the judgment of Apex Court in the matter of **X Vs. The State of Telangana and others, (2018) 16 SCC 511**.
12. On the other hand, learned counsel for respondent No.2/State referred the facts as narrated but accepts that trial is being delayed.
13. No other ground has been raised by the parties.
14. Heard learned counsel for the parties at length and perused the documents appended thereto.
15. It is a case where prosecutrix is seeking cancellation of bail of accused/respondent No.1 on the grounds of delayed trial, misuse of liberty and non compliance of conditions as enumerated in the bail order.

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16. From perusal of proceedings filed exhaustively by the petitioner/complainant, it appears that the case is of serious allegations (to some extent ugly also) in which accused was given the benefit of bail on 20-01-2020 because at that time he suffered more than a year of incarceration and cross-examination of prosecutrix was completed. Thereafter, from the proceedings of trial Court it appears that accused on the pretext or the other tried to get the trial delayed and obviously so because by avoiding brisk pace of trial he could have out maneuvered the prosecution witnesses according to his convenience. It is always draining and exhausting for prosecution witnesses/family members of victim to appear regularly before the Court to face the “glare and wrath of accused persons”, “exasperation of procedures” and at times “nonchalance of trial Court” to appreciate the plight and agony of victim/complainant/witnesses.
17. This is Secondary victimization of victim/complainant and same is deprecated by the Apex Court in the case of **Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. State of Karnataka and Ors., (2019) 2 SCC 752**).
18. Some Crimes give Psychic Gains whereas some Crimes give Monetary Gains. Here, nature of crime (as per allegations) suggests that accused is deriving Psychic Gains while compelling the

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prosecutrix and her family members to attend Court proceedings as witnesses more frequently than required.

19. Even otherwise, relevant statute vide Section 35 (1) and (2) of POCSO Act mandates concluding the trial within one year and statement of prosecutrix within one month from the date of cognizance because much legal sanctity and purpose lie behind it. It is beneficial legislation to protect the child from onslaught of lust and greed of accused and here prosecutrix is facing heat of lust allegedly displayed by accused. Much delay has been caused already since then and trial Court cannot be oblivious of the fact that accused and his counsel are dictating the terms of trial, especially when case bears such serious allegations then it is the duty of the trial Court to complete the trial as expeditiously as possible to avoid secondary victimization of complainant side.
20. It is evidently clear that the accused many a times took adjournments and tried to cross-examine the prosecution witnesses at the fag end of the day so that after some time no other option is left to the trial Court but to adjourn the case. Such conduct of accused to cause delay in trial deliberately, renders himself vulnerable for cancellation of bail.
21. Other conduct of accused also reveals that he is trying to harass the complainant/prosecutrix incessantly so that some how plight of the petitioner/prosecutrix can be misused to his advantage. Looking to

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the conduct of accused it appears that no leniency can be shown specially when accused is tinkering with the administration of justice which otherwise came to his rescue when bail was granted to him. Concept of Rule of Law is also undermined in the present case.

22. When the liberty of an accused is ensured by the Administration of Justice then it is the duty of the accused to ensure dignity of prosecutrix and her family members and to help the cause of justice.
23. So far as legal position is concerned, from perusal of recent judgment of Apex Court (Three Judge Bench) in **Vipan Kumar Dhir Vs. State of Punjab and another, AIR 20021 SC 4865** while relying upon other Three Judge Bench judgment recently pronounced by the Apex Court in the matter of **X Vs. State of Telangana and another, (2018) 16 SCC 511** it has been held that bail can also be revoked where Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. Relevant discussion needs reiteration as under:

*“9. At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that ‘cogent and overwhelming reasons’ are present for the cancellation of bail. Conventionally, **there can be***

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supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. This Court in [Daulat Ram and others vs. State of Haryana](#) observed that:

*“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the 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 the cancellation of bail. However, bail once granted should not be cancelled 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 have been reiterated time and again, more recently by a 3-judge Bench of this Court in [X vs. State of Telegana and Another](#).

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10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.

11. Broadly speaking, each case has its own unique factual scenario which holds the key for adjudication of bail matters including cancellation thereof. The offence alleged in the instant case is heinous and protrudes our medieval social structure which still waits for reforms despite multiple efforts made by Legislation and Judiciary.”

24. While dealing with liberty of an individual *vis a vis* collective interest of the community, observation of Apex Court in the case of **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and others,**

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(1987) 2 SCC 684 is worth consideration when Apex Court observed as under:

“Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

25. This observation is being reiterated by the Apex Court in the case of **Ramgovind Upadhyay Vs. Sudarshan Singh, (2002) 3 SCC 598.**
26. One has to keep in mind that **Administration of Justice** is meant for **Dispensation of Justice** and Justice is not a lopsided connotation tilting in favour of accused alone. Prosecution, Victim and Trial Court are equally important stakeholders and their presence bring meaning, purpose and legitimacy to the Administration of Justice. Therefore, plight of the Victim or Prosecution Witnesses cannot be ignored. If trial is continued for a long period, specially under POCSO Act then faith in institution would be the ultimate casualty. In the present case constant appearance of prosecutrix and her family members at trial Court for deposition and thereafter either adjournments or partial cross-examination must have made them **Fearful (from accused),**

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Doubtful (about dispensation of justice) and Embittered (due to delay). Construction of Restaurant, thereafter Hospital looks as if attempts are being made to harass the victim some how so that they may succumb one day. This gives a chain reaction to other similarly placed accused to play foul with the trial Court. Same cannot be allowed to continue.

27. From the aforesaid discussion, it appears that case for cancellation of bail is made out because not only secondary victimization of victim is going on but trial has also been delayed considerably *prima facie* attributable to the accused who is trying to compromise morale of the complainant side to his advantage. Same is not permissible. Therefore, application preferred under Section 439(2) of Cr.P.C. is hereby **allowed** and order dated 20-01-2020 granting bail to the accused/respondent No.1 is hereby recalled. Accused shall have **to surrender before the trial Court on or before 08-04-2022 otherwise consequences shall follow henceforth.**
28. Copy of this order be sent to the concerned trial Court for information and necessary compliance in case accused/respondent No.2 does not surrender within the stipulated period. Trial be conducted at expeditious note.
29. Before parting, Registrar General of this Court is directed to place this order before Hon'ble The Chief Justice seeking permission for

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circulation amongst officers of District Judiciary for information
and sensitization.

(Anand Pathak)

Judge

Anil*