

HIGH COURT OF MADHYA PRADESH : JABALPUR
SINGLE BENCH: HON.SHRI RAJEEV KUMAR DUBEY, J.
M.CR.C.No.16087/2021

FATHER OF PROSECUTRIX-X

Versus

1. **STATE OF MADHYA PRADESH THRO. MAHILA THANA DISTT. KATNI (MADHYA PRADESH)**
2. **YASH SEHGAL S/O SHRI SANJAY KUMAR SEHGAL, AGED ABOUT 23 YEARS, R/O NEAR THE GATE OF MADHAVNAGAR, MADHAVNAGAR, KATNI, DISTT. KATNI (MADHYA PRADESH)**
3. **SAKSHAM BHASIN S/O SHRI VINAY BHASIN, AGED ABOUT 23 YEARS, HOUSING BOARD COLONY, MADHAVNAGAR, KATNI, DISTT. KATNI (MADHYA PRADESH)**

Shri Anil Khare, Sr. Counsel with Shri Pranjal Diwakar, Advocate for the applicant.

Shri Dilip Shrivastava, Govt. Adv. for the respondent no.1/State.

Ms. Manjit P.S. Chuckal, Advocate for the respondent nos.2 and 3.

ORDER
(Reserved on 04/04/2022)
(Delivered on 18/04/2022)

This petition has been filed by the father of the prosecutrix, who was minor under Section 439(2) of the CrPC for cancellation of bail granted to the

respondent nos.2 & 3 namely Yash Sehgal and Saksham Bhasin by Special Sessions Judge (POCSO Act), Katni vide order dated 09/03/2021 in Crime no.04/2021 registered at Police Station Mahila Thana, Katni for the offence punishable under Sections 376(2)(j), 376(2)(k), 376(2)(n), 376(2)(f), 376 (D)(A) of the IPC and Sections 5g, 5l, 5n, 5m and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. As per prosecution case, prosecutrix, who was minor, lodged a written report on 21/02/2021 at Police Station Mahila Thana, Katni that during the period from 14/03/2013 to 21/02/2019 accused/applicants sexually exploited and committed rape with her. On that, police registered Crime no.04/2021 at Police Station Mahila Thana, Katni for the offence punishable under Sections 376(2)(j), 376(2)(k), 376(2)(n), 376(2)(f), 376DA of the IPC and Sections 5g, 5l, 5n, 5m and 6 of the Protection of Children from Sexual Offences Act, 2012 against the respondent nos.2 & 3 and arrested them on 22/02/2021. Special Sessions Judge (POCSO Act), Katni vide order dated 09/03/2021 granted them bail. Being aggrieved from that order, the applicant filed this petition.

3. Learned counsel for the applicant submitted that the respondent nos.2 & 3 sexually exploited the prosecutrix, who was a minor, from March 2013 to February 2019 continuously. Due to fear of respondent nos.2 & 3, she did not disclose their activities to anybody. She narrated the incident to her family members for the first time when her brother saw her trying to commit suicide.

Respondent nos.2 & 3 started exploiting her from March 2013 when the prosecutrix was nine years of age and continuously exploited her up to February 2019. The acts of the respondent nos.2 & 3 had a great impact on the emotional status of the prosecutrix. She is dealing with fear, low confidence and anxiety-related issues and she has to go to a psychologist from time to time for treatment and for counselling. During this period, she has undergone various counselling sessions and tests, the reports of which show that her mental condition and emotions have gone down to the average score. The incident has broken her badly both physically and mentally. Her childhood was destroyed due to the acts of the respondent nos.2 & 3. Her parents and family members are also suffering from big trauma. Learned Special Sessions Judge (POCSO Act), Katni without appreciating all these facts, the gravity of the offence and the provision of Section 29 of the POCSO Act wrongly granted bail to the respondent nos.2 & 3, so the order passed by the Special Sessions Judge (POCSO Act), Katni be cancelled.

4. In this regard, learned counsel for the applicant also placed reliance upon the judgements of the Hon'ble Apex Court passed in **State of Bihar vs. Rajballav Prasad alias Rajballav Prasad yadav alias Rajballabh Yadav** reported in (2017) 2 SCC 178, **State of Himachal Pradesh vs. Sanjay Kumar @ Sunny** reported in (2017)2 SCC 51, **Kanwar Singh Meena vs. State of Rajasthan and another** reported in (2012) 12 SCC 180.

5. Learned counsel for the respondent nos.2 & 3 submitted that it is alleged that the respondent nos.2 & 3 continuously exploited the prosecutrix sexually and also threatened her from March 2013 to February 2019. But, the Prosecutrix lodged the report for the first time on 21/2/2021. There is no plausible explanation regarding the delay in lodging the FIR. Had the respondent nos.2 & 3 been sexually exploiting the prosecutrix continuously for 6 years, this fact must have come to the knowledge of the mother of the prosecutrix. She further submitted that learned trial Court after appreciating all the facts and circumstances of the case granted bail to the respondent nos.2 & 3. The criteria/parameters for cancellation of bail are different from the one for grant of bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. The Court is required to exercise such discretion with circumspection and care and not in a mechanical way. There is no allegation against the respondent nos.2 & 3 that they misused the liberty of bail or they pressurised the prosecutrix and her family members. The respondent nos.2 & 3 have no criminal past. They are students and respondent no.2 Yash Sehgal is studying in PGDM SM course at Jaipuria Institute of Management Jaipur and respondent no.3 Saksham Bhasin is studying in PGDM Marketing at ITM Business School Navi Mumbai. If they are sent to jail, their future will be badly affected. They are continuously cooperating in the investigation and trial, so there is no need to cancel their bail.

6. In this regard, learned counsel for the applicant also placed reliance upon the judgements of the Hon'ble Apex Court **Daulat Ram vs. State of Haryana** reported in (1995) 1 SCC 349, **Raghubir Singh and ors. vs. State of Bihar** reported in 1986(4)SCC481, **Aslam Babalal Desai vs. State Of Maharashtra** reported in 1992(4)SCC 272, **Ramcharan vs. State of M.P.** reported in 2004(13)SCC617, **Padmakar Tukaram Bhavnagre vs. State of Maharashtra** reported in 2012(13)SCC 720, **Ms.X vs. State of Telangana** reported in 2018 (16)SCC511.

7. This court has gone through the record and arguments put forth by the learned counsels of both the parties. Apex court in the case of **State of Bihar vs. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballabh Yadav** reported in (2017) 2 SCC 178 has held that;

“where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.”

8. Apex Court in the case of **State of Himachal Pradesh vs. Sanjay Kumar @ Sunny** reported in (2017)2SCC51 held that “where order granting

bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.”

9. Apex Court in the case of **Kanwar Singh Meena vs. State of Rajasthan and another** reported in **(2012) 12 SCC 180** has held thus: **(SCC pp. 185-86, para 10)**

“10. ... Section 439 of the Code confers very wide powers on the High Court and the Court of Session 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.”

10. Apex Court in the case of **Padmakar Tukaram Bhavnagre vs. State of Maharashtra** reported in **2012(13)SCC 720** has held that: “It is true that this Court has held that generally speaking the grounds for cancellation of bail

broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled, where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail orders must be quashed in the interest of justice.”

11. Apex Court in the case of **Daulat Ram vs. State of Haryana** reported in **(1995) 1 SCC 3494** held 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.”

12. Apex Court in the case of **Raghubir Singh and ors. vs. State of Bihar** reported in **1986(4)SCC481** held that “where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in 60 days, after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.”

13. In the case of **State (Delhi Admn.) vs. Sanjay Gandhi** reported in **(1978) 2 SCC 411** Apex Court observed that “rejection of bail when bail is applied for is one thing; cancellation of a bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail once granted. That is because cancellation of bail interferes with the liberty already secured by the accused either on the exercise of discretion by the court or by the thrust of law. This Court, therefore, observed that the power to take back in custody an

accused, who has been enlarged on bail has to be exercised with care and circumspection. That does not mean that the power though extraordinary in character must not be exercised even if the ends of justice so demand.” In the case of **Aslam Babalal Desai vs. State of Maharashtra** reported in **1992(4)SCC 272** Apex Court held that unless there are strong grounds for cancellation of the bail, the bail once granted cannot be cancelled on mere production of the charge-sheet. In the case of **Ramcharan vs. State of M.P.** reported in **2004(13)SCC617** Apex Court held that “the order of bail can be cancelled on the existence of cogent and overwhelming circumstances.” In the case of **Ms.X vs. State of Telangana** reported in **2018 (16) SCC 511** Apex Court held that “it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out.”

14. From the above pronouncement of the Apex Court as relied upon by the learned counsels of both the parties, it transpires 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 to the bail,

already granted. 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. However, courts have the power and discretion to cancel bail even when there are no supervening circumstances where order granting bail was passed by ignoring material evidence on record and without giving reasons or where bail has been granted on untenable grounds; or where the order granting bail suffers from serious infirmities resulting in miscarriage of justice.

15. In the instant case, it is alleged that the respondent nos.2 & 3 sexually exploited Prosecutrix, who was a minor continuously for 6 years. They strated her exploitation, when she was at the age of 9 years and continuously exploited her sexually for 6 years. They also showed her porn videos. She could not tell anyone about the incident because of fear and shame. It is also alleged that the acts of the respondent nos.2 & 3 had a great impact on the emotional status of the prosecutrix. At present, she is dealing with fear, low confidence and anxiety-related issues.

16. Learned trial Court only on the ground that in the medical examination report of the prosecutrix, it is not mentioned that she was subjected to rape and that the incident is said to have started in the year 2013 but the report has been lodged after 8 years without showing any reason for the delay in lodging the FIR and respondent nos.2 & 3 are the students having no criminal past, granted bail to respondent nos.2 & 3.

17. Though, in the medical examination report of the prosecutrix, it is mentioned that no definite opinion can be given regarding rape but apart from that it is also mentioned that the hymen was old torn and two fingers were easily going in the vagina which *prima facie* corroborates the fact that she was sexually abused. The delay in lodging in FIR is also explained by the prosecution. In the case diary statement of prosecutrix, it is mentioned that she narrated the incident to her family members for the first time when her brother saw her trying to commit suicide also in cases like this where a minor girl was subjected to sexual abuse by two-persons one of whom is her relative, mere delay in lodging the FIR can not demolish the prosecution case. Though, the respondent nos.2 & 3 are young boys and have no criminal past, the prosecutrix was also minor and they destroyed her childhood from their acts. It is also alleged that the prosecutrix is dealing with fear, low confidence and anxiety-

related issues which clearly shows that learned trial Court on the basis of wrong facts and without considering the facts and circumstances of the case, gravity of the offence and provisions of Section 29 of POCSO Act granted bail to the respondent nos.2 & 3.

18. In the considered opinion of this court, the incarceration of respondent nos. 2 & 3 is necessary in the interest of justice and in accordance with law at least till the time, the prosecution evidence is over. Thus, the petition is allowed and the impugned order is set aside and respondent nos. 2 & 3 are directed to surrender before the competent Court within fifteen days from today.

19. Needless to say that any observation made in the impugned order is only for the purpose of consideration of the issue of bail and would not prejudice the trial in any manner.

(RAJEEV KUMAR DUBEY)

JUDGE

m/-