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MS. X

v.

THE STATE OF TELANGANA AND ANR.

(Criminal Appeal No. 000716 of 2018)

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MAY 17, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

Bail:

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Regular bail – u/s. 439 CrPC.- Granted in a case involving offences u/ss. 376, 342, 493, 506 and 354(C) of IPC – Cancellation of – Held: There is no cogent material to indicate that the accused had been guilty of conduct which would warrant his being deprived of his liberty – No supervening circumstance made out to warrant cancellation of bail – Code of Criminal Procedure, 1973 – s. 439.

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On the complaint of the appellant against respondent-accused, charge-sheet was filed for offences punishable u/ss. 376, 343, 493, 506 and 354(C) of IPC. Accused was granted anticipatory bail, which was later cancelled on the ground that accused had not disclosed that he was an accused in 2G Spectrum case. Thereafter, application for regular bail u/s. 439 CrPC was allowed directing to release the accused on bail on executing a personal bond of Rs.50,000/-. Hence the present appeal.

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Disposing of the appeal, the Court

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HELD: 1. Even going by the case of the complainant, there was intimate contact between the complainant and the accused over a period of nearly six months between July 2015 and January 2016. Even according to the complainant, she visited the accused on two occasions in Hyderabad and stayed with him. The tickets for her travel from Mumbai were borne by the accused. The complaint was filed nearly a year thereafter in January 2017. These circumstances do bear upon the defence that there was a consensual relationship between the complainant and the accused. [Para 13] [475-E-F]

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2. The accused had the benefit of an order granting him anticipatory bail. The grant of anticipatory bail was cancelled

principally on the ground that he had not disclosed the pendency of a prosecution against him in the 2G Spectrum case. The Court has been informed during the course of the hearing that the said prosecution has ended in an acquittal. Regular bail was granted by the High Court on 17 November 2017 in the present case. The second FIR which was lodged on 22 November 2017 is not a supervening circumstance of such a nature as would warrant the cancellation of the bail which was granted by the High Court. 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. [Para 14][476-B-C, D]

3. No supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty. [Para 15][476-E]

4. However, the quantum of the personal bond fixed by the High Court should be enhanced in the facts and circumstances of the case. Accordingly, the quantum of the personal bond shall stand enhanced to Rs 10 lakhs. [Para 16][476-F]

Kanwar Singh v. State of Rajasthan (2012) 12 SCC 180 : [2012] 10 SCR 847; *Neeru Yadav v. State of UP* (2016) 15 SCC 422 : [2015] 10 SCR 802 ; *State of Bihar v. Rajballav Prasad* (2017) 2 SCC 178 : [2016] 9 SCR 652 ; *Dolatram v. State of Haryana* (1995) 1 SCC 349 : [1994] 6 Suppl. SCR 69 ; *Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan* (2011) 5 SCC 296 : [2011] 5 SCR 824 ; *Dataram Singh v. State of Uttar Pradesh* 2018 (2) SCALE 285 – referred to.

Case Law Reference

[2012] 10 SCR 847	referred to	Para 11
[2015] 10 SCR 802	referred to	Para 11
[2016] 9 SCR 652	referred to	Para 11
[1994] 6 Suppl. SCR 69	referred to	Para 12
[2011] 5 SCR 824	referred to	Para 12
2018 (2) SCALE 285	referred to	Para 12

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 716 of 2018.

From the Judgment and Order dated 17.11.2017 of the High Court of Judicature at Hyderabad in CRL P No. 10602 of 2017.

B Karuna Nundy, Raunak Nayak, Avinesh Bhardwaj, Ms. Aparna Bhat, Mayank Sapra, Advs for the Appellant.

C Mukul Rohatgi, Sidharth Luthra, Sr. Advs, R. N. Karanjawala, Sandeep Kapur, Mahesh Aggarwal, Deb Malya Banerjee, Shivek Trehan, Vir Inderpal Singh Sandhu, A. S. Aman, Ms. Niharika Karanjawala, Ms. Apoorva Pandey, Abhimanshu Dhyani, Mayank Aggarwal, Ankur Sehgal, Kartik Bhatnagar, Aviral Kapoor, Ms. Iara Khalid, M/s. Karanjawala & Co., S. Udaya Kumar Sagar, Mrityunjai Singh, Advs for the Respondents.

The Judgment of the Court was delivered by

D **DR. D. Y. CHANDRACHUD, J.** 1. Leave granted.

2. Bail was granted to the second respondent on 17 November 2017 by a learned single Judge of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. The order forms the subject matter of the present appeal.

E 3. The second respondent (“the accused”) is a film producer, based in Mumbai. The complainant alleged, in a complaint which she filed on 10 January 2017, that in June 2014 she had enrolled in an institute which imparts training in film acting. She resided in a rented apartment in Mumbai. The complainant states that she became acquainted with the niece of the accused, who was to be married in December 2014. In the course of her visits to the home of her friend, the complainant became acquainted with the accused, who was producing a Hindi film. In July 2015 the accused is alleged to have invited himself to the home of the complainant. The accused and the complainant had wine. The complainant alleges that she felt dizzy after a few sips, and the accused forced himself upon her. It was after she regained senses that she realised that the accused had raped her. The accused left her apartment and when she called him, it is alleged that he threatened her of being in possession of her nude photographs and of his connections with the underworld. The complainant alleged that the accused continue to have

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a relationship with her; that he would come to her home in the hours of night and compel her to have sex with him, against her wishes. On 12 September 2015 it is alleged that he invited her to join him in Hyderabad where he was shooting a film. The complainant stayed with the accused in a hotel, when he is alleged to have raped her. She alleges that she visited Hyderabad again on October 12, 2015 and stayed with him, when he raped her. The complainant claims that she suffers from depression and had attempted suicide. The complainant alleged that the accused had been making false promises of marriage to her and was exploiting her continuously. A complaint was lodged before the Station Officer at Police Station, Hayathnagar in Hyderabad on 10 January 2017.

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4. After investigation, a charge-sheet has been submitted on 6 March 2018, for offences punishable under Sections 376, 342, 493, 506 and 354 (C) of the Penal Code.

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5. The accused was granted anticipatory bail by the Fourth Additional Metropolitan Sessions Judge, Hyderabad by an order dated 30 January 2017. The accused had the benefit of that order for a period of eight months. The order of anticipatory bail was cancelled by the Sessions Judge, principally on the ground that the accused had not disclosed the fact that he had been accused in the 2G Spectrum case (CC No.1 of 2011). The order of cancellation was affirmed by the High Court on 5 September 2017, and by this Court on 22 September 2017, though with the clarification that while dealing with the application under Section 439 of the Criminal Procedure Code 1973, the Court shall not be influenced by any of the observations made while cancelling anticipatory bail. The accused then moved an application under Section 439 for the grant of bail in Case Crime 33/2017, registered by the Hayathnagar Police Station for offences punishable under Sections 376, 342, 493, 506 and 354 (C) of the Penal Code.

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6. The High Court has allowed the application for the grant of bail and has directed that the accused be released on executing a personal bond of Rs 50,000 with two sureties each in a like sum to the satisfaction of the Metropolitan Magistrate. The accused has been directed not to leave the country without the permission of the trial Court. In allowing the application, the High Court has relied upon the following circumstances:

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- A (i) The accused was on anticipatory bail for a period of about eight months during the course of which there is no allegation of improper conduct;
- (ii) The grant of anticipatory bail was cancelled only on the ground that the accused had not revealed his involvement in the 2G Spectrum case;
- B (iii) All material witnesses have been examined during the course of the investigation and the cell phone recovered from his possession was sent to the forensic science laboratory, whose report is awaited;
- C (iv) The accused was granted regular bail during the pendency of the trial in the 2G Spectrum case and there was no allegation of a violation of the terms on which bail was granted. In the meantime, the accused had travelled abroad with the permission of the Court;
- (v) The accused is suffering from medial ailments;
- D (vi) Though the alleged offences took place between July 2015 and **January 2016**, the complaint was lodged only on **10 January 2017**;
- (vi) The complainant is an adult, who was cognisant of her actions; and
- (vii) The allegation of the complainant that the accused had promised to marry her was a matter of trial and whether her consent was obtained by fraud could only be established during the course of the trial.
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7. Ms Karuna Nundy, learned counsel appearing on behalf of the appellant submits that:
- F (i) The allegations in the complaint are of a serious nature involving rape committed by a person in a position of dominance;
- (ii) The accused as a film producer wielded a position of power in relation to the complainant who was an aspiring actress;
- G (iii) The lapse of the period between January 2016 (the allegation of the complainant being that she was raped between July 2015 and January 2016) and the filing of the complaint in January 2017 must be construed in the context of her explanation that the conduct of the accused had caused her to attempt suicide on three occasions;
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(iv) There is a supervening circumstance which is the filing of a first information report by the complainant on 22 November 2017 complaining that while driving her car in New Delhi, an auto had intentionally obstructed her path and hit her car besides which, her car has been followed by another vehicle. Besides, an attempt has been made to pressurise the complainant to withdraw her complaint and to “settle” the dispute against the payment of a consideration of Rs 5 crores; A B

(v) Though a charge-sheet has been filed, the investigation is still incomplete. The accused has attempted to mislead the investigation by producing a cell phone which belonged to his daughter and not to him. C

8. Learned counsel appearing on behalf of the complainant stated that this is not a case involving a breach of a promise to marry.

9. On the other hand Mr Mukul Rohtagi and Mr Sidharth Luthra, learned senior counsel appearing on behalf of the accused submitted that: D

(i) Bail was granted to the accused on 17 November 2017. The Special Leave Petition was filed on 23 December 2017 and was in objections of the Registry of this court until it was listed in March 2018. The second FIR was lodged on 22 November 2017, four days after the grant of bail to somehow set up a case of supervening event. There is nothing before or after the grant of bail which reflects on the conduct of the accused; E

(ii) Even before the grant of regular bail, the accused had the benefit of an order of anticipatory bail for nearly eight months and the sole ground on which it was cancelled was a non-disclosure of the prosecution in the 2G Spectrum case (which has since ended in acquittal); F

(iii) After the order of anticipatory bail was cancelled, the accused spent 58 days in custody, including police and judicial custody and cooperated with the investigation in all respects; G

(iv) The allegations of rape span over a period between July 2015 to January 2017, both in Mumbai and Hyderabad. Going by the case of the complainant, she voluntarily visited the accused in Hyderabad

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A during the course of a film shooting and stayed with him in a hotel on two occasions for which tickets were provided by the accused. The relationship between the complainant and the accused was of a consensual nature and the filing of a complaint nearly one year after the last contact between them indicates that it is an after-thought;

B (v) The explanation that the complaint was filed a year later because the complainant was undergoing treatment and had attempted to commit suicide has no factual basis and no medical record has been produced;

C (vi) The case in the complaint that the accused had betrayed a promise to marry the complainant is sought to be given up in the course of the submission before this Court as well as in the rejoinder which has been filed in these proceedings.

D (vii) Supervening circumstances, for the cancellation of bail, must be of such a nature as to lead to the conclusion that the accused does not deserve to be at liberty either by reason of a violation of the conditions of bail or due to supervening conduct which bears upon the misuse of liberty by the accused. No such case is made out.

E 10. During the course of the hearing, learned counsel appearing on behalf of the complainant alleged before the Court that her submissions in assailing the order of the High Court deal with two facets namely:

F (i) Whether the High Court was justified in granting bail to the accused under Section 439;

(ii) Whether there are any supervening circumstances which would warrant the cancellation of the bail granted by the High Court.

G 11. While the principles in regard to the grant of bail under Section 439 are well settled, we may note for the completeness of the record, that reliance has been placed on behalf of the appellant on the decisions of this Court in **Kanwar Singh v State of Rajasthan**¹, **Neeru Yadav v State of UP**² and **State of Bihar v Rajballav Prasad**³. In **Kanwar Singh**, a Bench of two learned Judges of this Court has held thus:

¹ 2012 (12) SCC 180

² 2016(15) SCC 422

³ 2017(2)SCC 178

“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.”

In **Neeru Yadav**, applying the same principle, this Court held that:

“It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge.”

The decision in **Rajballav Prasad** emphasises that while the liberty of the subject is an important consideration, the public interest in the proper administration of criminal justice is equally important:

“...undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations.”

A 12. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in **Dolatram v State of Haryana**⁴ observed that:

B “Rejection of a 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
 C cancellation of the bail, already granted, broadly (illustrative and
 not exhaustive) are: interference or attempt to interfere with the
 due course of administration of justice or evasion of 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
 D 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.”

E These principles have been reiterated by another two Judge Bench
 decision in **Central Bureau of Investigation, Hyderabad v
 Subramani Gopalakrishnan**⁵ and more recently in **Dataram Singh v
 State of Uttar Pradesh**⁶:

F “It is also relevant to note that there is difference between
 yardsticks for cancellation of bail and appeal against the order
 granting bail. Very cogent and overwhelming circumstances are
 necessary for an order directing the cancellation of bail already
 granted. Generally speaking, the grounds for cancellation of bail
 are, interference or attempt to interfere with the due course of
 G administration of justice or evasion or attempt to evade the due
 course of justice or abuse of the concessions granted to the accused
 in any manner. These are all only few illustrative materials. The

⁴ (1995) 1 SCC 349

⁵ (2011) 5 SCC 296

H ⁶ 2018 (2) SCALE 285

satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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.”

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13. Having considered the rival submissions, we are not at this stage, inclined to delve into the merits of the allegations at any length in order to preclude the possibility of our observations influencing the course of the trial. Since the appeal has been argued at some length before the Court, we are indicating our reasons, though with a clarification – by way of abundant caution – that our observations are confined to the issues which arise here in an appeal against the order of the High Court granting bail under Section 439. Having heard learned counsel, we have arrived at the conclusion that the exercise of discretion by the High Court in the present case cannot be faulted. We must, at the outset, note that the case of the complainant is that the accused had (as she described in the complaint) “been making false promises for getting married to her”. This has been reiterated in the charge-sheet which has been submitted on 6 March 2018. At this stage, all that we need to note is that even going by the case of the complainant, there was intimate contact between the complainant and the accused over a period of nearly six months between July 2015 and January 2016. Even according to the complainant, she visited the accused on two occasions in Hyderabad and stayed with him. The tickets for her travel from Mumbai were borne by the accused. The complaint was filed nearly a year thereafter in January 2017. This is a relevant circumstance which has been taken note of by the High Court. These circumstances do bear upon the defence that there was a consensual relationship between the complainant and the accused. Both in her complaint as well as in the charge-sheet, it has been alleged that the accused had falsely promised to marry the complainant. However, in the course of the rejoinder, the complainant has substantially diluted this stand, alleging that:

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“That the Petitioner has at every stage – including in arguments before this Hon’ble Court – maintained that the promise to marry was merely a complete elucidation of the facts and circumstances of the case.”

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A During the course of the hearing, learned counsel appearing on behalf of the complainant submitted that this is not a case involving a breach of a promise to marry.

B 14. The accused had the benefit of an order granting him anticipatory bail. The grant of anticipatory bail was cancelled principally on the ground that he had not disclosed the pendency of a prosecution against him in the 2G Spectrum case. The Court has been informed during the course of the hearing that the said prosecution has ended in an acquittal. Regular bail was granted by the High Court on 17 November 2017 in the present case. The second FIR which was lodged on 22 November 2017 is not, in our view, a supervening circumstance of such a nature as would warrant the cancellation of the bail which was granted by the High Court. The learned counsel appearing on behalf of the accused has submitted that the lodging of the second FIR, four days after the order of bail is merely an attempt to bolster a case based on a supervening event and that it suffers from vagueness and a complete absence of details. We are not inclined to make any further observations and leave the matter there. Above all, the Court must bear in mind 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. We find that to be absent in the present case.

E 15. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty.

F 16. However, we are of the view that the quantum of the personal bond fixed by the High Court should be enhanced in the facts and circumstances of the case. We, accordingly direct that the quantum of the personal bond shall stand enhanced to Rs 10 lakhs. Compliance shall be effected within two weeks from today. Subject to the above modification, the appeal shall stand disposed of. Pending IAs, if any, shall also stand disposed of.