



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.4598/2020

BETWEEN:

MS. X.

(NAME OF THE PETITIONER
NOT DISCLOSED AS PER
THE DIRECTION OF THE
HON'BLE SUPREME COURT IN
NIPUN SAXENA AND ANOTHER
VS. UNION OF INDIA AND ANOTHER
(2019) 2 SCC 703)

... PETITIONER

(BY SRI. ASIM MALIK, ADVOCATE (PHY. HG.))

AND:

1. STATE OF KARNATAKA
BY VIVEKNAGAR PS.
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.
2. JOE ABRAHAM MATHEWS
S/O T.M. PRASAD,
AGED ABOUT 37 YEARS,
R/O NO.160, ESTEEM APARTMENTS,
NO.301, 6TH CROSS,
S.T. BED LAYOUT, 4TH BLOCK,
KORAMANGALA,
BENGALURU-560 034.

... RESPONDENTS

(BY SRI. DIWAKAR MADDUR, HCGP FOR R1 (PHY. HG.)
MS. RENY SEBASTIAN, ADVOCATE FOR R2 (PHY. HG.))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.P.C. PRAYING THIS COURT TO CANCEL THE BAIL GRANTED ON 03.09.2020 IN CRL.P.NO.4023/2020 (CRIME No.58/2020 ON THE FILE OF THE VIVEKNAGAR POLICE STATION, BENGALURU) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376, 420, 506 OF IPC 1860.

THIS CRIMINAL PETITION COMING ON FOR ORDERS **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 439(2) of Cr.P.C. praying this Court to cancel the bail granted in favour of respondent No.2 in Criminal Petition No.4023/2020 in respect of Crime No.58/2020 on the file of the Vivek Nagar Police Station, Bengaluru City for the offences punishable under Sections 376, 420 and 506 of I.P.C.

2. Heard the learned counsel appearing for the petitioner, learned High Court Government Pleader appearing for the State and the learned counsel appearing for respondent No.2.

3. The factual matrix of the case is that a case has been registered against the respondent No.2 in Crime No.58/2020 for the above said offences on the allegation that

the accused/respondent No.2 came in contact with the complainant through a matrimonial website application in the name and style of 'tinder'. The application facilitates two people to establish contact, enable romantic relationship and could result in marriage as well. The accused lured and trapped the complainant into a romantic relationship thereby promising marriage on the pretext that he was an extremely successful businessman with multiple business establishments in India and abroad.

4. Furthermore, the accused confessed and expressed his love for the complainant with the promise of marriage. Trusting his intentions to be pure and being impressed with his charismatic approach, the complainant began a romantic relationship with the accused herein. The accused expressed his desire to get married to the complainant. Subsequently, the accused started demanding the complainant to engage in sexual intercourse with him. Despite her emphatic resistance to the same, the accused tried to establish physical and sexual relationship with her. In this regard the accused made an

unequivocal promise to the complainant that they shall get married and also asked her to presume that they were already a married couple. The accused had taken the complainant into his confidence by portraying himself to be a genuine person and tendering false assurances, he started demanding for payments of money from her to the tune of Rs.31,88,500/- and subsequently, the complainant came to know that the accused was already married for almost ten years and has a child from the said marriage. Since he cheated the complainant by promising that he would marry her, the complaint was lodged.

5. The case was registered against the accused/respondent No.2. Thereafter, the accused approached this Court by filing the petition for bail and the same was considered by this Court. The present petition is filed seeking the cancellation of the said bail. The main grounds urged in the present petition for cancellation of bail is that the accused is a habitual offender and he is employed in criminal, civil and money recovery proceedings and listed out the cases in page No.8 of the petition stating that there are 11 cases pending against the

respondent No.2. It is contended that the accused has a modus operandi of deceiving the women victims by indulging in sexual acts by promising marriage and dishonestly inducing them to deliver their money.

6. In fact, the complainants in Crime No.68/2016 on the file of Amruthahalli Police Station, Crime No.93/2020 on the file of Electronic City Police Station, Crime No.58/2020 are all women who have been cheated sexually and financially by promising marriage. The accused had earlier been granted bail by various Courts. However, despite strict conditions being imposed on the accused at the time of granting such bail, he knowingly and callously breached such bail conditions by constantly committing the same offences and the prosecution did not bring it to the notice of this Court of the cases registered against him. The instance of criminal antecedent is alone a ground for rejection of bail to the accused.

7. Learned counsel relied upon the judgment of this Court in the case of **Manikantan v. State of Karnataka** reported in **2018 SCC Online Kar 1822**, wherein a clear

observation is made that antecedents of the accused must be considered at the time of bail and the same is liable to be rejected, if the accused is found to be a habitual offender.

8. The Apex Court also in the similar circumstances in the case of **Chandrakeshwar Prasad v. State of Bihar and Anr.** in Criminal Appeal No.932/2016 and **State of Bihar v. Md. Shahabuddin** in **Criminal Appeal No.933/2016** decided on 30.09.2016, reported in **(2016) 9 SCC 443** held that the suppression of material facts before the Court regarding the several criminal antecedents of the accused while obtaining the order of bail makes the aforesaid order vitiated.

9. Learned counsel also relied upon the judgment of the Apex Court in the case of **K.D.Sharma v. Steel Authority of India and Others** reported in **(2008) 12 SCC 481**, wherein it is held that suppression of facts is not an advocacy.

10. The accused herein deliberately suppressed the material facts regarding the pending criminal cases. Hence, it is

a fit case to exercise powers under Section 439(2) of Cr.P.C. and cancel the bail granted in his favour, which is *void ab initio*.

11. Learned counsel appearing for the petitioner herein in his oral arguments also relied upon the judgment of the Apex Court in the case of ***Neeru Yadav v. State of Uttar Pradesh and Another*** reported in ***(2016) 15 SCC 422***, wherein it is held that having taken note of the criminal antecedents of the accused, it is a fit case to cancel the bail. Learned counsel also brought to my notice para No.18 of the said judgment, wherein the Apex Court has observed as hereunder:-

"18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order.

12. Learned counsel relying upon the judgment of the Apex Court in the case of **Chandrakeshwar Prasad** (stated supra) would submit that while granting bail, the balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society. The Apex Court observing as aforesaid, held that the High Court has erred in granting bail to the accused without taking into consideration of overall facts.

13. Learned counsel also in his oral arguments relying upon the judgment of this Court in **Manikantan's** Case (stated supra) brought to my notice para No.5 of the judgment, wherein it is observed that the other factors to be considered is the antecedents of the petitioner. It is held that first the Court has to consider the *prima facie* material about the involvement of the

accused in the crime and then bail can be rejected, if the accused is found to be a habitual offender.

14. Learned High Court Government Pleader appearing for respondent No.1 also reiterated the grounds urged in the petition and supports the contention of the petitioner that several cases have been filed against the accused and the same has been suppressed and obtained the order of bail.

15. Per contra, learned counsel appearing for the accused/respondent No.2 would contend that merely because there are number of cases pending against the accused, the same cannot be a ground to come to the conclusion that he is a habitual offender. The definition of a habitual offender is clear that if he has been convicted in more than three cases then he may be considered as a habitual offender. The cases listed out in page No.8 of the petition are pending cases and among them one is Civil in nature and other cases are pertaining to different offences. It is not the case of the petitioner that the respondent No.2 has violated the order of this Court or coming in the way of trial which he is facing.

16. This Court, considering the merits of the case and the ingredients of the offences alleged against the respondent No.2 exercised its discretion while passing the order on bail. Hence, no circumstances are made out to invoke Section 439(2) of Cr.P.C. and cancel the bail granted to respondent No.2. In support of the said contention, learned counsel also relied upon the judgment of this Court passed in Criminal Petition No.1364/2019. Referring to the said judgment, learned counsel would submit that, in order to invoke Section 439(2) of Cr.P.C., there must be a breach or violation of the conditions of the bail granted by this Court. It is observed in the said judgment that even the material facts indicate that the accused has been granted anticipatory bail and thereafter he has appeared before the Court and he is regularly attending the Court and already many more witnesses have been examined and when there is no hurdle or misuse of the liberty granted by the accused in the said case, wherein the bail has been granted, merely because some other cases have been registered and in that light if the bail is cancelled, then automatically it affects the personal liberty

of a particular person under Article 21 of the Constitution of India. While dealing with personal liberty of a person, the Court has to keep in mind the overall facts and then consider the petition.

17. Having heard the arguments of the learned counsel for the petitioner, learned High Court Government Pleader appearing for the State and learned counsel appearing for respondent No.2, the point that would arise for the consideration of this Court is whether the powers conferred under Section 439(2) of Cr.P.C. can be exercised by this Court in canceling the bail granted to respondent No.2 in Criminal Petition No.4023/2020 dated 3.09.2020.

18. Having heard the arguments of the learned counsel for the petitioner, learned High Court Government Pleader and learned counsel for respondent No.2 and so also on perusal of the material available on record, it is clear that the case has been registered against respondent No.2 for the commission of offences punishable under Sections 376, 420 and 506 of IPC. This Court, while passing the order on bail, considered the

material available on record as observed in para No.8 in relation to the fact of the contents of complaint, age of the complainant and also the fact that the complainant herself went and stayed with respondent No.2. It is also observed that the fact as to whether respondent No.2 took the consent of the complainant at the guise of marrying her has to be tested during trial and thus, exercised discretion by granting bail.

19. The main contention of the petitioner before this Court is that the accused is a habitual offender and in support of the said contention, has listed out the cases pending against him in page No.8 at para No.15 of the petition. No doubt there are 10 criminal cases pending against respondent No.2 for the commission of offences, out of which one case is for the commission of offence punishable under Sections 420, 468, 471, 120B of IPC and other three cases are for the offences punishable under Sections 376, 420, 506 and 417 of IPC whereas the particulars of the said cases were not furnished before this Court while granting bail to accused under Section 439 of Cr.P.C. As it is rightly pointed out by learned counsel for

respondent No.2, he has not been convicted for any offences in any other cases and it is also to be noted that in all the aforesaid cases, he has been enlarged on bail.

20. No doubt, the State while considering the earlier bail petition did not bring it to the notice of this Court about the pendency of several cases against this petitioner. Merely registering of several cases against respondent No.2 is not a ground to invoke Section 439(2) of Cr.P.C. While exercising the power under Section 439 (2) of Cr.P.C., the Court has to look into the material available on record.

21. On perusal of the material placed before the Court, except listing out the cases registered against the accused, no other material is placed before the Court to show that he has been convicted for the commission of any offences in any other cases and in order to substantiate that he is a habitual offender, no material is placed before the Court.

22. It is clear from reading of the Section 439(2) that the High Court or Court of Sessions may direct that any person

who has been released on bail under this Chapter be arrested and commit him to custody. In the case on hand, there is no any allegations against respondent No.2 that he has violated the order of bail granted in his favour except alleging that there are number of cases registered against him. No doubt, the Apex Court in **Neeru Yadav's** case (stated supra), while allowing the bail, has taken note of the cases registered against the accused as stated in para No.8 and observed that respondent No.2 was a history-sheeter and involved in heinous crimes. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a 'history-sheeter'. The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity. It is to be noted in para No.8 of the said judgment that, the criminal cases are listed out particularly for the offences punishable under Sections 302, 392, 398, 401, 307, 364 and 201 of I.P.C. and he has been involved in the serious offences of murder, dacoity and other offences. Observing that he was a history-sheeter and the crimes alleged

against him are serious in nature, the Court has exercised the powers conferred under Section 439(2) of Cr.P.C.

23. In the case on hand, no doubt, though 10 cases are listed out, out of which 3 cases are registered for the offences punishable under Sections 376, 420, 417 and 506 of I.P.C. It is important to note that in all the cases he has been enlarged on bail invoking Sections 438 and 439 of Cr.P.C. and not convicted. Merely because the prosecution has failed to bring out the said cases which are pending against him while considering the bail petition, the same cannot be a ground for canceling the same. The Apex Court, in **Neeru Yadav's** case taking note of the fact that he was a history-sheeter and involved in murder and dacoity cases, has invoked Section 439(2) of Cr.P.C.

24. To invoke Section 439 (2) of Cr.P.C., there must be material before the Court to show that there is violation of conditions of the bail order granted or the accused is coming in the way of trial. Mere filing of cases is not a ground to come to the conclusion that he is a habitual offender and he has to be tried and found material that he is having criminal antecedents

and having considered the nature of cases registered against him and the offences invoked against him, it requires full fledged trial to ascertain the truth. The judgments of **Chandrakeshwar Prasad** and **Shahabuddin** cases do not assist the case of the petitioner to invoke Section 439(2) of Cr.P.C. When no such circumstances have been made out in the case on hand, this Court is not inclined to exercise powers conferred under Section 439(2) of Cr.P.C.

25. Having considered the material available on record and the grounds urged in the petition, in the absence of any material to show that he has violated the order of the Court or coming in the way of the trial and when this Court has considered the bail petition on merits, as observed in para No.8 of the order, the question of canceling the bail does not arise at all. In the absence of any cogent material on record, the liberty of any person as envisaged under Article 21 of the Constitution of India cannot be curtailed on the mere ground of number of cases being pending against him. It is settled law that Section 439(2) of Cr.P.C. has to be invoked in exceptional cases when it

causes miscarriage of justice, if it is not invoked and the same has to be exercised sparingly and not mere asking of the cancellation of bail. Hence, I do not find any merits in the petition to exercise powers conferred under Section 439(2) of Cr.P.C. and cancel the bail which was granted by this Court vide order dated 03.09.2020 in favour of respondent No.2 only on the ground that several cases are registered against him.

26. In view of the aforesaid discussion, I proceed to pass the following:-

ORDER

The Criminal Petition is hereby dismissed.

**Sd/-
JUDGE**

PYR