REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEALS NO. 822-823 OF 2023
ARISING OUT OF
PETITIONS FOR SPECIAL LEAVE TO APPEAL (CRL.) NO. 11104-11105 OF 2022

MS. X ..... APPELLANT

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER ..... RESPONDENTS

J U D G M E N T

Hima Kohli, J.

1. Leave granted.

2. The appellant/prosecutrix, who claims to have been exposed to the horrors of the notorious casting couch syndrome, at the hands of the respondent No.2/accused herein, is aggrieved by the orders dated 21st September, 2022[1] and 07th October, 2022[2], passed by the High Court of Judicature at Bombay in exercise of its Criminal Appellate jurisdiction allowing the anticipatory bail application[3] filed by the respondent No.2/accused in connection with FIR[4] filed by her with the MIDC Police Station, Mumbai. Initially, the FIR was registered under Sections 354, 354-B and 506 of the

1 First Impugned Order
2 Second Impugned Order
3 Anticipatory Bail Application No. 2594 of 2022
4 CR FIR No. 915 of 2022 registered on 06th August, 2022

Indian Penal Code[5]. Subsequently, on the supplementary statement of the appellant/prosecutrix being recorded, offence under Section 376 was added to the subject FIR. By the first impugned order, the High Court granted pre-arrest bail to the respondent No. 2/accused as an interim measure subject to certain conditions and on 7th October 2022, confirmed the said order.

FACTS OF THE CASE

3. The facts of the case as are relevant for deciding the present appeals are briefly stated:-

3.1 The appellant/prosecutrix is a Model by profession. She filed a complaint with P.S. MIDC, Mumbai against the respondent No.2/accused in the late hours of 5th August, 2022, when she dialled '100' to call the police alleging that the respondent No.2/accused, a businessman, who lured her under the garb of offering her some modelling assignments and then forced himself upon her and raped her in a hotel room where she was staying.

3.2 The relevant portion of the appellant's statement recorded in the early hours of 06th August, 2022 at the MIDC Police Station, Mumbai is extracted hereinbelow :-

5 For short 'the IPC'

> "……Thereafter we discussed about our work, thereafter Jignesh told me that he wants to talk with me some personal therefore he told me to go in room. Then as Jignesh is going to give me job therefore at about 11.15 pm in the night I took him in the hotel room. Then I asked him water but he refused. Then he told me that, *"xxx tu jo field me kaam karti hai, wo field me to tumhe pata hai kya kya karna padta hai"* (xxx you know that, what things needs to do in the field you are working), at that time I told him to speak clearly. Then he told me that, *"xxx kuchh pane ke liye kuchh khona padata hai"* (xxx one has to sacrifice something to get something). At that time I told him, that I have cleared you about the same on very first day. At that time he told me that, you have to compromise with me, I have good contacts. At that time I clearly refused him. *Thereafter he got up from bed and pushed me on bed and* he touched my breast and backside. Then I started shouting and then he held my neck and threatened to kill me and then he opened his shirt buttons and he tried to open my clothes. In between my maxi was torn near the neck and breast and then he took out his private part with his hand and he started doing intimacy with me and then I pushed him forcibly and went out from the room and then I got down to the reception from staircase and called the police on 100 number……."

3.3 Thereafter, in the evening of 06th August, 2022 itself, a supplementary statement of the appellant/prosecutrix was recorded, relevant portion whereof is as under :-

> "……Then he got up from the bed and pushed me on the bed by pushing me hard. This time he touched my chest and my rear and lifted my dress which I was wearing. As I screamed and begged him not to do this to me, he grabbed me by the throat and threatened to kill me. At that time my whole body was shivering, I was completely scared, I had no idea. He then unbuttoned his shirt, removed his pants and tried to remove my clothes. There was a tussle between us and my maxi was torn near my neck and near my chest. During the tussle, he pulled my knicker down and pulled out his private part with his hand and tried to insert in my private part. Then I pushed him hard and I opened the door and ran outside, then he told, "if you say something about this by going outside then I will kill you and your family." He was giving such threat then also I came out from the room……"

3.4 It is the case of the appellant/prosecutrix that to favour the respondent No. 2/accused, the police had intentionally removed a vital portion of her

statement while recording the FIR and had only mentioned the offences under Sections 354, 354-B and 506 IPC; that the police deliberately did not take the appellant/prosecutrix for a medical examination even on her alleging commission of rape by the respondent No.2/accused; that though the police came to the Hotel on a call being made by the appellant/prosecutrix at around 11:00 p.m. on 5th August, 2022 and had taken her and the respondent No. 2/accused to the Police Station, she was made to wait from 11:30 p.m. till 05:00 a.m. on 6th August, 2022 and during that period, she was being constantly pressurized to settle the matter with the respondent No. 2/accused; that when the appellant/prosecutrix did not agree for any settlement, the police was compelled to register the FIR but even then, they had watered down the offences to favour the respondent No. 2/accused.

SEQUENCE OF EVENTS :

4. On 6th August, 2022 itself, at noon time, the police produced the respondent No. 2/accused before the Court of the Additional Chief Metropolitan Magistrate[6], XXII Court, Andheri, Mumbai and sought his judicial custody which was allowed by the learned ACMM upto 20th August, 2022. Contemporaneously, the respondent No.2/accused filed an application for bail[7]

6 For short 'ACMM'
7 Bail Application No.2279/BA/2022

in the Court of the learned ACMM which was opposed by the Additional Public Prosecutor appearing for the State on the ground that the offence is non-bailable; the statement of the prosecutrix was yet to be recorded under S. 164 of the Code of Criminal Procedure[8], the investigation was still in progress; and if released, the respondent No.2/accused may tamper with the evidence. However, the said application was allowed by the learned ACMM vide order dated 06th August, 2022.

5. Aggrieved by the casual approach allegedly adopted by the investigating team, the appellant/prosecutrix approached the Deputy Commissioner of Police of the area, which as per her, activated the police and on 7th August, 2022, they called her for recording her further statement. Based on the said statement, the offence under Section 376 IPC was added in the FIR . Thus, the FIR was registered under Sections 376, 354, 354-B, 506 and 506(2), IPC. On the same day, the investigating officer addressed a letter to the appellant/prosecutrix requesting her to present herself for her medical examination on 8th August, 2022. Accompanied by a lady Police Officer the appellant/prosecutrix was taken to the Municipal Corporation of Greater Mumbai Hospital on 08th August, 2022 where the doctor conducted her medical examination and recorded the following :-

8 For short 'CrPC'.

> "As per history given by the survivor 25 yrs. Female were at hotel Silver INN at Marol Andheri West. Survivor met Jignesh Mehta 48 yrs. Male around time 11.15 pm. 5.8.2022.
>
> **Jignesh touched survivor on her private parts, breast, abdomen he held survivor's neck and threatened that he will kill her removed own clothes and survivor's clothes forcefully and inserted his genitalia penis in the vulvo once.** After that survivor pushed Jignesh and ran away from room.
>
> **There was history of sexual assault physical assault verbal assault…."**

5.1. Dissatisfied with the manner in which the Investigating Officer was conducting the investigation, the appellant/prosecutrix states that she submitted an application dated 10.08.2022 to the Additional Commissioner of Police, West Region imploring him to ensure that the investigation is carried out properly and the respondent No. 2/accused is arrested.

5.2. On 10th August, 2022, the police moved an application before the learned ACMM for cancellation of the bail granted to the respondent No. 2/accused having regard to the fact that the provision of Section 376 IPC has been added to the subject FIR vide application dated 8th August, 2022. The said application was allowed and *vide* order dated 23rd August, 2022, the learned ACMM cancelled the bail granted to the respondent/accused on 6th April, 2022.

5.3. On 06th September, 2022, the Supplementary Statement of the appellant/prosecutrix was recorded by the police wherein she stated as follows :-

> ".....I straightaway refused to oblige him but he got up from the bed and forcefully pushed me onto the bed. He touched my chest and posterior inappropriately and pulled up posterior the gown worn by me. I screamed and requested him to not to do such things with me but he held me by my neck and threatened to kill me. At that time out of grave fear I was completely petrified and was unable to think anything. **Thereafter he removed his shirt buttons, removed his pants and tried to disrobe me. In the ensuing scuffle my gown tore near my neck and breasts. During the struggle he pulled down my nickers, pulled out his member and penetrated it inside my private part**....."

5.4. On 17th September, 2022, the respondent No.2/accused filed an application[9] under Section 438 Cr.P.C. seeking anticipatory bail in respect of the subject FIR before the court of the Learned Additional Sessions Judge, Borivali Division, Dindoshi (Borivali Division), Goregoan, Mumbai. After noting the submissions made by the respondent No.2/accused, counsel for the State and counsel for the appellant/prosecutrix who had moved an intervention application in the matter, the learned Additional Sessions Judge rejected the anticipatory bail application of the respondent No. 2/accused with the following observations :-

9 Anticipatory Bail Application No. 1367 of 2022

> "12 It is pertinent to note that in the application filed under section 438 of Cr.P.C. the applicant has averred several facts which appear to be aptly unusual and strange. Though the applicant has contended that he is the victim of honey-trap which was arranged by the victim with her friends, in Para. No. 8 of the application the applicant has contended that he is lifetime member of the Club Emerald, where he used to go for recreation and fitness. In Para. No. 14 of the application whatever is stated prima-facie does not appear to be acceptable in ordinary human behavioral pattern. Despite the applicant is claiming himself to be reputed businessman who used to visit the Club as lifetime member, he has stated in Para. No. 14 that in the said room of the hotel he was invited by the prosecutrix and she started kissing him on his neck and cheek and even rubbing her hand on the body of the applicant and when the applicant stopped her, prosecutrix became more aggressive and suddenly demanded Rs. 15,00,000/- from the applicant.
>
> 13 Considering the grounds set up in the application, it is apparent that the applicant has not disputed that at the time of the incident, he was with the victim in the room of the said hotel. Even if the contents in the supplementary statement are overlooked, averments in the FIR prima-facie made out the case under section 376 of IPC. I am, therefore of the view that, in view of the gravity of the offence and nature of punishment in the light of aforesaid allegations, no prima-facie case is made out by the applicant for granting bail under section 438 of Cr.P.C....."

IMPUGNED ORDERS:

6. The respondent No. 2/accused then approached the High Court seeking anticipatory bail[10]. By the first impugned order dated 21st September, 2022, interim protection was granted to the respondent No. 2/accused with the following order :-

> "1. Heard learned counsel for the applicant and learned A.P.P. for the State.
>
> 2. On 06/08/2022, C.R.No.915 of 2022 came to be registered with MIDC Police Station, on the complaint filed by the prosecutrix, who is a model by profession and she reported to the police station that her modesty was outraged by the applicant. This resulted in invocation of Sections 354, 354-B, 506 IPC.

10 Anticipatory Bail Application No. 2594 of 2022

On the very same day, i.e. on 06/10/2022, the prosecutrix got her supplementary statement recorded and this time, she elaborated the incident by taking it further and stated that after inappropriately touching her, she was pushed on the bed and an attempt was made to commit forcible sexual intercourse. In the scuffle that took place, she alleged that her apparel, which she was wearing was torn and she pushed him out of the door, but while leaving the room, he threatened her that she should not disclose the incident to any one. She came to reception and made a phone call.

After one month i.e. on 06/09/2022, there is further improvement in the version of the prosecutrix, where she states that there was penetrative sexual assault and the other narration that she pushed him and rang the reception remain same.

3. The applicant was released on bail on an earlier occasion, when the subject C.R. invoked Sections 354, 354-B and 506 of I.P.C., but on the supplementary statement being recorded, Section 376 has been added to the subject C.R. and the applicant is apprehending his arrest, since the earlier order operating in his favour, has been cancelled. **Looking to the star variations in the narration of the prosecutrix, without judging it's truthfulness, at this stage, these variations itself persuade me to protect the applicant by way of an interim order**. Subject to his co-operation in the investigation and the material that would come up before the Investigating Officer, further course of action as to whether his custodial interrogation is necessary, would be ascertained. Hence, the following order:

:ORDER:

(a) In the event of arrest in connection with C.R.No.915 of 2022 registered with MIDC Police Station, applicant-Jignesh Jashwantrai Mehta shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(b)The applicant shall report to the concerned police station from 27th to 30th September, 2022 between 2.00 p.m. to, 5.00 p.m.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

List the application on 07/10/2022."

6.1. On coming to know of the passing of the aforesaid order, the appellant/prosecutrix filed an application for intervention[11] before the High Court. By the second impugned order dated 7th October 2022, the Bail application moved by the respondent No.2/accused was allowed with the following order :-

> "2. Considering the improvement in the version of the prosecutrix and that too coming after a period of more than one month, the applicant was protected by interim order he was directed to report to the Investigating Officer. Accordingly, he has reported to the Investigating Officer, his medical is conducted and the mobile phone is seized.
>
> 3. In the wake of the above, since the applicant has rendered his co-operation in the investigation, order dated 21/09/2022 is made absolute."

7. Aggrieved by the aforesaid two orders, the appellant/prosecutrix has preferred the present appeals wherein notice was issued on 18th November, 2022. Appearance was entered on behalf of the respondent No. 1 – State and the respondent No. 2/accused before the next date of hearing and time was granted to file counter affidavits. Counter affidavits have been filed by the counsel for the respondent No. 1/State and the respondent No. 2/accused.

11 Intervention Application No.17150 of 2022 in Anticipatory Bail Application No.2594 of 2022 dated 06.10.2022

ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES:

A. COUNSEL FOR THE APPELLANT/PROSECUTRIX

8. Mr. R. Basant, learned Senior Counsel appearing on behalf of the appellant/ prosecutrix has urged that while granting anticipatory bail, the High Court has failed to take notice of the nature and gravity of the allegations levelled against the respondent No.2/accused; that while making the observation in the first impugned order that "*star variations in the narration of the prosecutrix, ...itself persuade me to protect the applicant by way of an interim order*", the High Court failed to appreciate that the allegations recorded in the FIR itself were sufficient to demonstrate commission of offence under Section 376 IPC; that the High Court ignored the observations made by the learned Additional Sessions Judge, Borivalli in the order dated 17th September, 2022, while rejecting the anticipatory bail application of the respondent No.2/accused to the effect that even if the contents in the supplementary statements are overlooked, the averments made in the FIR *prima facie* make out a case under Section 376 IPC; that despite an intervention application[12] filed by the appellant/prosecutrix in the application for anticipatory bail[13] filed by

12 Intervention Application No. 17150 of 2022 in Anticipatory Bail Application No. 2594 of 2022
13 ABA NO. 2594 of 2022

the respondent No. 2/accused before the High Court, she was not granted a hearing; that the order granting anticipatory bail to the respondent no. 2/accused falls foul of the settled legal principles required to be followed by the Court while considering an application for bail, as has been spelt out by this Court in several judicial verdicts including ***Prasanta Kumar Sarkar v. Ashis Chatterjee And Another***[14]; that the High Court ignored the fact that the respondent No. 2/accused is a wealthy and influential businessman who used his influence to delay registration of the FIR and having been granted anticipatory bail, is bound to influence the witnesses to the detriment of the appellant/prosecutrix.

B. COUNSEL FOR THE RESPONDENT NO. 2/ACCUSED

9. On the other hand, Mr. Sanjay R Hegde, learned Senior Counsel appearing on behalf of the respondent no. 2/accused has defended the impugned orders and submitted that after the first impugned order was passed granting interim protection to the respondent No.2/accused, he was called for investigation on several dates and had duly cooperated and reported to the Police Station, as and when called; that he had been attending the hearings before the learned ACMM, Andheri and the learned Additional Sessions Judge,

14 (2010) 14 SCC 496

Borivalli on all occasions; that there is no eye witness to the alleged incident; that the circumstantial evidence and the medical report does not support the allegations levelled by the appellant/prosecutrix against the respondent No.2/accused; that there is no justification to interfere with the order granting anticipatory bail to the accused, more so, when no supervening circumstances for cancellation of bail have been pointed out by the appellant/prosecutrix or the counsel for the State.

C. COUNSEL FOR THE STATE – RESPONDENT NO. 1

10. Mr. Nitin Lonkar, learned counsel for the State has informed the Court that a charge-sheet[15] in the instant case was filed before the Sessions Court on 21st October, 2022 and 25 witnesses have been cited by the prosecution out of which 12 are independent witnesses. The case is now listed for arguments on charge on 27th July, 2023.

ANALYSIS, INTERPRETATION AND CASE LAWS:

11. We have heard learned counsel for the parties and perused the records. As can be gathered from a perusal of the impugned order, the primary ground that had persuaded the High Court to grant interim protection to the respondent No. 2/accused is that the appellant/prosecutrix tried to improve her version of

15 As sworn in Para 8 of counter affidavit filed by the Investigating Officer

the incident from what was first recorded in the FIR in the early hours of 06th August, 2022, by levelling additional allegations in her first Supplementary Statement recorded in the evening on the very same date and in the second Supplementary Statement recorded after one month, on 06th September, 2022. In the words of the High Court, there were "*star variations in the narration of the prosecutrix....".* The aforesaid observation has been reiterated in the second impugned order and noting the fact that the respondent No.2/accused had reported to the investigating officer, his medical examination had been conducted and the mobile phone had been seized, the interim order passed earlier, was made absolute[16].

11.1. We propose to take a quick look at the considerations that ought to govern grant of anticipatory bail. There are a line of decisions of this court that have underscored the fact that while deciding an application for bail, the court ought to refrain from undertaking a detailed analysis of the evidence, the focus being on the *prima facie* issues including consideration of some reasonable grounds that would go to show if the accused has committed the offence or those facts that would reflect on the seriousness of the offence. The self-imposed restraint on delving deep into the analysis of the evidence at that stage is for valid reasons, namely, to prevent any prejudice to the case set up

16 *Vide* second impugned order dated 21st September, 2022

by the prosecution or the defence likely to be taken by the accused and to keep all aspects of the matter open till the trial is concluded.

12. In ***Prasanta Kumar Sarkar's case*** *(supra)*, a Division Bench of this Court had highlighted the factors that ought to be borne in mind while considering the anticipatory bail application and had stated that :-

> "9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
>
> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
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> (ii) nature and gravity of the accusation;
>
> (iii) severity of the punishment in the event of conviction;
>
> (iv) danger of the accused absconding or fleeing, if released on bail;
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> (v) character, behaviour, means, position and standing of the accused;
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> (vi) likelihood of the offence being repeated;
>
> (vii) reasonable apprehension of the witnesses being influenced; and
>
> (viii) danger, of course, of justice being thwarted by grant of bail.
>
> [See ***State of U.P. through CBI v. Amarmani Tripathi***[17], ***Prahlad Singh Bhati v. NCT, Delhi and Another***[18] and ***Ram Govind Upadhyay v. Sudarshan Singh and Others***[19]] "

17 (2005) 8 SCC 21
18 (2001) 4 SCC 280
19 (2002) 3 SCC 598

13. In ***Masroor v. State of Uttar Pradesh And Another***[20], speaking for the Division Bench, Justice D.K. Jain observed that courts ought to refrain from mechanically granting bail and absence of relevant considerations will make such an order susceptible to interference. Para 13 of the said order is relevant and is reproduced herein below :-

> "13. .....Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.
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> (See also ***State of Maharashtra v. Ritesh***[21], ***Panchanan Mishra v. Digambar Mishra And Others***[22], ***Vijay Kumar v. Narendra and Others***[23] and ***Anwari Begum v. Sher Mohammad And Another***[24])"
>
> [Also refer : ***Neeru Yadav v. State of Uttar Pradesh And Another***[25]; ***Anil Kumar Yadav v. State (NCT Of Delhi) And Another***[26] and ***Mahipal v Rajesh Kumar Alias Polia And Another***[27]]

14. Stressing on the necessity to look into the earlier orders where the bail applications of the accused have been rejected, this Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav And Another***[28] held thus :-

> "12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent

20 (2009) 14 SCC 286
21 (2001) 4 SCC 224
22 (2005) 3 SCC 143
23 (2002) 9 SCC 364
24 (2005) 7 SCC 326
25 (2014) 16 SCC 508
26 (2018) 12 SCC 129
27 (2020) 2 SCC 118
28 (2004) 7 SCC 528

> application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted."

15. In ***Sushila Aggarwal and Others v. State (NCT of Delhi) And Another***[29], a Constitution Bench comprising of five Judges was confronted with conflicting views of different Benches of varying strength on the following two questions framed for consideration :-

> "(i) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.
>
> (ii) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court."

After an extensive discussion, the Constitution Bench distilled the Law and answered the above reference in para 91 in the following words :-

> "91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.
>
> 91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so."

29 (2020) 5 SCC 1

16. In the light of the answers given to the Reference, the Constitution Bench went on to clarify the factors that would be required to be kept in mind while dealing with applications moved under Section 438 CrPC and observed that :-

> "92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. **While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc**……
>
> 92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.
>
> XXXX XXXX XXXX
>
> 92.6. An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence." [emphasis added]

17. In ***Myakala Dharmarajam and Others v. State of Telangana and Another***[30], holding that the Appellate Court or a superior Court can set aside an order granting bail if the concerned Court that granted bail, failed to consider the relevant factors, this Court observed that:-

30 (2020) 2 SCC 743

> "9. 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."

18. The aforesaid view has been reiterated in ***Supreme Bhiwandi Wada Manor Infrastructure Private Limited v. State of Maharashtra And Another***[31]

19. In ***Pradeep Ram v. State of Jharkhand And Another***[32] called upon to deal with a situation where an accused had been bailed out in a criminal case in which new offences were added subsequently and a question arose as to whether it would be necessary to cancel the bail granted earlier for taking the accused in custody, a Division Bench of this Court took pains to examine the view taken by several High Courts including the High Courts of Rajasthan, Madras, Allahabad and Jammu and Kashmir as also the observations made by this Court in previous decisions on this aspect and held thus :-

> "31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:
>
> 31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.
>
> 31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.
>
> 31.3[Ed. : Para 31.3 corrected vide Official Letter dated 31-7-2020.] . The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his

31 (2021) 8 SCC 753

32 (2019) 17 SCC 326

> bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.
>
> 31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail."

20. As can be discerned from the observations made in ***Pradeep Ram*** *(supra)*, addition of a serious offence can be a circumstance where a Court can direct that the accused be arrested and committed to custody even though an order of bail was earlier granted in his favour in respect of the offences with which he was charged when his application for bail was considered and a favourable order was passed. The recourse available to an accused in a situation where after grant of bail, further cognizable and non-bailable offences are added to the FIR, is for him to surrender and apply afresh for bail in respect of the newly added offences. The investigating agency is also entitled to move the Court for seeking the custody of the accused by invoking the provisions of 437(5)[33] and 439(2)[34] Cr.P.C., falling under Chapter XXXIIII of the Statute that deals with provisions relating to bails and bonds. On such an application being moved, the Court that may have released the accused on bail or the Appellate

33 **Section 437(5)** - Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

34 **Section 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.

Court/superior Court in exercise of special powers conferred on it, can direct a person who has been released on bail earlier, to be arrested and taken into custody.

21. Coming back to the facts of the instant case, it is not in dispute that when the respondent No. 2/accused moved an application for bail[35] before the learned ACMM on 6th August, 2022, the offences mentioned in the FIR were under Sections 354, 354-B and 506 IPC. Bail was granted to him on the same day primarily on the ground of non-compliance of Section 41-A CrPC. Subsequently, the offence under Section 376 IPC was added to the same FIR and the crime was escalated to offences under Sections 376, 354, 354-B and 506(2) of IPC. On this turn of events, the State moved an application seeking cancellation of bail[36] granted to the respondent No. 2/accused stating *inter alia* that initially, he was charged under Sections 354, 354-B and 506 IPC, but, during the course of recording the statement of the appellant/prosecutrix, the allegations levelled made out an offence under Section 376 which had to be added to the subject FIR and therefore, the bail granted in his favour needed to be cancelled and he was required to be taken into custody. The said application was allowed by the learned ACMM *vide* order dated 23rd August,

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36 Dated 10th August, 2022

2022. This made the respondent No.2/accused approach the Court of the learned Additional Sessions Judge, Borivalli seeking anticipatory bail. By a well-reasoned order, the said application was rejected and the plea taken by him that he was a victim of honeytrap, was disbelieved. The contention of the respondent No. 2/accused that the appellant/prosecutrix had been improving her version in the supplementary statements[37] was also considered and rejected and it was observed that even if the said statements were to be overlooked, there was sufficient *prima facie* material in the FIR to have made out an offence under Section 376, IPC.

22. Surprisingly, none of the aforesaid aspects have been touched upon in both the impugned orders. The nature and gravity of the alleged offence has been disregarded. So has the financial stature, position and standing of the accused *vis-à-vis* the appellant/prosecutrix been ignored. The High Court has granted anticipatory bail in favour of the respondent No. 2/accused in a brief order of three paragraphs, having been swayed by the *"star variations in the narration of the prosecutrix"* implying thereby that what was originally recorded in the FIR, did not make out an offence of rape, as defined in Section 375 IPC, which is an erroneous assumption. Even if the first Supplementary statement of the appellant/prosecutrix recorded in the evening hours of 6th August, 2022,

37 Dated 06th August, 2022 and 06th September, 2022

the date on which the FIR had been registered against the respondent No.2/accused in the first half of the same day, her second Supplementary statement recorded on 6th September, 2022 and the Medico-Legal Report of the doctor who had examined the appellant/prosecutrix on 8th August, 2022, are kept aside for a moment, we find that there was still sufficient material in the FIR that would *prima facie* attract the provision of Section 376, IPC. In our opinion, these factors ought to have dissuaded the High Court from exercising its discretion in favour of the respondent No.2/accused for granting him anticipatory bail.

23. Another reason that has weighed with this Court for interfering in the impugned orders is that despite the appellant/prosecutrix having filed an application for intervention[38] in the petition for anticipatory bail moved by the respondent No.2/accused before the High Court, she was not afforded a hearing. At least a perusal of the second impugned order does not reflect the said position. No doubt, the State was present and was represented in the said proceedings, but the right of the prosecutrix could not have been whittled down for this reason alone. In a crime of this nature where ordinarily, there is no other witness except for the prosecutrix herself, it was all the more incumbent for the High Court to have lent its ear to the appellant.

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24. Our view is in line with the observations made by a three-Judges Bench of this Court in ***Jagjeet Singh And Others v. Ashish Mishra Alias Monu And Another***[39] wherein speaking for the Bench, Justice Suryakant made the following pertinent observations relating to the victim's right to be heard and alluding to the recommendations made by the Law Commission of India in its 154th Report that highlighted ***"the right of the victim or his/her legal representative to be impleaded as a party in every criminal proceedings where the charges are punishable with 7 years' imprisonment or more"***, observed thus :-

> "19. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a "victim" under Section 2(wa) but also statutorily recognised various rights of such victims at different stages of trial.
>
> 20. It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression *"victim" which "means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir".*

25. It must be remembered that in the present case, the machinery of criminal justice has been set into motion by none other than the appellant/prosecutrix herself. She was the one who had dialled '100' number

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from the reception area of the Hotel where the crime had allegedly taken place. She was the one who had approached senior officers in the police hierarchy complaining of the apathy and inertia adopted by the investigating officers in her case. Notably, she had moved an intervention application in the anticipatory bail application moved by the respondent No.2/accused before the learned Additional Sessions Judge and as is reflected from the order passed, her counsel was granted a hearing whereafter the said application was rejected. However, when a similar application for intervention[40] was moved by the appellant/prosecutrix before the High Court in the anticipatory bail application moved by the respondent No.2/accused, it appears that heed was not paid to the pleas taken by her though her counsel's presence does find mention in the order sheet. We are constrained to note that such an approach tantamounts to failure to recognize the right of the prosecutrix to participate in the criminal proceedings that would include a right to oppose the application for anticipatory bail moved by the accused. The appellant/prosecutrix having been denied a meaningful hearing when the first impugned order of anticipatory bail granted in favour of the respondent No. 2/accused was confirmed by the second impugned order, is an additional factor that has prevailed with this Court to interfere in the impugned orders.

40 Intervention Application No. 17150 of 2022

CONCLUSION:

26. For the aforesaid reasons, the two impugned orders dated 21st September, 2022 and 07th October, 2022, granting anticipatory bail to the respondent No. 2/accused, cannot be sustained and are quashed and set aside. The bail bonds of the respondent No.2/accused are cancelled.

27. We, however, hasten to add that this Court has not expressed any opinion on the merits of the case. The chargesheet has already been filed in the case. If the respondent No.2/accused moves an application under Section 439 Cr.P.C. before the appropriate Court, the same shall be considered on its own merits and in accordance with law, uninfluenced by the observations made hereinabove.

28. The appeals are disposed of on the above terms.

DIRECTIONS TO THE REGISTRY

29. Having regard to the sensitivity of the allegations levelled in the matter and the nature of the offence complained of, it is imperative to protect the identity of the appellant/prosecutrix. She has been identified as “Ms. X” in these proceedings. In the instant case, the Registry is directed to take immediate steps to redact the name of the appellant/prosecutrix from the

records. Henceforth, the Registry shall ensure that in sensitive matters like the present one, if the name of the prosecutrix is revealed in the petition, the same is returned to the learned counsel for redacting the name before the matter is cleared for being placed before the Court for appropriate orders.

.....**J.**
[A.S. BOPANNA]

.....**J.**
[HIMA KOHLI]

New Delhi,
March 17, 2023