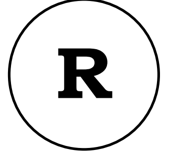
Reserved on : 01.08.2024
Pronounced on : 28.08.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 4914 OF 2024

BETWEEN:

THE STATE OF KARNATAKA
STATE BY SIT CID
REPRESENTED BY THE
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

... PETITIONER

(BY PROF. SRI RAVI VARMA KUMAR, SPL.PP A/W
SRI B.N.JAGADEESHA, SPL.PP)

AND:

SRI REVANNA H. D.,
S/O H.D.DEVE GOWDA
AGED ABOUT 66 YEARS
MEMBER OF LEGISLATIVE ASSEMBLY
HOLENARSIPURA CONSTITUENCY
STATE OF KARNATAKA
RESIDING AT CHENNAMBIKA NILAYA
CHENNAMBIKA CIRCLE
HOLENARSIPURA, HASSAN - 573 211.

... RESPONDENT

(BY SRI C.V.NAGESH, SR. ADVOCATE A/W.,

SRI SOMEGOWDA A. N., ADVOCATE AND
SRI MADHAV B.KASHYAP, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.P.C., PRAYING TO SET ASIDE AND CANCEL THE IMPUGNED ORDER OF GRANT OF BAIL U/S 439 OF CR.P.C. DATED 13.05.2024, TO THE RESPONDENT/ACCUSED NO.1 IN CRL.MISC.NO.4229/2024 (CR.NO.149/2024) OF THE K.R. NAGARA P.S. (NOW SIT CID, BENGALURU) FOR THE OFFENCES P/U/S 364A, 365 R/W 34 OF IPC BY LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, CCH-82.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner/State by Special Investigating Team, CID has preferred the subject criminal petition calling in question the order dated 13-05-2024 passed by the LXXXI Additional City Civil and Sessions Judge, Bengaluru in Criminal Miscellaneous No. 4229 of 2024 granting bail to the respondent invoking its power under Section 439 of the Cr.P.C.

2. Heard Prof. Ravi Varma Kumar, learned Special Public Prosecutor along with Sri B.N. Jagadeesha, learned Special

Public Prosecutor appearing for the petitioner and Sri C.V. Nagesh, learned senior counsel appearing for the respondent.

3. Facts, in brief, germane are as follows:-

The genesis of the issue is when certain videos of the son of the respondent which depict sexual abuse and sexual assault on several women get circulated from Hassan Lok Sabha constituency. It is reported then that these videos were an object of sexual exploitation by the then Member of Parliament Sri. Prajwal Revanna. Certain victims come forward to file a complaint against the said Member of Parliament on 28-04-2024 before Holenarasipura Town Police Station. The Holenarasipura Town Police Station then registers a crime in Crime No.107 of 2024 against two persons – one the respondent and the other his son under Sections 354A, 354D, 506 and 509 of the IPC. In connection with the aforesaid case of sexual assault against several women the State constitutes a Special Investigating Team on 28-04-2024 to investigate into the cases registered in connection thereto. Here begins the problem of impugned proceedings.

4. The complainant's mother has worked in the house of accused No.1/H.D.Revanna as a domestic help for about 6 years. During those years, it is the allegation that she was subjected to sexual assault and violence by the son of the respondent. While committing such sexual assault on her, the son of the respondent had made a video of the said acts. It is seen in the video that the victim is begging him by holding his feet not to commit sexual assault on her. This is the details of crimes which broke out as observed hereinabove. On the said date i.e., 28-04-2024 one Satish Babanna, accused No.2 in the subject crime, at the instance of the wife of the respondent Smt. Bhavani Revanna, Accused No.8 in the subject crime, approached the complainant's mother and brought her to her house on the morning of the day of election and warned or threatened that she should not approach the Police complaining or co-operating with any investigation. The next day, i.e., on 29-04-2024, it is said, that accused No.2 goes to the house of the complainant and again warned the victim that if the Police come to know anything, they would be sent to jail by registering a complaint. This was the threatening words by accused No.2. Later

again, accused No.2 along with the victim travelled on a Hero Honda Splendor bike and come to a certain house. The complainant then registers a complaint on 2-05-2024 alleging that accused No.2, on the instructions of accused No.1, using deceitful means, apprehended the complainant's mother. The complaint then becomes a crime in Crime No.149 of 2024 against several accused. Accused No.1 is H.D.Revanna and accused No.2 is Sathish Babanna. The offences alleged are Sections 364A, 365 read with 34 of the IPC. On 03-05-2024 the Department transfers the case to the Special Investigating Team of the CID for further investigation. This is the broad background in which the present respondent/accused No.1 is brought into the web of crime along with others.

5. Accused No.1/H.D. Revanna applies for interim/ anticipatory bail in Criminal Miscellaneous Petition No.4138 of 2024 before the Court of Sessions. This comes to be rejected. After such rejection, the respondent is arrested and taken into custody on 04-05-2024. He was remanded to Police custody till 08-05-2024. On 06-05-2024 when the respondent was in Police custody, another

petition seeking regular bail, as he was already in custody, is filed in Criminal Miscellaneous Petition No.4229 of 2024 before the Special Court constituted to hear the cases of people's representatives. Objections were filed by the State that regular bail should not be granted in the matter, as accused No.1 along with others has indulged in criminal conspiracy. Notwithstanding the said objections, it appears, the Court of Sessions, in terms of its order dated 13-05-2024, grants regular bail to the respondent. He is then enlarged on bail. The State through its Special Investigating Team ('SIT' for short) is before this Court, challenging the order of grant of bail.

6. The learned Special Public Prosecutor Prof. Ravi Varma Kumar representing the SIT/petitioner would vehemently contend that all the offences in the case at hand are *prima facie* met. The offence is the one punishable under Section 364A of the IPC which is punishable for a minimum period of 10 years and can lead to life imprisonment. There is clear evidence against accused No.1 and as such, he should not have been enlarged on bail, that too making an observation that there is not even a *prima facie* case made out

against accused No.1 when there was clear evidence. He would submit that in the teeth of the allegations against the son of accused No.1, it is clearly probable that accused No.1 and his wife have in connivance with other accused threatened the complainant. The victim was taken from her house by several henchmen of accused No.1 and kept captive in a house. He would submit that the order granting bail on irrelevant consideration should be set aside and accused No.1 be sent back into the wall of the jail.

7. Per contra, the learned senior counsel Sri C.V.Nagesh would refute the submissions to contend that the consideration, on a challenge to the grant of bail, is completely different from consideration for grant of bail. He would submit that the Court has considered the purport of Section 364A of the IPC and held that there is no *prima facie* evidence against this accused for denying bail and once an accused is set free, it can be cancelled only on certain parameters set in by the Apex Court in plethora of judgments. He would place reliance upon several judgments, one of which is rendered by the coordinate Bench of this Court granting bail to accused No.8, wife of accused No.1. He would submit that

all these submissions that are now being projected were projected in the matter of bail to accused No.8 and, therefore, it would become applicable to the facts of the case as well. He would seek dismissal of the petition.

8. The learned Special Public Prosecutor appearing for the State would join issue to submit that the bail granted to accused No.8 is pending consideration before the Apex court. Notice is ordered to accused No.8 in a challenge made by the SIT. He would further contend that, as a special case, the observations in the case at hand are made in favour of accused No.1, while the same is not made applicable to all other cases as they have been denied bail. He would also seek to place reliance on several judgments of the Apex Court. The judgments upon which reliance is placed by the petitioner and the respondent would all bear consideration in terms of their relevance in the course of the order.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts are not in dispute. They would not require reiteration, as the consideration at the hands of this Court is on a challenge to the order granting bail. Accused No.1 is the respondent. Therefore, it becomes necessary to notice the reasons so rendered by the concerned Court. It reads as follows:

"…. …. ….

*14. **Point No.1:-** Before adumbrating to the contentions urged by both the parties, the facts in narrow compass is that a FIR came to be registered on 2.5.2024 at about 9.00 p.m. The main allegations which been leveled is that the complainant's mother who was working as maid in the house of petitioner for many years and of late, she had left the job. The above case is required to be appreciated in the back drop of the allegations which has been leveled against the petitioner. The complaint itself indicates that some of his friends had reportedly stated to the complainant that his mother who is also the victim, was subjected to sexual assault and even the same was circulated through viral videos. It is also relevant to note that the victim was allegedly taken out from her house by accused No.2 Satish Babanna, who has been arrested and remanded to custody. The complaint averments indicates that on the fateful day the accused No.2 had visited the house of complainant and had allegedly stated that she was being called upon by petitioner herein. As such the victim had accompanied with accused No.2 and thereafter, she was not heard for about 4 days and later on a complaint was filed on 2.5.2024 at about 9.00 p.m. before the K.R.Nagar Police station.*

15. In order to appreciate the factual aspects of the case, firstly the court has to consider whether the ingredients of Sec.364-A of IPC is made out. For the sake of Convenience, the provision is extracted which reads as follows:-

Sec.364-A of IPC ***Kidnapping for ransom, etc.***

[Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or 2 [any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

16. On perusal of the aforesaid section, it would clearly indicate that in order to attract the rigors of the aforesaid provision the prosecution is required to establish the following aspects.

a) kidnapping or abduction of any person or keeping him under detention

b) threatens to cause death or hurt to such person

c) causes hurt or death to such person in order to compel the government or any foreign state or any governmental organisation or any other person to do or to abstain from doing any act or to pay a ransom.

17. The first and foremost aspect which is required to be established is that there should be an act of kidnapping or abduction. In the instant case, admittedly, the victim is not a minor nor is alleged to have been kidnapped from the country. However, the ingredients of abduction as defined under Sec.362 of IPC at best could be pressed into. At this juncture, at the cost of repetition, the allegation which has been leveled in the complaint is to be looked into. Admittedly, the victim is also known to the complainant and also accused No.2. Absolutely, there is no qualms that the victim was working in the house of petitioner for many years. It is contended that the petitioner son had ravished her and as such a separate complaint was filed. However nothing as

such has been narrated in the complaint and all that it is stated is that accused No.2 had insisted the complainant to send his mother i.e., victim with him on 29.4.2024. It is stated that the victim was allegedly called by the petitioner herein. The learned counsel for the petitioner has vehemently argued that the basic ingredients of Sec.364-A is not at all attracted. It is his submission that the victim was not allured, abducted or kidnapped on some false pretense as required under the provisions and immediately, after the alleged incident also, there were no demand for ransom nor any threat being given to the victim. By pointing out the said aspects he has argued that the basic ingredient has not been met by the prosecution. Though the said submission seems to be proper, the court has carefully appreciated the materials which has been furnished by the prosecution. Admittedly in the above case, two remand applications came to be filed by the prosecution on two separate dates. The first remand application was filed on 5.5.2024 and it is noticed that at that point of time, the victim was traced and also she was accompanied by investigating agency and was kept in safe place. It is also relevant that the remand application indicates that on 5.5.2024 her statement was not recorded and she was subjected to counselling. It is also stated that her statement under Sec.164 of Cr.P.C. was also required to be recorded. I have bestowed my anxious reading to the second remand application which came to be filed on 8.5.2024. It is pertinent to note that on the same day, the police custody of the petitioner was completed and he was remanded to judicial custody as per the request of the Investigation agency. In the said remand application it is stated that the statement of victim under Sec.164 of Cr.P.C. was yet to be recorded. The court has also appreciated the fact that in the entire remand application no whisper is found with respect to recording the statement of victim under Sec. 161 of Cr.P.C. I have also bestowed my anxious reading to the CD files and also the statements which have been furnished by the prosecution. The record indicates that the petitioner was remanded to police custody from 5.5.2024 to 8.5.2024 and it is stated in the statement of objections more particularly, in para-No.17 that the victim in her Statement recorded under Sec.161 of Cr.P.C., has disclosed the commission of rape by petitioner's son. It is also noticed that as per the objection statement at para-10, it is stated that

the complainants mother was forcibly taken and kept in detention by the petitioner and others on 29.4.2024 and also the prosecution has contended that the complaint indicates of danger to the life of the victim. However, the said fact is also not forthcoming in the complaint and all that it has been stated is that the victim was insisted upon by accused No.2 to accompany him as per the directions of petitioner. As rightly argued by the learned Senior Counsel for the petitioner, the aforesaid fact is required to be established only during the course of trial. At this initial stage, it is pertinent to note that the victim has not given any statement against the petitioner herein. Though the SPP has argued at length with respect to the grounds which they had urged in their petition, at para-27 that the victim in her statement under Sec.161 Cr.P.C. had stated about reasonable apprehension of her survival and also threat to her life, no materials have been produced at this juncture, that the entire incident of addiction had taken place at the behest of petitioner herein. Apart from a stray allegation in the complaint that the accused No.2 had insisted the victim at the say the petitioner, no materials are forthcoming.

…. …. ….

26. The aforesaid authority clearly indicates that confession statement is a very weak type of evidence which at best could lend assurance to the case of prosecution and in the instant case, the confession statement of accused No.2 allegedly against the petitioner cannot be solely relied upon to ascertain the existence of prima facie case. The other contention which has been urged by the learned SPP is with respect to the findings rendered by the Hon'ble High Court of Karnataka in the Election Petition filed against the son of the petitioner. It is relevant to note that in the said petition the petitioner was not arraigned as accused person. The said judgment is not with respect to commission of offence of abduction, but only it has been relied upon to indicate the conduct of the petitioner by the prosecution. However, both the parties have admitted that the aforesaid judgment has been stayed by the Hon'ble Apex Court.

27. Before concluding the other aspect which has been traversed by the prosecution is with respect to maintainability of the bail petition at the inception, since the accused / petitioner was in police custody. It is pertinent to note that the bail petition was filed on 6.5.2024 and no interim order was passed by this court and subsequently, the petitioner's police custody came to an end on 8.5.2024. Accordingly, the said contention will become redundant.

28. To sum up, it is pertinent to note that the allegation which has been leveled against the petitioner herein is of abducting the victim. However, the ingredients which are required to be established at this Juncture, as laid down by the Hon'ble Apex Court in the judgment reported in (2024) SCC OnLine SC 196 (William Stephen Vs. 'State of Tamil Nadu) is not made out at this juncture. It is noticed from the records that though the allegation leveled against the petitioner is of abducting the victim, no materials have been produced to indicate his active role at this juncture. It is made clear the observations made are only for the purpose of ascertaining the prima facie case and no observations are made with respect to merits of the case. In the instant case, the victim has been rescued and also her statement has been recorded. Even otherwise, as per the remand application, the petitioner is got required for custodial interrogation and he has been sought for remanding to judicial custody. Though a serious allegation is leveled against the petitioner's son, the same cannot be a ground to reject the bail petition unless it is pointed out that he would be menace to the society. It is pertinent to note that though he is said to be an ML.A and also an Ex-Minister, the same by itself will not prevent him from seeking bail or will not lead to an inference that he would threaten or tamper the prosecution witnesses. Even otherwise, no criminal antecedent has been pointed out against him. Under the circumstances, the apprehension of the prosecution can be taken care by imposing stringent conditions. Sequentionally, I answer Point No.1 in the Affirmative.

29. ***Point No.2:*** *In view of my findings on point No.1, I proceed to pass the following:-*

ORDER

Bail Application filed by the the petitioner under Sec.439 of Cr.P.C., in Cr.No.149/2024 registered by the respondent Police station for the offences punishable under Sec.364-A, 365 read with Sec.34 of IPC pending on the file of the learned XLII ACMM Court at Bengaluru is hereby allowed and the petitioner is hereby admitted to bail on executing a personal bond for Rs.5,00,000/- with two sureties to the satisfaction of the jurisdictional court i.e., learned XLII ACMM Court at Bengaluru subject to following conditions:

a) The petitioner shall not threaten and tamper the prosecution witnesses or the complainant and victim;

b) The petitioner shall not evade the Investigation and shall appear before the I.O. whenever called by him for the purpose of investigation:

c) The petitioner shall furnish his passport to the Court and shall not leave the State Court without obtaining written permission from the Court.

d) The petitioner shall not enter upon K.R.Nagar Taluk or the permanent place of residence of the victim directly or indirectly till further orders;

e) The petitioner shall appear before the I.O. on every second Sunday of the month and mark his attendance between 9.00 a.m. to 5.00 p.m. for a period of 6 months or till the filing of charge sheet, whichever is earlier.

f) The petitioner shall not indulge in similar offence.

Office is directed to return the CD files to the prosecution."

It is this order that is called in question in the case at hand. The prayer sought in this petition becomes relevant to be noticed. The prayer reads as follows:

> *"WHEREFORE, the above-named petitioner respectfully prays that this Hon'ble Court may be pleased to:*
>
> *1. Call for records in Crl.Misc.4229 of 2024 before the LXXXI Additional City Civil & Sessions Judge, Bengaluru – CCH-82.*
>
> *2. Set aside and cancel the impugned order of grant of bail under Section 439 of CrPC dated 13-05-2024, to the respondent/Accused No.1 in Crl.Misc.No.4229 of 2024 (Cr.No.149 of 2024) of the K.R. Nagara PS (Now SIT CID, Bengaluru), for the offences punishable under Sections 364A, 365 r/w 34 of IPC by LXXXI Additional City Civil & Sessions Judge, Bengaluru CCH-82, in the interest of justice and equity."*

What is sought is setting aside of the order of grant of bail or cancellation of bail. The parameters of consideration of a case for grant of bail and challenge to the grant of bail or cancellation of bail are entirely different.

11. It now becomes necessary to notice the judgments relied on by the learned Special Public Prosecutor appearing for the petitioner. Heavy reliance is placed upon two judgments of the

Apex Court – one, in the case of ***SHAIK AHMED v. STATE OF TELANGANA***[1] and the other in the case of ***WILLIAM STEPHEN v. STATE OF TAMIL NADU***[2]. In the case of ***SHAIK AHMED*** *supra* the Apex Court was considering a challenge to the conviction of the appellant therein for offence punishable under Section 364A of the IPC. While considering the challenge to the conviction, the Apex Court holds as follows:

"…. …. ….

9. *The Law Commission of India took up the revision of the Penal Code and submitted its report i.e. 42nd Report (June 1971). In Chapter 16, offences affecting the human body was dealt with. The chapter on kidnapping and abduction was dealt by the Commission in Paras 16.91 to 16.112. Sections 364 and 364-A was dealt with by the Commission in Paras 16.99 to 16.100 which are as follows:*

*"**16.99. Section 364—Amendments proposed**. — Section 364 punishes the offence of kidnapping or abduction of a person in order to murder him, the maximum punishment being imprisonment for life or for ten years. In view of our general recommendation as to imprisonment for life, we propose that life imprisonment should be omitted and term imprisonment increased to 14 years.*

The illustrations to the section do not elucidate any particular ingredient of the offence and should be omitted.

***16.100. Section 364-A—Kidnapping or abduction for ransom**.—We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnapping or abduction is punishable under Section 365*

---

[1] *(2021) 9 SCC 59*
[2] *(2024) 5 SCC 258*

> *since the kidnapped or abducted person will be secretly and wrongfully confined.*

We also considered the question whether a provision for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section:

> *'**364-A. Kidnapping or abduction for ransom**.—Whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine.' "*

10. *Although the Law Commission has in Para 16.100 proposed Section 364-A, which only stated that whoever kidnaps or abducts any person with intent to hold that person for ransom be punished for a term which may extend to 14 years. Parliament while inserting Section 364-A by Act 42 of 1993 enacted the provision in a broader manner also to include kidnapping and abduction to compel the Government to do or abstain from doing any act or to pay a ransom which was further amended and amplified by Act 24 of 1995.*

11. *Section 364-A as it exists after amendment is as follows:*

> *"**364-A. Kidnapping for ransom, etc**.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."*

12. *We may now look into Section 364-A to find out as to what ingredients the section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:*

(i) *"Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction"*

(ii) *"and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,*

(iii) *or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom"*

(iv) *"shall be punishable with death, or imprisonment for life, and shall also be liable to fine."*

The first essential condition as incorporated in Section 364-A is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction". The second condition begins with conjunction "and". The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence. The third condition begins with the word "or" i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words "or causes hurt or death to such person in order to compel the Government or any foreign State to do or abstain from doing any act or to pay a ransom". Section 364-A contains a heading "Kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364-A.

13. *We have noticed that after the first condition the second condition is joined by conjunction "and", thus, whoever kidnaps or abducts any person or keeps a person in detention*

after such kidnapping or abduction and threatens to cause death or hurt to such person.

14.** **The use of conjunction "and" has its purpose and object. Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfilment of first condition, the second condition i.e. "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or".

***15.** The word "and" is used as conjunction. The use of word "or" is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:*

> *" … The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused."*

… …

20.** **Thus, applying the above principle of interpretation on Conditions (i) and (ii) of Section 364-A which is added with conjunction "and", we are of the view that Condition (ii) has also to be fulfilled before ingredients of Section 364-A are found to be established. Section 364-A also indicates that in case the condition "and threatens to cause death or hurt to such person" is not proved, there are other classes which begin with word "or", those conditions, if proved, the offence will be established. The second condition, thus, as noted above is divided in two parts— (a) and threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt.

… … …

33. *After noticing the statutory provision of Section 364-A and the law laid down by this Court in the abovenoted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:*

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is "and". Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.

34. The second condition which is "and threatens to cause a death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt" is relevant for consideration in this case since appellant has confined his submission only regarding non-fulfilment of this condition*. We may also notice that the appellant has filed grounds of appeal before the High Court in which following was stated in Grounds 6 and 7:*

> *"6. The learned Judge failed to see that PW 2 stated that he was treated well and as such there was no threat to cause death or hurt.*
>
> *7. The learned Judge should have seen that PW 1 did not state that the accused threatened to cause death or hurt to his son.""*

(Emphasis supplied)

The Apex Court delineates the principle as to what would amount to an offence under Section 364A of the IPC. The conditions that are necessary to be present for an offence under Section 364A of the IPC were analyzed and it was held that Section 364A is not met in the case therein. The next judgment in the case of ***WILLIAM STEPHEN*** *supra* is also again answering a challenge to conviction. The Apex Court again lays down as to what should be the ingredients. Paragraph-10 is what is relied upon. It reads as follows:

> *"…. …. ….*
>
> ***10. The first ingredient of Section 364-A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If the said act is coupled with a threat to cause death or hurt to such person, an offence under Section 364-A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364-A will be attracted. In the light of this legal position****, now we refer to the evidence of the child PW 2."*
>
> *(Emphasis supplied)*

Since both these cases were concerning challenge to conviction, a third judgment is relied on in the case of ***BHAGWAN SINGH v.***

DILIP KUMAR[3] wherein bail that was granted was cancelled by the Apex Court. The circumstance that led to cancellation of bail is captured in the following paragraphs:

"…. …. ….

> ***23.*** *The accused in the instant case, namely, Deepak was apprehended by the jurisdictional Sessions Court by executing the arrest warrant on 09.01.2023. He did not initially surrender after being charge-sheeted or participate in the investigation even after arrest warrant being issued by the trial court.*
>
> ***24.*** *The fact that accused Deepak is the son of sitting MLA would disclose the domineering influence he would wield not only in delaying the proceedings but also in pressurizing the witnesses to either resile from their statement given during the course of investigation or pose threat to them from deposing against accused on their failure to act according to his dictates or induce them to testify as per his dictates or to help the defence of the accused.*
>
> ***25.*** *The prosecutrix has made allegations against the concerned accused-respondents and it becomes amply clear from the plain reading of the complaint as well as the testimony of the prosecutrix that accused persons had indeed participated in the gang rape. She also states that she was threatened that if she were to inform any family member of the alleged rape incident, they would make the video of rape to go viral. During the course of investigation of the FIR registered for gang rape, it was found that entries maintained at Hotel Samleti Palace, relevant to the date of incident was specifically missing; the CCTV cameras at the Hotel though found, the CCTV footage of the date of incident was not available; Vivek had called the prosecutrix several times and had exchanged number of messages; Vivek and Netram were in regular touch on phone and after the incident, accused Deepak was dropped from the charge-sheet only on the ground that call details of his mobile provided to the investigating authorities did not disclose about his presence at the scene of the incident on that particular date and as such the charge-sheet was filed only against*

---

[3] *2023 SCC OnLine SC 1059*

Vivek and Netram. The prosecutrix had also named Deepak having participated in the incident of gang rape in her statement recorded under Section 161 and 164 of the Cr. P.C. and had also named him in the FIR. It is only on the strength of the application filed by complaint under Section 190-193 of Cr. P.C., the trial court took cognizance against Deepak for the offences punishable under Section 376D and section 5 of POCSO Act and said order has reached finality, as already noticed hereinabove.

26. *The complainant's grievance, through-out has been that Deepak had been threatening the prosecutrix and other witnesses and that there is every possibility of threat to their life in the event they depose to the truth, and such apprehension is justifiable, especially because accused is in a domineering position. The complainant underlines the influence and possibility of the clout being wielded on the witnesses which cannot be discounted. The fact that even after recording of the deposition of the prosecutrix other prosecution witnesses have not come forward to tender evidence though more than nine dates of hearing has passed, would lend credence to the apprehension of the complainant. The High Court seems to have erred in not considering these basic facts while considering the prayer for grant of bail by taking into consideration the well-established judicial pronouncements already noticed hereinabove. That the court framed charges, prima facie discloses the possibility and reasonable suspicion of the accused prima facie culpability.*

27. *The Courts have placed the liberty of an individual at a high pedestal and extended the protection to such rights whenever and wherever required. In the same breadth, it requires to be noticed that emphasis has also been laid on furnishing reasons for granting while balancing it with the requirement of a fair trial bail even though such reasoning may be brief.*

28. *In the aforesaid circumstances, we notice that the impugned order granting bail is not only bereft of material particulars which would justify grant of bail, but it seems that the High Court has got swayed on the ground of delay and the video having not been recovered during the course of investigation and has given a complete go by to the allegation made in the FIR and statement recorded under Section 161 and 164 of the Cr. P.C. as also the testimony of the prosecutrix before the jurisdictional court.*

> ***29.*** *Hence, we are of the considered view, that order of the High Court requires to be set aside and accordingly it is set aside. We hereby direct that the accused/respondents shall surrender before the jurisdictional court within two weeks from today failing which they shall be taken into custody We make it clear that they will be at liberty to seek bail after the evidence/depositions of the remaining witnesses are recorded and in the event of such an application being filed, the High Court shall consider the same on its own merits and without being influenced by any of the observations made hereinabove. We also make it clear that the jurisdictional court shall not be influenced by any of the observations made hereinabove and are limited to present proceedings. The appeals are accordingly allowed."*

Placing reliance upon these judgments, the learned Special Public Prosecutor would submit that the bail granted to the respondent should be cancelled as it is a pain to the Society to allow such people out to roam freely, borrowing the words of the Apex Court in the case of ***BHAGWAN SINGH*** *supra*.

12. It is now necessary to notice the judgments relied on by the learned senior counsel for the respondent. The Apex Court in the case of ***X v. STATE OF TELANGANA***[4] has held as follows:

"*…. …. ….*

> ***9. During the course of the hearing, the 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:***

[4] *(2018) 16 SCC 511*

> ***(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."***
>
> *(Emphasis supplied)*

The Apex Court holds that consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are entirely different. While considering the application for cancellation of bail the Court ordinarily looks for some supervening circumstances like tampering of evidence during investigation or during trial. The learned senior counsel would submit that what is challenged in the case at hand is grant of bail and not cancellation bail. Therefore, the parameter of examination is limited. The other case on which he places reliance upon is a judgment rendered by the coordinate Bench of this Court in ***SMT.BHAVANI REVANNA v. STATE OF KARNATAKA***[5]. A coordinate Bench of this Court, while granting bail to accused No.8 has observed as follows:

"…. …. ….

[5] *Criminal Petition No.5125 of 2024 decided on 18-06-2024*

III. BRIEF FACTS:

(i) One Mr.Raju.H.D. lodged the FIR on 02.05.2024 with the respondent-Police inter alia alleging that one Mr.Satish Babanna had forcibly taken away his mother to Holenarasipura on a bike on 29.04.2024 saying that the petitioner herein & her husband Mr.H.D.Revanna, an accused named in the FIR were calling her; on the very next day she was brought back and left at Mysore with the instruction that she should not tell anything about this to Police.

(ii) FIR also alleges that two persons namely, Mr.Danu & Mr.Yashu visited complainant's house on the noon of 01.05.2024 and told that in a mobile video his mother was seen with her legs tied and being sexually abused by petitioner's son Mr.Prajwal who is later accused in another case and that a case has been registered in that regard. It further alleges that, he had phoned Mr.Satish Babanna and enquired about mother's whereabouts; Mr. Satish Babanna told him about Prajwal's tumult with others and that a photo depicting his mother holding a club in the company of others, has appeared; he also alerted saying in that connection, an FIR has been registered.

(iii) Mr.Satish Babanna told the complainant that a bail order has to be secured for his mother and that he should speak from others phone, keeping his unused. The complainant lastly alleges that his mother was forcibly taken to an unknown place and confined there; she runs risk to her life; therefore legal action should be taken against Satish Babanna & Revanna. Accordingly the Police have registered the subject case for the aforesaid offences.

(iv) In the above background, petitioner had moved the jurisdictional court for the grant of anticipatory bail in Crl.Misc.No.4229/2024. After hearing the parties, learned Judge of the court below vide order dated 13.05.2024 rejected the petition. Therefore, the petition at hands for the same relief has been moved before this court.

IV. Having heard the learned counsel appearing for the parties and having perused the petition papers along with police papers furnished in the sealed cover, I am inclined to grant anticipatory bail to the petitioner for the following reasons:

(A) Firstly, in the FIR the complainant who happens to be son of the abducted lady does not implicate the petitioner. He requests the Respondent-Police to take action only against two specified persons namely, Satish Babanna & Revanna, later being petitioner's husband. It is relevant to reproduce the last paragraph of the FIR:

> *"ನನ್ನ ತಾಯಿಯು ಪೋಲೀಸಿನವರಿಗೆ ಸಿಗಬಾರದು ಅಂತ ಹೇಳಿ ಸತೀಶ್ ಬಾಬಣ್ಣ ರವರು ದಿನಾಂಕ:29/04/2024 ರಂದು ರಾತ್ರಿ 9.00 ಗಂಟೆಗೆ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ನನಗೆ ಸುಳ್ಳು ಹೇಳಿ, ನಮ್ಮ ಮೇಲೆ ಪೋಲೀಸ್ ಕೇಸಾಗುತ್ತದೆ ಎಂದು ಹೆದರಿಸಿ ನನ್ನ ತಾಯಿಯನ್ನು ಒತ್ತಾಯದಿಂದ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಯಾವುದೋ ಗೊತ್ತಿಲ್ಲದ ಜಾಗದಲ್ಲಿ ಕೂಡಿ ಹಾಕಿರುತ್ತಾರೆ. ಮತ್ತು ನನ್ನ ತಾಯಿಯ ಜೀವಕ್ಕೆ ತೊಂದರೆ ಇರುತ್ತದೆ. ಅದರಿಂದ ನನ್ನ ತಾಯಿಯನ್ನು ನಮ್ಮ ಮನೆಯಿಂದ ಒತ್ತಾಯಮಾಡಿ ಕರೆದುಕೊಂಡು ಹೋಗಿರುವ ಸತೀಶ್ ಬಾಬಣ್ಣ ಮತ್ತು ನನ್ನ ತಾಯಿಯನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಲು ಬಾಬಣ್ಣ ರವರಿಗೆ ಹೇಳಿರುವ ರೇವಣ್ಣ ಸಾಹೇಬರ ಮೇಲೆ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಿ ನನ್ನ ತಾಯಿಯನ್ನು ಪತ್ತೆ ಮಾಡಿಕೊಡಬೇಕಾಗಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ."*

What is notable is that the complaint mentions about Satish Babanna having taken complainant's mother to Holenarasipura 3 – 4 days earlier to Lok Sabha Election and leaving her back at Mysore on the same night. It says that this was done at the instance of petitioner. All this is set as a prelude to the incident and that no allegations of abduction or the like is made against this petitioner. In all fairness learned Special Public Prosecutor not only did not dispute but conceded this position.

(B) Learned Special Public Prosecutor submits that a lot of material has been collected during the investigation and that the petitioner is the 'King Pin' of the entire episode; the offences alleged against the culprits are punishable with death or

life imprisonment and therefore in such heinous offences no anticipatory bail can be granted as a matter of course. This is stoutly opposed by the learned Sr. Advocate appearing for the petitioner, contending that there is absolutely no allegation or material to implicate the petitioner in the offence punishable u/s.364A of IPC. He banks upon WILLIAM STEPHEN vs. STATE OF TAMIL NADU, 2024 SCC Online SC 196, to substantiate his contention. He further submitted that there is absolutely no implication of the petitioner in any offence. Let me examine the matter.

(C) Section 364A of IPC which is brought on the statute book vide Act 42 of 1993 w.e.f. 22.05.1993 has the following text:

> ***"Section 364A kidnapping for ransom, etc.***
> ***Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine."***

The Apex Court in para 10 of STEPHEN supra has analysed the intent & content of this provision by observing as under:

> ***"10. The first ingredient of Section 364A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If the said act is coupled with a threat to cause death or hurt to such person, an offence under Section 364A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled***

> ***with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364A will be attracted. In the light of this legal position, now we refer to the evidence of the child-PW-2."***

Further, what is observed at para 15 shows the practical application of this provision and therefore a relevant part thereof is reproduced below:

> *"15……The call records could have been the best possible evidence for the prosecution to prove the threats allegedly administered by the accused and the demand of ransom. Even taking the evidence of PW-1 and PW-3 as correct, all that is proved is that they received a phone call from someone for demanding ransom and the person threatened to kill their son in case ransom is not paid. However, the prosecution is not able to connect the alleged demand and the threat with both the accused. Therefore, the ingredients of Section 364A of IPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364A about the threats given by the accused to cause death or hurt to such person. In a given case, if the threats given to the parents or the close relatives of the kidnapped person by the accused are established, then a case can be made out that there was a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution."*

(D) There is force in the submission of Mr.C.V.Nagesh that the provisions of Sec.364A of IPC do not appear to be invokable in the case at its present stage, although new facts that may arguably emerge during the progressive investigation may warrant its attraction. There is not even a whisper that the argued risk to abductee's life is at the instance of petitioner. Even otherwise, no assumption of the kind can be made against the petitioner who is not named by the complainant or by his mother in her sections 161 & 164

statements that are furnished in a sealed cover. Much discussion in this regard is avoided, lest the ongoing investigation should be affected. If the said provision is found to be prima facie not invokable, then the remaining offences alleged against the Accused, obviously do not attract the capital punishment, life imprisonment or imprisonment for ten years also. Companion Sec.365 is also a species of the offence of abduction/kidnapping and it prescribes a maximum punishment of only seven years. Therefore, it cannot be gainfully argued that in matter like this, no bail, anticipatory or regular can ever be granted, as a Thumb Rule. The off quoted slogan of Krishna Iyer in ***STATE OF RAJASTHAN vs. BALCHAND ALIAS BALIAY, AIR 1997 SC 2447*** *that 'Bail is rule and jail is an exception' has not yet been rendered "much ado signifying nothing". It still animates our Criminal Jurisprudence subject to all just exceptions, such as cases of terrorism, PMLA, treason, attack on Defence/Police Personnel, etc. Of course, there are exceptions to these exceptions, is also true. However, such a case has not been made out by respondent here. That being the position, the contention that the case involves heinous offences that should abhor the request for bail, regular or anticipatory, does not merit acceptance.*

(E) Learned Special Public Prosecutor contends that the Police need the petitioner for custodial interrogation and this version of Police has to be accepted at face value, no discretion availing to the court to examine its veracity. In support of this he presses into service the decision in ***CBI vs. VIKAS MISHRA, (2023) 6 SCC 49.*** *Para 17 which was specifically read out by him is as under:*

> *"17. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting CBI to have the police*

> *custody interrogation for the remainder period of seven days, it will be given a premium to an accused who has been successful in frustrating the judicial process."*

A perusal of the above paragraph does not reveal the proposition passionately canvassed by him. A decision is an authority for the proposition that it lays down in a given fact matrix of a case and not for all that which logically follows from what has been so laid down, said Lord Halsbury more than a century ago in ***QUINN vs. LEATHEM, (1901) AC 495.*** *Further, it is not the case of the State that the petitioner had frustrated the judicial process, which is a predominant factor in the said ruling.*

(F) Mr.C.V.Nagesh is right in telling that the version of the Police as to the requirement of custodial investigation is liable to be examined by the court, personal liberty of individual being constitutionally sacrosanct. This view gains support from a latest decision in ***ASHOK KUMAR vs. STATE OF UNION TERRITORY OF CHANDIGARH, 2024 SCC OnLine SC 274****, wherein at para 12 the Apex Court has observed as under:*

> *"12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation."*

If the proposition canvassed by the learned Special Public Prosecutor that the courts under no circumstance can examine the tenability of the police claim for custodial interrogation is accepted, that would strike the death knell of sacrosanct

guarantees of freedom & liberty gloriously enacted in the Constitution, they have been progressively construed by the courts. In our evolved system, the freedom has been broadened from precedent to precerdent. Makers of Constitution have founded a Welfare State for us in the light of lessons drawn from the experience during the Colonial Regime. Our Constitution does not enact Idi Amin Jurisprudence, nor does our Criminal Justice System. Despite vociferous submissions, why the police want custodial interrogation has not been even nearly substantiated and therefore, it cannot be granted, law having heavily loaded against such a claim.

(G) Learned Special Public Prosecutor on his own having produced the police papers in sealed covers submitted that the abductee was manhandled; that she was made to spend days without food; further that all through she remained in the same clothes, is not supported by the evidentiary material, on record and nor from the perusal of the sealed cover material. In the Statement of Objections at para 34 it is written as under:

> ***"34. It is submitted that during the victim's confinement, the Petitioner was in touch with Accused No.7 through her driver's phone. The Accused No.7 enquired about the supply of clothing to the victim, and the Petitioner made the arrangements for the clothes through her driver and Accused No.6 – Keerthi. "***

The victim herself in her Sec.164(5) Statement that was recorded on 08.05.2024 has specifically stated that she was given food. However, from this paradoxical version, one cannot hastily jump to a view that the victim was in the custody/confinement of the petitioner/accused, matter being in bail jurisdiction. She has not uttered anything about the so called manhandling during confinement. Even in her Sec.161 Statement

recorded on 18.05.2024 there is nothing of the kind. The fact remains that the abductee is back home.

(H) The next contention of learned Special Public Prosecutor that the Petitioner despite intimation refused to come for investigation and therefore she should not be granted advance bail, appears to be too far fetched. Learned counsel for the Petitioner submitted that there was every reason to believe that she would be arrested at once, if she appeared before police. This version is plausible since it is the specific and emphatic case of Police that they require her for custodial interrogation and court cannot say 'no' to it. When the police sends notice in terms of Sec.41A of Cr.P.C., the citizen should comply with the same, hardly needs to be stated, compulsive elements of law being what they are. However, matter will not be as simple as it purports to be. This court takes judicial notice of cases wherein police had effected arrest & detention despite noticee in due compliance appearing before them for interrogation/investigation. Unless such notices assure citizens of 'no arrest/detention', one cannot falter their knocking at the doors of court for redressal of their grievance. Citizens have a feel of distrust in the governmental functionaries in general and police personnel in particular. A section of the society sees the State as the first opponent, if not as the enemy. It was Rudyard Kipling (1865-1936) who poetically said "Believe all, but none too much" applies qua Police too.

(I) The contention that the petitioner despite grant of interim anticipatory bail which stipulates condition of co-operation, has not co-operated in investigation, is difficult to agree with. The interim order dated 07.06.2024 directed the petitioner to go before the Investigating Officer on the same day, and admittedly she did it. On that day she was asked 21 questions and she answered all of them. Similarly, as instructed, again she appeared before them on 08.06.2024. She was given a

bank of 34 questions and she has not left even one of them unanswered. Once again, as instructed, she appeared before the police on 12.06.2024 and answered all the 25 questions. In all, thus she answered 80 questions. The police cannot insist that an accused should give answers in the way as the police desire. After all in our evolved Criminal Jurisprudence, an accused is presumed to be innocent and that she has a constitutional guarantee against compulsive self incrimination vide Article 20(3) as widely interpreted by the Apex Court in ***NANDINI SATPATHY vs. P.L.DANI, AIR 1978 SC 1025****. Even now the petitioner is ready & willing to further participate in the ongoing investigation whenever & wherever the police want her. The number of appearance and duration of interrogation are not to be taken as restricted by this court since investigation pertains to the domain of Investigating Agency and the Agency controls it.*

(J) The submission of learned Special Public Prosecutor that petitioner has not prevented her son from sexually abusing several women & from fleeing the country and therefore, she should not be granted bail, again is too farfetched, to say the least. Control of the patriarch of the family that obtained in Roman Law does not appear as a justiciable norm in our set up. Petitioner's son is facing criminal cases and after his return from abroad, he has been taken into custody by the police for investigation, is not in dispute. But, what duty a mother owes in law to prevent her major children from committing offences, has not been shown by turning the pages of statute book or by citing rulings. History & epics bear testimony to the fact that children of noble parents may commit delinquencies. Vice versa may also be true. Nothing is placed on record to show that in the cases of sexual abuse of women registered against her son, petitioner happened to be an abettor. The said abuses allegedly happened in the property belonging to the petitioner, can only be a poor factor. The facts of those cases cannot be much read into the case registered against the petitioner while deciding her advance bail petition.

> *(K) The next contention of the learned Special Public Prosecutor that the petitioner hails from political background cannot be disputed. Her father-in-law is a former Prime Minister of this country; her husband was a Cabinet Minister in the State Government and now is a sitting MLA; her husband's brother is a Cabinet Minister in the Union Government. Her son is an Ex.MP. Also, there are some other relatives holding significant political positions. However, all that cannot be a sole consideration for denying bail in a matter like this, especially when petitioner is a married woman having a settled family and roots in the society. There are umpteen decisions of Apex Court and of this Court wherein, bail/anticipatory bail has been accorded to women accused of even heinous offences punishable with death or life imprisonment. They hardly need to be enlisted. Therefore, there is no Thumb Rule that arguably in serious matters like this, invocation of bail jurisdiction should never be permitted."*
>
> *(Emphasis added)*

The learned senior counsel would also place reliance upon the judgment in ***WILLIAM STEPHEN*** *supra* which is heavily relied upon the learned Special Public Prosecutor for the petitioner, with particular reference to paragraphs 17 to 18. They read as follows:

> *"…. …. ….*
>
> ***17. However, the prosecution is not able to connect the alleged demand and the threat with both the accused. Therefore, the ingredients of Section 364-AIPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364-A about the threats given by the accused to cause death or hurt to such person.***
>
> ***18. In a given case, if the threats given to the parents or the close relatives of the kidnapped person by***

> ***the accused are established, then a case can be made out that there was a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution."***
>
> *(Emphasis supplied)*

The reliance on the aforementioned paragraphs, by the learned Special Public Prosecutor for the petitioner is projecting what is necessary for Section 364A of the IPC and the reliance on the same judgment by the learned senior counsel for the respondent is on the evidence. The Apex Court holds that there was no ingredient of Section 364A of the IPC and at best it was Section 363 of the IPC. It, therefore, becomes necessary to notice the provisions.

13. Sections 359 to 370 of the IPC deal with several hues and forms of kidnapping. Section 362 deals with abduction; Section 363 deals with punishment for kidnapping; Section 363A deals with kidnapping of a minor; Section 364 deals with kidnapping or abducting in order to murder; Section 364A deals with kidnapping for ransom; Section 365 deals with kidnapping or abducting with intent to secretly and wrongfully confine a person. It is these

provisions that are necessary to be noticed in the case at hand. They read as follows:

> *"**362. Abduction**.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.*
>
> ***363. Punishment for kidnapping**.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> ***363-A. Kidnapping or maiming a minor for purposes of begging**.—(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
>
> *(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punished with imprisonment for life, and shall also be liable to fine.*
>
> *(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.*
>
> *(4) In this section,—*
>
> *(a) "begging" means—*
>
> *(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;*

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means—

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.

***364. Kidnapping or abducting in order to murder**.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

***364-A. Kidnapping for ransom, etc**.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.*

***365. Kidnapping or abducting with intent secretly and wrongfully to confine person**.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with*

> *imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

What is alleged in the case at hand is Section 364A of the IPC. A perusal at the ingredients of Section 364A would *prima facie* indicate its absence in the case at hand. It reads that whoever kidnaps or abducts any person or keeps any person in abduction and threatens to cause death or hurt to do or abstain from doing any act or to pay ransom. As observed by the coordinate Bench while considering the grant of bail to accused No.8, *prima facie* there is no ingredient of Section 364A of the IPC and it can at best be brought under Section 362 of the IPC which deals with abduction or Section 365 which deals with abduction with intent secretly and wrongfully confine a person, both of which are punishable to a maximum of 7 years.

14. The learned Special Public Prosecutor for the petitioner submits that charge sheet has been filed against all the accused, accused 1 to 9. Accused No.9 is said to be absconding even today. In the light of the charge sheet being filed, it is ununderstandable as to why the bail granted to the respondent should be cancelled or

the order that granted bail should be set aside. If denial of bail is bleak after filing of the charge sheet in the case at hand, its cancellation or setting aside the grant of bail is absolutely bleak. The Apex Court has also considered parameters of examination while cancelling the bail, as the prayer that is sought in the case at hand is twofold – one, to set aside and the other, to cancel. The Apex Court in the case of ***HIMANSHU SHARMA v. STATE OF MADHYA PRADESH***[6] has laid down certain parameters for cancellation of bail. The Apex Court has held as follows:

"…. …. ….

> ***10.*** *While cancelling the bail granted to the appellants, the learned Single Judge referred to this Court's judgment in Abdul Basit [Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257] . However, we are compelled to note that the ratio of the above judgment favours the case of the appellants. That apart, the judgment deals with the powers of the High Court to review its own order within the limited scope of Section 362CrPC. Relevant observations from the above judgment are reproduced below : (Abdul Basit case [Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257] , SCC pp. 761-64, paras 14-21)*
>
> > *"14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the*

---

[6] *(2024) 4 SCC 222*

grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty 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. However, in the last-mentioned case, one would expect very strong grounds indeed. (Raghubir Singh v. State of Bihar [Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 : 1986 SCC (Cri) 511])

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41]

16. In Gurcharan Singh case [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short "the old Code") and elucidated the position of law vis-à-vis powers of the courts granting and cancelling the bail. This Court observed as under: (SCC pp. 123-24, para 16)

'16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly, under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different

language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted [State (UT of Delhi) v. Gurcharan Singh, 1977 SCC OnLine Del 103] by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.'

17. In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Narendra K. Amin v. State of Gujarat [Narendra K. Amin v. State of Gujarat, (2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled

[State of Gujarat v. Narendra K. Amin, 2008 SCC OnLine Guj 682] the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in Puran case [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

18. Reverberating the aforesaid principle, this Court in the recent decision in Ranjit Singh v. State of M.P. [Ranjit Singh v. State of M.P., (2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405] has observed that : (SCC p. 806, para 19)

> *'19. … There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.'*

19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition

> ***challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.***
>
> ***21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."***
>
> ***(emphasis in original)***

11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

(a) the accused has misused the liberty granted to him;
(b) flouted the conditions of bail order;
(c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;
(d) or that the bail was procured by misrepresentation or fraud.

In the present case, none of these situations existed."

(Emphasis supplied)

The Apex court holds that cancellation of bail can happen only if the accused has misused the liberty granted to him; flouted the conditions of bail; the bail was granted in ignorance of statutory provisions; and bail was procured by misrepresentation or fraud. None of these instances are even present in the case at hand or even projected to be present.

15. In the absence violation of those parameters laid down by the Apex Court, the learned Special Public Prosecutor seeks to place reliance upon a judgment of the Apex Court in the case of ***YOUNUS BIN OMER YAFAI v. STATE OF ANDHRA PRADESH***[7] wherein it is held as follows:

"…. …. ….

> ***16.*** *The allegations, as they appear in the charge-sheet dated 30-6-2011, leave no room for doubt that the accusations are of a very serious nature. In broad daylight, at 11.10 a.m., an elected representative of the people, was attacked, without any fear of the repercussions. The attacks resulted in serious injuries to him. In the aforesaid attack, at least two of the accused were in possession of guns. The MLA is alleged to have received gunshot injuries as well. The allegations constitute an open challenge to the civil society. The persons involved in the alleged incident cannot be accepted to remain disciplined if enlarged on bail. It is likely that they would threaten witnesses, which would severely prejudice the outcome of the trial. In fact, it has been noticed in the impugned order [Younus Bin Omer*

---

[7] *(2013) 1 SCC 365*

> *Yafai v. State of A.P., Criminal Petition No. 5678 of 2011, order dated 25-4-2012 (AP)] passed by the High Court that Accused 8, after his release on bail, had picked up a quarrel with the MLA on 1-3-2012, and an entry of the aforesaid fact was recorded in the station general diary. The aforesaid factual position has been noticed in para 10 of the impugned order [Younus Bin Omer Yafai v. State of A.P., Criminal Petition No. 5678 of 2011, order dated 25-4-2012 (AP)] . The same was emphatically highlighted by the learned Additional Solicitor General who represented the State of Andhra Pradesh. It is also apparent, that if the trial concludes by returning a finding against the accused, they would be liable to be subjected to extremely severe punishment(s). As of now, the period of their custody is trivial in comparison to the punishment prescribed for the offences for which they are charged."*

The Apex court holds that accusations were very serious in nature. An elected representative in broad day light was attacked without any fear of repercussions. It resulted in serious injuries to the elected representative. It is, therefore, the Apex Court holds that the allegations constitute an open challenge to the civil society. The persons who are involved in the alleged incident cannot be accepted to remain disciplined if they are enlarged on bail. The facts pertaining in the case at hand are entirely different to what the facts before the Apex court in the case of ***YOUNUS BIN OMER YAFAI*** *supra*. Therefore, none of the ***armory*** from the ***arsenal*** of the Special Public Prosecutor for the petitioner would lend any assistance towards cancellation of bail of respondent/accused No.1.

16. In the result, finding no merit in the petition, the petition stands ***rejected.***

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS