



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL PETITION NO.200940 OF 2025

(439(2)(Cr.PC)/483(3)(BNSS))

BETWEEN:

DEVIBAI W/O CHANNAPPA CHINNARATHOD,
AGE: 42 YEARS, OCC: LABOURER,
R/O. CHAMNAL TANDA, TQ. SHAHAPUR,
DIST. YADGIR-585201.

...PETITIONER

(BY SRI SANJAY A. PATIL, ADVOCATE)

AND:



1. THE STATE OF KARNATAKA,
THROUGH GOGI POLICE STATION,
SHAHAPUR RURAL CIRCLE,
TQ. SHAHAPUR,
DIST. YADGIR-585201,
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH.
2. SUNIL S/O TOPU RATHOD,
AGE: 21 YEARS, OCC: AGRICULTURE,



R/O. CHAMNAL TANDA, TQ. SHAHAPUR,
DIST. YADGIR-585201.

...RESPONDENTS

(BY SMT. ARATI PATIL, HCGP, FOR R1;
SRI ASHOK B. MULAGE, ADVOCATE, FOR R2)

THIS CRL.P. IS FILED UNDER SECTION 483(3) OF BNSS, 2023, PRAYING TO ALLOW THE PETITION THEREBY CANCEL THE IMPUGNED ORDER DATED 03.05.2025 PASSED BY LEARNED DISTRICT AND SESSIONS JUDGE, YADGIR, EXTENDING BAIL TO ACCUSED NO.1/RESPONDENT NO.2 HEREIN, AND DIRECT THE RESPONDENT NO.1-POLICE TO TAKE CUSTODY OF ACCUSED NO.1 IN CRIME NO.33/2025 REGISTERED BY GOGI PS, TALUKA SHAHAPUR, DISTRICT YADGIR.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V. SRISHANANDA

ORAL ORDER

(PER: HON'BLE MR. JUSTICE V. SRISHANANDA)

Heard Sri Sanjay A. Patil, learned counsel for the petitioner, Smt. Aarti Patil, learned High Court Government Pleader for respondent No.1 - State and Sri Ashok B Mulage, learned counsel for respondent No.2 - accused.



2. Petition is filed under Section 483(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') with the following prayer:

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court be pleased to allow the petition thereby cancel the impugned order dated: 03.05.2025 passed by Learned District and Sessions Judge, Yadgir extending bail to Accused No.1/respondent No.2 herein and direct the respondent No.1 Police to take custody of Accused No.1 in Crime No.33/2025 registered by Gogi PS, Taluka Shahapur, District Yadgir, in the interest of justice."

3. Facts in brief, which are utmost necessary for disposal of the present petition are as under:

Upon the complaint lodged by Smt. Devibai, the mother of the victim girl, Gogi Police registered a case in Crime No.33/2025 on 12.04.2025 for the offences punishable under Sections 64(1), 137(2) read with Section 3(5) of BNSS, 2023 and under Section 4 of the Protection



of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3.1 Police after registering the case, investigated the matter *inter alia* arrested the accused. Accused, who is respondent No.2 in this case approached the Sessions Court for grant of bail under Section 483 of BNSS, 2023.

3.2 Learned Sessions Judge after entertaining the objections of the prosecution and after hearing the parties, by considered order date 03.05.2025 allowed the petition *inter alia* imposed following conditions:

"1) The petitioner shall mark his attendance before the concerned police station once in three weeks preferably on Sunday between 10-00 a.m. and 6-00 p.m. till filing of the final report.

2) The petitioner shall not threaten or allure the prosecution witnesses.

3) The petitioner shall appear before the Investigating Officer as and when directed."



4. Being aggrieved by the same, de-facto complainant has filed the present petition seeking cancellation of bail on the following grounds:

- *The impugned order dated: 03.05.2025 granting bail to Accused No.1 is against settled principles of law and further that in a short period the court below has extended the benefit of bail to the prime Accused who is Accused No.1 in the said case.*
- *The impugned order dated: 03.05.2025 extending bail to Accused No.1 is not justifiable since the matter is still under investigation and the respondent Police are yet to complete the investigation and lay charge sheet by collecting material evidence, the statement of the victim girl U/Sec.161 of Cr.PC as well as the statement of the victim girl recorded U/Sec. 164 Cr.PC makes out a clear case of the offence punishable U/Sec.4 of the POCSO Act, 2012, that being so the impugned order of granting bail to Accused No.1 by the Court of District and Sessions Judge, Yadgir deserves to be set aside.*
- *The Court below without properly appreciating the material evidence collected by the I.O*



during his investigation has hurriedly passed the order of extending bail to Accused No.1 ignoring certain materials on record which prima-facie sufficient to proceed against the Accused and thereby ought to have rejected the bail application filed by Accused No.1.

- *It is submitted on behalf of the Petitioner that, the alleged offences are heinous in nature and also the offence U/Sec.4 of the POCSO Act is prescribed for a punishment for life, that being so the Court below was not justified in granting bail to Accused No.1 when the case was still under investigation and charge sheet was yet to be filed.*
- *It is submitted on behalf of the Petitioner that, the victim girl is none else than the minor daughter of the complainant/petitioner and that the State has not sought for cancellation of bail order till today and hence petitioner has exhausted her remedy by filing the present petition U/Sec.483(3) of BNSS-2023 for cancellation order dated: 03.05.2025 and direct the respondent Police to take custody of Accused No.1 in the said case.*
- *It is submitted on behalf of the Petitioner that, the present petition is maintainable since it*



comes within the parameters laid by the Hon'ble Apex Court with regard to cancellation of bail moreso on merits.

5. Retreating the grounds urged in the petition, learned counsel for the petitioner would contend that the petition before this Court is maintainable having regard to the fact that cancellation of bail is permissible either before the Court, which granted bail or before this Court having regard to the concurrent power vested by the statute in this Court.

6. He would also contend that even in the absence of any violation of the conditions imposed by the learned Sessions Judge, very grant of bail can be questioned before this Court by filing an application under Section 483(3) of BNSS, 2023.

7. He would further contend that in the case on hand, since the victim girl is aged 17 years and there are material on record, which would *prima facie* establish that respondent No.2 has committed an offence punishable



under Section 4 of the POCSO Act, ignoring the *prima facie* material and granting bail to respondent No.2 by the Sessions Judge has resulted in miscarriage of justice and sought for allowing the petition.

8. *Per contra*, learned High Court Government Pleader for respondent No.1 and learned counsel for respondent No.2 oppose the petition stating that the order of granting bail is a discretionary order and in the absence of any compelling circumstances, bail once granted cannot be cancelled.

9. Having heard the arguments of both sides, this Court perused the material on record meticulously.

10. On such perusal of the material on record, even though an accused, who is alleged with heinous offence like Section 4 of the POCSO Act, ordinarily would not get an order of bail. However, grant of bail to respondent No.2 by the learned Sessions Judge with conditions if



needs to be assailed, there must be compelling circumstances or violation of the conditions.

11. As a general rule, application seeking cancellation of the bail is to be filed before the Court, which granted bail, inasmuch as, it is that Court which is exclusive knowledge of facts for grant of bail or rejection thereof.

12. Even though concurrent powers vested in this Court along with the Special Court or the Sessions Court to grant or cancel the bail, the application seeking cancellation of bail shall not be construed as if it is an appeal over the order of grant of bail.

13. Scheme of the statute does not provide for such an eventuality. Even in BNSS, 2023, no such provision is carved out by the legislature so as to vest the power of either revision or appeal over the discretionary order of grant of bail.



14. Section 483(3) of BNSS, 2023 is retained in verbatim of Section 439(2) of Cr.P.C. If at all the legislature is of the opinion that even in case of a discretionary order, if no proper discretion is exercised by a Court, then such orders could also be subject matter of either revision or appeal, necessarily the legislature would have carved out such power in the higher Courts namely, the High Court as against the Sessions Court or the Special Court.

15. In the absence of any such power being vested in the higher Courts either under Section 483(3) of BNSS, 2023 or any other provision of BNSS, 2023 and no such power being carved out in the POCSO Act as well, this Court is of the considered opinion that bail once granted cannot be cancelled just for asking.

16. No doubt, if there is a grave and serious error that has been committed by the Court while granting the bail, same can be questioned under the supervisory power



under Article 227 of the Constitution of India and by invoking inherent power of this Court under Section 482 of Cr.P.C.

17. Reserving such liberty for the petitioner/complainant, the present petition in the considered opinion of this Court is not maintainable. Accordingly, following order is passed:

ORDER

Criminal petition is dismissed.

Sd/-
(V. SRISHANANDA)
JUDGE

SBS/SRT
List No.: 1 Sl No.: 11
CT:PK