

2023 LiveLaw (SC) 924

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SURYA KANT; J., DIPANKAR DATTA; J.**

OCTOBER 20, 2023

CRIMINAL APPEAL NO. 3297 OF 2023 [ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 3312 OF 2021]

Munilakshmi versus Narendra Babu & Anr.

Bail - Cancellation of - If it is found that an undertrial has attempted to misuse the concession of bail either by influencing the witnesses or tampering with the evidence or trying to flee from justice, such person can be committed to custody by withdrawing the concession of bail. (Para 20)

Criminal Justice System - The Courts are under an onerous duty to ensure that the criminal justice system is vibrant and effective; perpetrators of the crime do not go unpunished; the witnesses are not under any threat or influence to prevent them from deposing truthfully and the victims of the crime get their voices heard at every stage of the proceedings. (Para 21)

Code of Criminal Procedure, 1973; Section 311 - Power to recall witnesses under Section 311 Cr.P.C. ought to be exercised sparingly and mere hostility by a witness, *per se*, would not be a sufficient ground to infer misuse of concession of bail. (Para 31)

Constitution of India, 1950; Article 142 - Code of Criminal Procedure, 1973; Section 311 - Recalling the witnesses for an effective, fair, and free adjudication of the trial – The Apex Court is vested with vast and ample powers to have such recourse not only under Article 142 of the Constitution but also under Section 311 Cr.P.C., be it on the request of the prosecution or *suo moto*. Such Constitutional or statutory power is not limited by any barriers like the stage of inquiry, trial, or other proceeding. A person can be called and examined though not summoned as a witness, or can be recalled, or re-examined so as to throw light upon the imputations. Section 311 Cr.P.C., of course, does not intend to fill the lacunae in the prosecution's case and cause any serious prejudice to the rights of an accused. The exercise of power under this provision is intended to meet the ends of justice and to gather overwhelming evidence to scoop out the truth. (Para 28)

(Arising out of impugned final judgment and order dated 12-08-2020 in CRLP No.3164/2020 passed by the High Court of Karnataka at Bengaluru)

For Petitioner(s) Mr. Mahesh Thakur, AOR Mrs. Vipasha Singh, Adv. Mrs. Geetanjali Bedi, Adv. Ms. Anusha R, Adv. Mr. Ranvijay Singh Chandel, Adv. Mr. Shivamm Sharrma, Adv.

For Respondent(s) Mr. T. Harish Kumar, AOR Mr. Navneet Dugar, Adv. Mr. Subham Kothari, Adv. Ms. Preethi G, Adv. Mr. D. L. Chidananda, AOR

J U D G M E N T

Surya Kant, J.

1. Leave granted.
2. This criminal appeal arises out of an order dated 12.08.2020 passed by the High Court of Karnataka at Bengaluru, whereby Respondent No.1 was granted regular bail in trial proceedings numbered S.C. 1111/2021, pending before Ld. Addl. City Civil and Sessions Judge, Bengaluru. The said trial has emanated from Crime No. 151/2019 dated

21.12.2019 registered at Police Station Vyalikaval, Bengaluru under Sections 109, 120B, 201, 302, 450, 454 read with Section 34 of the Indian Penal Code [**Hereafter 'IPC'**].

A. FACTS:

A.1. FACTUAL MATRIX BEFORE THE GRANT OF BAIL

3. Marriage between Vinutha M. and Respondent No. 1 was solemnised in the year 2006. A male child was born from the wedlock in the year 2009. It is alleged that Respondent No. 1 was having an extra-marital affair. He and his family members allegedly started harassing Vinutha M. soon after the birth of their child and pressurised her to sign the divorce papers. She, therefore, started living separately on the first floor of the matrimonial home.

4. Vinutha M. filed multiple criminal complaints of harassment including alleged attempts made on her life against Respondent No. 1 and his family members, leading to registration of several First Information Reports [**Hereafter 'FIR'**], the brief details of which are as follows:

I. FIR No. 231/2015 was lodged under Section 498A of IPC at P.S. Vyalikaval, Bengaluru on 23.11.2015 alleging that Respondent No. 1 along with his family members assaulted and threatened the complainant to sign divorce papers. On her refusal, the mother of Respondent No. 1 tried to kill the Complainant by pouring kerosene oil on her but she managed to escape.

II. FIR No. 238/2015 was registered under Sections 354(A) (2), 506, 504, 341, 448, 109 read with 34 of IPC at P.S. Vyalikaval, Bengaluru alleging that the driver of the uncle of Respondent No. 1 entered the Complainant's room and tried to commit rape upon her at the instigation of the father of Respondent No. 1.

III. FIR No. 97/2016 was registered under Sections 143, 323, 448, 504, 506, and 149 of IPC at P.S. Vyalikaval, Bengaluru alleging that Respondent No. 1 tried to kill the Complainant with an axe but she managed to escape to the toilet and saved herself. She called the police from inside the toilet and on hearing the sound of the police siren, Respondent No. 1 and his family members ran away.

IV. FIR No. 205/2017 was registered under Section 25(1)(B) (B) of the Arms Act of 1959 and Sections 96 and 97 of the Karnataka Police Act of 1963 [**Hereafter 'KP Act'**] at P.S. Vyalikaval, Bengaluru, alleging that Respondent No. 1 sent some rowdies to kill the Complainant. The Police later caught those goons along with axes and chilli powder, which they carried along to assault the Complainant.

V. FIR No. 50/2019 was registered under Sections 354(B), 341, 323, 427, 504, and 506 of IPC at P.S. Vyalikaval, Bengaluru alleging that Respondent No. 1 along with his childhood friends physically and sexually assaulted the Complainant on 16.06.2019 and also damaged her two-wheeler.

5. It is pertinent to note here that due to alleged continuous attacks and threats to her life, the Complainant wrote a letter to the Police Commissioner requesting for police protection and sought legal action against Respondent No. 1 and his family members.

6. Having received no response from the police officials, she approached the High Court through W.P. No. 33221/2019, seeking protection from Respondent No.1 and his family. The writ petition was disposed of by the High Court vide order dated 08.08.2019 (after noticing the law laid down by this Court in **Lalita Kumari v. Government of U.P.**

and Ors.¹), with a direction to the competent authority to take necessary action on the complaint, if not taken already, within a period of three weeks.

7. Thereafter, the Complainant brought the order of the High Court to the notice of the jurisdictional Police Station on 19.08.2019 and requested to provide adequate police protection to her.

8. Apparently, no heed was paid to her request for police protection, hence the Complainant made another complaint to the police station, Bengaluru on 21.10.2019, alleging specifically that Respondent No. 1 had paid a sum of Rs.15 lakhs to one Chinnaswamy and his associates for her Contract-Killing. It appears that the above-named Chinnaswamy and his associates were caught red-handed on 29.11.2017 by the local police in connection with FIR 205/2017. They were subsequently released on bail, which posed an imminent threat to the Complainant's life at the hands of Respondent No. 1, and his associates like Chinnaswamy who had criminal antecedents.

9. The Complainant left no stone unturned and made yet another elaborate complaint reiterating the abovementioned allegations to the Chief Minister of Karnataka on 30.10.2019. Additionally, a women's organisation also came forward and made a complaint alleging collusion of the police officials of Vyalikaval Police Station with Respondent No. 1 stating expressly that the local police was 'inactive' for extraneous considerations.

10. It is also discernible from the contents of all the complaints that the son born from wedlock continued in the sole custody of the Complainant while Respondent No. 1 unabatedly kept on harassing the Complainant and pressurising her to agree to a mutual divorce.

11. On the ill-fated day, i.e., 21.12.2019, the Complainant [**Hereafter 'Deceased'**] was found dead in her apartment. She was found lying in a pool of blood and in a supine position. The Appellant – Smt. Munilakshmi, the Deceased's mother, lodged the subject FIR, which was initially registered only under Sections 306 and 498A of IPC. The FIR stated that Respondent No. 1 was coercing the Deceased to consent to divorce as he wanted to marry someone else. It further alleged that Respondent No.1, his family members, and his associates had also previously attempted to kill the Appellant's daughter.

12. Being aggrieved by the non-inclusion of offence under Section 302 of IPC in the subject FIR, the Appellant thereafter made another complaint on 25.12.2019, alleging that suspects wearing helmets, etc., used to regularly visit the matrimonial home of the Deceased on the pretext of meeting the resident of the second floor but in actuality they would threaten the Deceased, who was staying on the first floor of that very house, with dire consequences. Respondent No. 1 along with one Prashanth (accused No. 2), and one Jaganatha (accused No. 3) was accused of killing the Appellant's daughter. The investigation in Crime No. 151/2019 was eventually completed, and a final report was submitted on 01.03.2020 against four persons, including Respondent No. 1, for the offences punishable under Sections 109, 120B, 201, 302, 450, 454 read with Section 34 of the IPC. In the final report, Respondent No. 1 was accused of hatching a criminal conspiracy to kill his wife by giving a 'supari' to accused Nos. 2 and 3, who assaulted the Deceased fatally. All the accused were arrested.

¹ (2014) 2 SCC 1.

13. Soon after his arrest, Respondent No. 1 applied for bail. The High Court in the impugned order dated 12.08.2020 observed that though several other cases were pending against Respondent No. 1; however, the allegations against him in Crime No.151/2019 are punishable under Sections 109 and 120B, IPC only. The High Court observed that whether the material like cell phone, and CCTV footage, was sufficient to prove the allegation of hatching of a criminal conspiracy is a subject matter of trial, and there was no other material as of then to show that Respondent No. 1 was in communication or contact with other accused persons. Consequently, Respondent No. 1 was directed to be released on bail.

A.2 EVENTS SUBSEQUENT TO THE GRANT OF BAIL AND FILING OF PRESENT SLP:

14. The aggrieved Appellant is in appeal before us. During the pendency of these proceedings, some disturbing events have taken place which are briefly noticed hereinafter:

(a) Notice was issued in the Special Leave Petition on 16.04.2021, but the matter could be taken up for effective hearing on 27.03.2023 only when it was informed that some complaints had been received against Respondent No. 1 after his enlargement on regular bail. Consequently, the Appellant was granted time to file an additional affidavit.

(b) On 24.04.2023, this Court was apprised that though the charges had been framed, the trial was yet to commence. The State counsel informed that there were 109 prosecution witnesses to be examined. We, thus, directed the Trial Court to commence the examination of prosecution witnesses. Respondent No.1 was directed to cooperate with the trial and remain present in the Court on the date of hearing.

(c) On 31.07.2023, an order dated 24.04.2023 passed by the Trial Court was brought to our notice, which revealed that CW-1 to CW-3 (Appellant and her family members) did not appear for their depositions and they were again served with non-bailable warrants. A fresh status report from the Trial Court was accordingly sought with a further direction that necessary steps, including coercive action be taken to ensure the presence of the witnesses.

15. What has transpired thereafter is quite disheartening, and it pricks the conscience of this Court. Our attention has been drawn to the fact that there was a gap of around 20 days between the examination-in-chief and the cross-examination of the key witnesses, who are none else than the Appellant (PW-1), her daughter-Vidhya (sister of the Deceased, PW-4), and Muniraju (father of the Deceased, PW-5). They all have turned hostile and retracted from their earlier statements.

B. CONTENTIONS:

16. Learned Counsel for the Appellant, regardless of her contradiction in the cross-examination, vehemently contended that the High Court committed a grave error in overlooking the well-established principles which guide the Courts to exercise their discretion in the matter of granting or refusing a bail. He urged that *prima facie* there is sufficient material gathered by the prosecution to indicate the involvement of Respondent No. 1 in a criminal conspiracy hatched for killing his wife. He also made a pointed reference to the complaints alleging gross misuse of concession of bail by Respondent No.1.

17. Learned State Counsel has supported the Appellant reiterating that Respondent No. 1 had been harassing the Deceased and was compelling her to concede for divorce, with

the intention to marry someone else. His family members and relatives also continued to humiliate the Deceased by demanding dowry and even attempted to kill her by pouring kerosene over her. He further submitted that Respondent No. 1 has other criminal antecedents also. He is involved in Crime No. 122/2017 under Section 3(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and Sections 345(A)&(B), 341, 355, 323, 504 read with 34 of the IPC and Crime No. 205/2017 under Sections 96, and 97 of the KP Act and Section 25B of the Arms Act. He further submitted that the Government Pleader for the State of Karnataka had displayed the seized CCTV footage and cell phone taken from the possession of Respondent No. 1 to link him to the gruesome murder. He also made a submission to the effect that Respondent No. 1 hardly spent a few months in custody and was enlarged on bail soon after, overlooking the heinous nature of the offence committed and the fact that Respondent No. 1 could influence the vulnerable witnesses with his money and muscle power.

18. On the other hand, learned Senior Counsel Mr. Narender Hooda, appearing on behalf of Respondent No. 1 very passionately urged that barring the offences under Sections 302, 450, and 454 IPC, all other offences are bailable in nature. Relying upon **Sanjay Chandra v. Central Bureau of Investigation**² and **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.**³, he submitted that the seriousness of the charge is not a test or factor while considering a bail application. He maintained that Respondent No. 1 has never misused the concession of bail and there is no cogent evidence produced so far by the prosecution linking Respondent No. 1 with the unnatural death of his wife. He emphasised that once the High Court has exercised its discretion in granting bail to Respondent No.1, this Court should not interfere with it.

C. ANALYSIS:

19. We have given our thoughtful consideration to the rival submissions and perused the material on record. It appears that the sudden change of stance shown by the most vital witnesses, namely, the family members of the Deceased within 20 days of their examination-in-chief cannot be a mere coincidence. The Appellant has been vigorously pursuing this appeal seeking cancellation of bail given to Respondent No. 1. In her examination-in-chief, she has specifically named Respondent No. 1 as the main conspirator in the murder of her daughter. Her sudden somersault, therefore, cannot be easily detached from the chain of allegations made against Respondent No. 1 in the past, of influencing the police, hiring goons, repeatedly assaulting the Deceased, and various attempts to take away her life. All these accusations, for the limited purpose of these proceedings, do suggest that Respondent No. 1 has the potential to influence the investigation or the witnesses who were slated to depose against him. The seriousness of allegations levelled against Respondent No. 1 by the Deceased during her lifetime or by the Appellant before the Police or in this appeal ought to be evaluated against this backdrop.

20. This Court undoubtedly has a narrow scope of interference in an order granting bail while exercising its power of judicial review and will be invariably reluctant to interfere in such order even if it has a different opinion. The Courts often grapple with balancing the most precious right to liberty embodied in Article 21 of the Constitution on one hand and the right of the orderly society, which is committed to the rule of law, on the other. The delicate balance in the case of long incarceration is drawn by releasing a suspect on bail

² (2012) 1 SCC 40.

³ (2011) 1 SCC 694.

on such terms and conditions that will ensure that a fair and free trial is not hampered. However, if it is found that an undertrial has attempted to misuse the concession of bail either by influencing the witnesses or tampering with the evidence or trying to flee from justice, such person can be committed to custody by withdrawing the concession of bail.

21. The Courts are under an onerous duty to ensure that the criminal justice system is vibrant and effective; perpetrators of the crime do not go unpunished; the witnesses are not under any threat or influence to prevent them from deposing truthfully and the victims of the crime get their voices heard at every stage of the proceedings.

C.1 THE REMEDIES IN LAW:

C.1.1 CANCELLATION OF BAIL

22. Where, on consideration of the facts and circumstances of a case, the Court is satisfied that there are cogent and overwhelming circumstances indicating misuse of concession of bail, it becomes imperative upon the Court in the interest of justice to withdraw such concession forthwith.

23. The expression “cogent and overwhelming circumstances for cancellation of bail” has been well-illustrated by this Court in a catena of decisions including **Dolat Ram and Ors. v. State of Haryana**⁴, which are:

- (i) Evasion or attempt to evade the due course of justice or abusing or attempt to abuse the concession of bail granted;
- (ii) Possibility of the accused to abscond;
- (iii) Development of supervening circumstances impeding upon the principles of fair trial;
- (iv) The link between the gravity of the offence, the conduct of the accused, and the societal impact on the Court’s interference.

24. In **Vipan Kumar Dhir v. State of Punjab and Anr.**⁵, this Court explained the impact of supervening circumstances developing post the grant of bail, such as interference in the administration of justice, abuse of concession of bail, etc., which are aversive to a fair trial and would warrant cancellation of bail.

25. Applying these parameters to the facts and circumstances of the case in hand, we are satisfied that there is a *prima facie* proximity between the grant of bail to Respondent No.1 and an emboldening opportunity for him to win over the witnesses. Respondent No.1, therefore, does not deserve to enjoy the concession of bail at least until all the crucial witnesses are examined. The privilege of liberty extended to him, thus, deserves to be withdrawn for an effective, fair, just and unbiased conclusion of trial.

C.1.2 ENSURING A FAIR TRIAL : RECALLING OF WITNESSES

26. A major challenge before this Court is to ensure a fair trial amidst the hostility of witnesses. Undoubtedly, witnesses play a very vital role in bringing justice home, especially in the adversarial system of court trials where the onus lies on the prosecution to prove the guilt of the accused by bringing persons acquainted with the facts before the courts of justice. Their testimony determines the fate of a trial before the court of law, without which the court would be like a sailor in an ocean sans the radar and the

⁴ (1995) 1 SCC 349.

⁵ (2021) 15 SCC 518.

compass.⁶ If a witness turns hostile for extenuating reasons and is reluctant to depose the unvarnished truth, it will cause irreversible damage to the administration of justice and the faith of the society at large in the efficacy and credibility of the criminal justice system will stand eroded and shattered.

27. This Court in **Ramesh and Ors. v. State of Haryana**⁷ has illustratively explained the reasons behind the witnesses retracting their statements before the Court and turning hostile. These include: (i) threat/intimidation; (ii) inducement by various means; (iii) use of muscle and money power by the accused; (iv) use of stock witnesses; (v) protracted trials; (vi) hassles faced by the witnesses during investigation and trial; and (vii) nonexistence of a robust legislative mechanism to check hostility of witnesses. Amongst these reasons, the 'threat' and 'intimidation' of the witnesses have always been a matter of serious concern amongst all the stakeholders.

28. It seems to us that the unusual and surprising events that have happened post the grant of bail to Respondent No.1, do make out a case for recalling the witnesses for an effective, fair, and free adjudication of the trial. This Court is vested with vast and ample powers to have such recourse not only under Article 142 of the Constitution but also under Section 311 of the Code of Criminal Procedure, 1973 (**Hereafter 'CrPC'**), be it on the request of the prosecution or *suo moto*. Such Constitutional or statutory power is not limited by any barriers like the stage of inquiry, trial, or other proceeding. A person can be called and examined though not summoned as a witness, or can be recalled, or re-examined so as to throw light upon the imputations. Section 311 CrPC, of course, does not intend to fill the lacunae in the prosecution's case and cause any serious prejudice to the rights of an accused. The exercise of power under this provision is intended to meet the ends of justice and to gather overwhelming evidence to scoop out the truth.

29. In the case at hand, the family members of the Deceased are the most crucial witnesses to test the veracity of the allegations levelled by the prosecution. Their stand in the examination-in-chief is diametrically opposite to the one in the cross-examination. The fact that the parents and sister of the Deceased have resiled from their earlier standpoint where they had been found to be agitating vigorously before different forums since the year 2019, implores us to invoke our Constitutional powers under Article 142 read with Section 311 CrPC and direct their recalling for a fresh cross-examination after ensuring a congenial environment, free from any kind of threat, psychological fear, or any inducement.

30. We, thus, find it a case fit for recalling the witnesses (PW-1, PW-4 and PW-5) for their further cross-examination to reach an effective decision in the subject trial.

31. We, however, hasten to add that power to recall witnesses under Section 311 CrPC ought to be exercised sparingly and mere hostility by a witness, *per se*, would not be a sufficient ground to infer misuse of concession of bail. Still further, the observations made hereinabove shall have no bearing on the merits of the pending trial.

D. CONCLUSION:

32. In view of the above discussion and without expressing anything on merits, we allow this Appeal with the following directions:

⁶ Mohd. Ashraf, 'Peculiarities of Indian Criminal Justice System Towards Witnesses : An Analysis' (2018) 26 ALJ 64.

⁷ (2017) 1 SCC 529.

- (i) the impugned order dated 12.08.2020 is set aside and the bail granted to Respondent No. 1 is hereby cancelled;
- (ii) Respondent No. 1 is directed to surrender not later than one week. He shall remain in custody till the conclusion of trial or till this Court releases him on bail in changed circumstances;
- (iii) the Trial Court is directed to recall PW-1, PW-4, and PW-5 for their further cross-examination;
- (iv) the Commissioner of Police, Bengaluru is directed to provide security to the Appellant and her family, including her daughter (PW-4), round the clock at least till their fresh depositions;
- (v) the Commissioner of Police, Bengaluru is further directed to investigate as to whether the Appellant and her family members were threatened, induced, or subjected to any extraneous pressure for retracting their statements. Such a report be presented before the Trial Court within 2 weeks subject to the right of objection to Respondent No. 1 and his co-accused, if there is any finding against them in such report; and;
- (vi) the Trial Court will closely observe the demeanour of Respondent No.1 or his counsel during further cross-examination of the Appellant, PW-4, PW-5 and other important prosecution witnesses. No minacious gesture or appeasing expressions be allowed so that the voluntary, free and unpolluted version of all the material witnesses is brought on record.

33. The present appeal is disposed of in the above terms.

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