



IN THE COURT OF THE JUDGE
SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.

Present : Sri. K. M. Retheesh Kumar, Judge.

Saturday 20th day of August, 2022

Crl. M.P. No. 778/2022 in SC.No. 265/2018.

State rep. by the Deputy Superintendent of Police,
SMS Unit Agali Sub-Division, Agali.
(Represented by. Sri. Rajesh.M. Menon,
Special Public Prosecutor).

Petitioner

Vs

1. Hussain S/o Muhammed, aged 54 yrs,
Mecheriyil (H), Thavalam (P.O), Pakkulam,
Palakkad (Dist).
2. Marakkar S/o Unneen, aged 37 yrs,
Kilayil (H), Mukkali (P.O), Kallamala, Palakkad.
3. Shamsudheen S/o Muhammed, aged 37 yrs,
Pothuvachola (H), Mukkali (P.O), Kallamala,
Palakkad.
4. Aneesh S/o Rajagopalan, aged 34 yrs,
Kunnath (H), Kakkuppadi, Kalkandi (P.O),
Kallamala, Palakkad.
5. Radhakrishnan S/o Balan, aged 38 yrs,
Thazhussery (H), Mukkali (P.O), Kallamala,
Palakkad.
6. Aboobacker @ Backer S/o Muhammed,
aged 35 yrs, Pothuvachola (H), Pallippadi,
Thenkara (P.O), Anamooli, Palakkad.
7. Sidhiq S/o Saidh, aged 42 yrs, Padinjare
Palla kurikkal (H), Mukkali (P.O), Kallamala,
Palakkad.
8. Ubaid S/o Ummar, aged 29 yrs, Thottiyil (H),
Mukkali (P.O), Kallamala, Palakkad.

Accused

9. Najeeb S/o Latheef, aged 37 yrs, Viruthiyil (H),
Mukkali (P.O), Kallamala, Palakkad.

10. Jaijumon S/o Ayyappankutty, aged 48 yrs,
Mannampatta (H), Mukkali (P.O), Kallamala,
Palakkad.

11. Abdul Kareem S/o Thajudheen, aged 52 yrs,
Cholayil (H), Mukkali (P.O), Kallamala,
Palakkad.

12. Sajeev S/o Raveendranath, aged 34 yrs,
Puthanpurakkal (H), Kottiyurkunnu,
Mukkali (P.O), Kallamala, Palakkad.

13. Satheesh S/o Govindan, aged 43 yrs,
Muriykkada (H), Mukkali (P.O), Kallamala,
Palakkad.

Accused

14. Hareesh S/o Sivaraman, aged 38 yrs,
Cherivil (H), Mukkali (P.O), Kallamala,
Palakkad.

15. Biju S/o Sivaraman, aged 41 yrs,
Cherivil (H), Mukkali (P.O), Kallamala,
Palakkad.

16. Muneer S/o Latheef, age 32 yrs, Viruthiyil (H),
Mukkali (P.O), Kallamala, Palakkad.

(Rep. by Advs.

Sri. M.N. Sakkeer Hussain- A1 &11

Sri. Babu Karthikeyan-A2

Sri. Anil.K. Muhammed- A3, A6, A8, A9, A10,
A12, A16.

Sri. K. Krishnamoorthi - A4, A7, A14 and A15

Sri. N. Madhusoodanan - A5.

Smt. K.Deepa - A13).

ORDER

This is an application filed by the learned Special Public Prosecutor on
behalf of the investigating officer to cancel the bail granted to some of the

accused alleging that these accused persons have influenced the witnesses and thereby violated the conditions in the bail order.

The averments in the petition in brief are as under:-

2. The prosecution case is that the accused persons have committed offences punishable u/s. 143, 147, 148, 323, 324, 326, 294(b), 342, 352, 364, 367, 368, 302 r/w 149 IPC and section 3(1) (d), (r), 3(2) (v) of SC/ST (POA) Act.

3. The accused persons were released on bail as per the order of the Hon'ble High Court of Kerala. The witnesses and accused belong to same locality. This fact was brought to the notice of the Hon'ble High Court of Kerala while granting bail to the accused persons. Accordingly in the bail order the Hon'ble High Court of Kerala observed as under paragraph 5 of the order.

"if the court finds any possibility of the witnesses being influenced or threatened or won over, or any of the accused absconding from legal process, and the trial process being thus obstructed bail can be denied by the court and the accused can be detained in custody till the whole trial process is over".

In the operative part of the order, certain conditions were imposed by the Hon'ble High Court of Kerala. As per clause "c" of that operative part of the order it was specified that "the accused shall not have any contact with the witnesses directly or over telephone or otherwise till the whole trial process is over and they shall not make any attempt to influence or threaten the witnesses

in any manner”.

4. During the course of trial it is observed that the witnesses are showing a hostile attitude towards the prosecution. Accordingly the Witness Protection Committee headed by the District Judge has passed an order to give protection to the witnesses concerned and there is a further direction to monitor the e-mails and telephone calls of the witnesses. By that time it is found that some of the witnesses who turned hostile to the prosecution case, who were eye witnesses and given 164 statement before Magistrate are in constant contact with the accused. It is further found that some of the accused have contacted with these witnesses who have turned hostile to the prosecution case even before they were examined in court. This is a clear violation of the bail condition imposed by the Hon'ble High Court of Kerala.

5. On monitoring call details of the witnesses, it is found that the second accused had contacted CW14 Anand, CW18 Kalimooppan, CW19 Kakki, CW15 Mehrunnissa, CW16 Razak, CW32 Abdul Manaf by violating the conditions in the bail order passed by the Hon'ble High Court of Kerala. Likewise third accused, Shamsudheen had contacted CW12 Anilkumar, CW14 Anand, CW15 Mahrunnissa, CW31 Deepu, CW32 Abdul Manaf, CW42 Navas. Likewise accused Nos.4, contacted CW10 and CW42. Similarly accused no 5 contacted CW18 and CW19. Accused no 6 contacted CW 14 and CW 31. CW 10 and CW14 have contacted accused no 7. Accused no 9 contacted CW 10, CW31, CW32, CW34, and CW35. Accused no 10 contacted CW15, CW18. Accused no

12 contacted CW10,CW14,CW31,CW32,CW34,CW35. Accused no 15 contacted CW11, CW14, Cw31, CW31, CW32, CW35 and accused no 16 contacted Cw10,CW31,CW32,CW35.

6. Apart from all these a particular phone number having number 8943615072 has been used by the accused to contact the witnesses and it was found to be activated since 03-06-2022 and now that number remain inactive from 19-07-2022 on wards. On further enquiry it is learnt that the SIM card was issued in the name of one Bhagavathy. When the said Bhagavathy was contacted it is found that she has not availed any such SIM and the photo affixed in the application form for issuing mobile phone connection was that of one Nisha W/o Aneesh. On enquiry it is found that the SIM card was taken by her relative Dhanalakshmi and now it is being used by the husband of that girl namely Sivakumar. On further enquiry it is found that that SIM card was in the hands of one Aanjan who is a politician in that locality and now the SIM is being used by A15 (Biju) in this case by receiving it from Anjan.

7. Apart from the phone calls mentioned above Aanjan has been contacting with the witnesses and the said Aanjan along with witnesses in this case such as Chandran and Suresh had taken a room in Bee Yem lodge from 07-06-2022 to 09-06-2022. The CC TV footages and the registers of the hotel confirms those facts. Likewise it is learnt that on 23-06-2022 at 17.12 hours a sum of Rs.1000/- was found to be credited to the account of one Thevan by one Muhammad Saleem, a close relative of A11. The said Thevan was the bystander

of CW13,(Suresh) while he was hospitalised. The said Thevan has withdrawn that money by using ATM card and gave that Rs.1000/ to CW13, Suresh. Likewise an FIR was registered in Agali Police Station as Cr.No.180/2022 for offence u/s.452, 506(i),195 A r/w 34 IPC and section 3(2)v(a) of SC/ST (POA) Act for threatening the mother of Madhu namely Malli, CW39.

8. All the accused in this case are politically influential and economically strong and they are trying to derail the judicial system with the help of their money power and muscle power, that is against public justice. If the accused persons are set free then they will influence all the remaining witnesses and the same will prejudicially affect the prosecution case.

9. Under these circumstances, prosecution seeks to cancel the bail granted to those accused persons who alleged to have influenced the witnesses.

10. The respondents filed separate objections as they have engaged different advocates. However the sum and substance of the objections can be summarised as under:-

11. Prosecution has filed this application only to protract the trial. The accused persons have not contacted the witnesses. Even as per the call list produced by the prosecution in several occasions it is the witnesses who have contacted the accused persons and not vice versa. In most of the calls, the time span of conversation is only a few seconds and that is not sufficient to influence the witnesses. Some of the accused persons are driver by profession and some others are doing business in that locality where in the witnesses reside.

Therefore in connection with their profession or business transactions some mobile phone conversation might have been made, but that was not in any way for the purpose of influencing the witnesses. The mobile phone of the accused persons might have been used by their staff of their business concern, or even the family members as well. Law doesn't require that the mobile number can only be used by the subscriber himself. The accused persons are released on bail as per the order of Hon'ble High Court of Kerala in an appeal preferred u/s. 14 A of SC/ST (POA) Act and hence bail granted by Hon'ble High Court of Kerala can never be cancelled by this court.

12. Some of the accused have totally denied the allegation that the accused persons have contacted the witnesses over mobile phone and it is contended that the prosecution has to produce other evidences to prove that these mobile numbers belong to the accused persons. The witnesses who were examined before court so far, have not raised any allegations that they were influenced or threatened by the accused persons. The witnesses were compelled by the Police to give 164 statement before the Magistrate. When they were examined before the court the witnesses have deposed the real truth before court.

13. In the bail order the Hon'ble High Court of Kerala, the High Court has never authorised this court to cancel bail in the event of violation of the condition imposed by the Hon'ble High Court of Kerala. In the subsequent order passed by the Hon'ble High Court of Kerala certain conditions imposed by

the Hon'ble High Court in the bail order was also vacated. Cancellation of second involve review of the bail order passed by the Hon'ble High Court of Kerala and hence this court has no jurisdiction to entertain this petition and hence the petition is to dismissed in its threshold.

14. CW13/PW8 who alleged to have been influenced by some of the accused persons have given evidence supporting the prosecution case. Therefore, there is no merit in the allegation that the accused persons have influenced the witnesses. The accused had not deliberately violated any of the conditions imposed by the Hon'ble High Court of Kerala. Mere innocent violation of the certain conditions doesn't warrant cancellation of bail. Madhu was died while he was in the Police custody. Therefore, the Investigating Officer is trying to help his colleagues from facing the allegation of custodial death of Madhu. Thus all the respondents vehemently opposed the application filed by the learned Special Public Prosecutor. The documents produced by the learned Special Public Prosecutor are marked as P1 to P3 and documents produced by the respondents are marked as D1 (series) for the purpose of this CMP.

15. Heard, both sides.

Thus the point that arise for consideration is whether the bail granted to the respondents/accused is to be cancelled?

16. In order to decide this CMP two main questions are to be answered by this court. The first one is whether there exists any prima-facie material to find that the accused persons have influenced the witnesses. The

Second question is whether this court has any authority to cancel the bail granted by the Hon'ble High Court in an appeal preferred under section 14 A of SC/ST (POA) Act. Only if these questions are answered in favour of the prosecution, then only this court is justified in allowing this application. It will be convenient to answer these questions one by one.

17. The first and foremost question is whether there exists any sufficient material to prima-facie find that the accused persons have influenced the witnesses. In order to establish that the accused persons have contacted the witnesses over mobile phone the prosecution has made available the call details of the accused persons. The call details prima-facie reveal that in many occasions the respondents/accused have contacted the witnesses. There are instances in which the witnesses have contacted the accused persons as well. It is to be noted that so far the prosecution has examined 16 material witnesses to prove the occurrence. Out of these 16 witnesses, only two witnesses have supported the prosecution case and remaining 14 witnesses completely turned hostile to the prosecution case. It is to be noted most of these witnesses have given 164 statement before the Magistrate supporting the prosecution case. As per the prosecution allegation the accused persons have beaten late Madhu, a tribal youth to death, by nabbing him from Reserve Forest and brought to a place called Mukkali. As per the prosecution case during this journey from Reserve Forest to Mukkali the accused persons have repeatedly beaten the said Madhu. Therefore not even a single witness cited by prosecution is able to

depose about the entire incident starting from the Reserve Forest to the place called Mukkali. Thus, the prosecution is attempting to prove the case by establishing the entire facts one by one starting from nabbing of Madhu from Reserve Forest, Parading of Madhu through street upto the place called Mukkali by citing several witnesses. It seems that what is expected from each witnesses are the connecting links to prove the commission of crime by the accused. Some of them have witnessed the actual assault, some have witnessed the parading of the Madhu through street, some others have witnessed manhandling at Mukkali and so on.

18. It is to be noted that all the witnesses who have given 164 statement before Magistrate blindly turned hostile to the prosecution case. Some of the witnesses deposed before the court that they are quite unaware of the accused persons. The demeanor of the witness reveal that they are attempting to create an impression that they have never seen these accused persons in their lifetime. It is sarcastic to note that, those witnesses who have given testimony before court that they have no idea about the accused persons are found to have contacted these accused persons in their mobile phones in several occasions. It is further to be noted that one witnesses has denied his own picture when he was confronted with the CCTV footage in open court.

19 Likewise it is noted that during examination of PW16, by slip of tongue the witnesses deposed that "എന്നൊരാൾ വാങ്ങിയിട്ടില്ല" This answer was voluntarily given by that witness when a suggestion was made by the learned

Special Public Prosecutor during the course of cross examination that the witness is lying due to the influence of the accused. This reveal that some talk is going on among the public in that locality, that in Madhu case witnesses are turning hostile to the prosecution case by "receiving some thing".

20. The evidence so far adduced before the court makes it succinctly clear that the witnesses are giving false evidence before court quite contrary to their earlier statement given before Police and before the Magistrate. The court is compelled to remain as a silent spectator of all these mockery for the last several days. The court is unable to take any action, rather compelled to remain as a silent spectator, in the absence of any material to find that the witnesses are being influenced by someone else.

21. It is to be noted that in the objection/counter affidavit the respondents are not saying that the mobile number doesn't belongs to the accused persons but belongs to some one else. The Special Prosecutor has produced certified copies of Re verification EKYC forms issued by the service providers. There documents reveal that the respective mobile numbers stated in the call list are subscribed by the accused themselves. Therefore I am compelled to proceed with a finding that the mobile numbers alleged to have been used by the accused persons were subscribed and belong to them only. The call list reveal that accused are in constant contact with the witnesses. Accused no 15 is found to have contacted CW32, more than fifty times. Likewise third accused is found to have contacted CW 14 around 63 times. It is found that

the accused persons contacted the witnesses who were already examined, before their examination and further contacted those witnesses who are yet to be examined. It seems that this may be the reason why the learned Special Prosecutor filed CMP No 780/2022 to postpone examination of these witnesses after the disposal of this CMP. The call details produced by the prosecution reveal that in several occasions the accused persons have contacted the witnesses and there are instances in which the witnesses themselves have contacted the accused persons. It cannot be believed that both accused and witnesses have contacted each other for discussing about the difference of opinion between India and Pakistan or to discuss about future of Indian Economy or even to discuss about some other spiritual books such as Bible, Holy Quran or Bhagvath Geetha.

22. The circumstances made available before court, the very fact that most of the witnesses who were examined so far turned hostile to the prosecution case in its entirety etc prompting me to believe that the accused and witnesses have interacted each other to discuss about this case and for the purpose of winning over of the case. Likewise I don't find any reason to accept the argument canvased by the counsel for some of the accused that conversation between accused and witnesses for a few seconds is not sufficient to influence the witnesses. It is to be found that even a mere sentence that "we will discuss it directly not in phone" or "I will come and meet you" etc., which can be completed within a few seconds is more than enough to start the process of

influencing of witnesses. Likewise it is noticed in the call details of accused No 7 and 10 that there were no outgoing calls to the mobile nos of witnesses. However there are several incoming calls from the mobile nos of witnesses to the mobile nos of these accused. In such circumstances they cannot be said to be innocents as claimed by their counsel. Had the witnesses who were examined so far not turned hostile to the prosecution case, it would have been said that the conversation between accused and witnesses were not relating to the case, but for some other purpose.

23. It is to be noted that the accused are found to have contacted the witnesses when a specific order passed by the competent authority constituted under the Witness Protection Scheme headed by the District and Sessions Judge Palakkad is in force. The competent authority has directed the witness protection cell to monitor the E-mails and phone calls of the witnesses, to take all possible safeguards to see that the witnesses are not subject to any influence or threat by the accused or any others on behalf of the accused. It seems that as per the order of the competent authority so constituted the investigating officer has monitored the call details of the witnesses and found that the witnesses are influenced by the accused. I find that the directions of the competent authority to monitor the call details is to be continued to ensure fair trial in this case in future.

24. Thus the call register made available before court, the very fact that most of the witnesses turned hostile to the prosecution case, the demeanor

of those witnesses who turned hostile to the prosecution case before court. e witness
constraining me to hold that the persons behind such turning of the witnesses, bsc
as hostile to the prosecution case is none other than the accused in this case, c
They have been in constant contact with the witnesses. Therefore, I hold that
the materials available before court is sufficient to find that the accused persons
have influenced the witnesses.

25. In this context, it is worthwhile to note that the mother of Madhu who died in the atrocity was threatened by two persons in the locality at the influence of the accused in this case and accordingly a crime was registered as per the complaint made by the mother of Madhu. This further strengthen the above arrived conclusion.

26. The next question to be considered is whether this court has got any authority to cancel a bail granted by the Hon'ble High Court. It is contended by the counsel for the accused that as the accused persons were released on bail by the Hon'ble High Court of Kerala in exercise of its appellate jurisdiction this court being a trial court cannot cancel the bail. In this context it is worthwhile to reproduce paragraph 5 of the bail order passed by the Hon'ble High Court of Kerala. Paragraph 5 of the bail order of Hon'ble High Court reads as under.

“Now that investigation is over and final report is in court, the only consideration is whether trial of the case would be in any manner affected or obstructed if the accused are granted bail. If the court finds any possibility of

the witnesses being influenced or threatened or won over, or any of the accused absconding from legal process, and the trial process being thus obstructed, bail can be denied by the court, and the accused can be detained in custody till the whole trial process is over. That investigation is over is not the sole ground to claim bail as of right. So the question here is whether there is any such possibility of the trial being in any manner obstructed by the accused".

27. Like wise in the operative portion of the bail order in clause (b), the Hon'ble High Court of Kerala has authorised this court to permit the accused persons to leave the State of Kerala before the conclusion of trial.

28. Thus a conjoint reading of paragraph 5 and the operative portion of the bail order makes it clear that the Hon'ble High Court has authorised this court to cancel bail if this court finds that there is any possibility of witnesses being influenced or threatened or won over or any of the accused absconding from legal process. The starting portion of paragraph 5 of the order makes it clear that the term "court" intended by Hon'ble High Court is nothing but the "court where in final report is filed". Therefore I find that this court is authorised by the Hon'ble High Court to deny bail to the accused in the event of influence of the witnesses by the accused persons.

29. It is to be bear in mind that influencing of witnesses in a criminal case involving grave offence is a serious issue. As the trial court is directly perceiving such instances or circumstances of influencing of witnesses during the course of trial, it is always better to take the consequential course of actions

by the trial court itself. That may be the reason why here also such task entrusted to the trial court by Hon'ble High Court.

30. Infact, when it is brought to the notice of a trial court from the material placed before it, that the witnesses are being influenced by the accused, then the trial court can very well cancel the bail and commit the accused to jail even without having a bail condition that the accused shall not influence the witness. That is why section 437 (5) and section 439(2) of Cr.PC was drafted in elastic terms, reserving the authority of trial courts to cancel bail if circumstances so warrant.

31. Assume a situation where in bail was granted to an accused involving grave offence without imposing any condition. Can it be said that the bail granted by a Superior court cannot cancelled by a trial court when the accused doesn't appear before the court during the course of trial ?. Likewise can it be said that bail granted by the trial court or by the superior court cannot be cancelled when it is found that the accused are either influencing or threatening the witnesses ?. In my view, every trial court has got authority to cancel bail in the above circumstances by invoking authority under section 437(5) and 439(2) of Cr.PC as the case may be.

32. In this context it is worthwhile to rely on the decision of our Hon'ble Supreme court reported in 2022 KHC 6496 wherein the Hon'ble Supreme court has examined and enumerated the circumstances under which bail granted to the accused under section 439(2) Cr.PC can be cancelled. The

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Circumstances enumerated are as follows:-

- a). If the accused misuses their liberty by indulging in similar or other criminal activity.
- b). If the accused interferes with the course of the investigation.
- c). If the accused attempts to tamper with evidence.
- d). If the accused attempts to influence/threaten witnesses.
- e). If the accused attempts to evade the court proceedings.
- f). If the accused is likely to flee from the country.
- g). If the accused attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency.
- h). If the accused attempts to place himself beyond the reach of his surety.
- i). If any facts may emerge after the grant of bail it is considered unconducive to a fair trial.

The Hon'ble Apex Court held that these instances are only illustrative in nature and not exhaustive. Thus whether bail granted to the accused can be cancelled or not depend on facts of each case. It may not be possible to specify the circumstances in a straight jacket formula.

33 Incidentally the counsel appearing for the accused for 3, 6, 8 to 10, 12 and 16 argued that as the accused in this case was released by the Hon'ble High Court in its appellate jurisdiction under section 14A of SC/ST (POA) Act, such bail cannot be cancelled by invoking section 439(2) of Cr.P.C. I am unable accept such argument canvased by the counsel for the accused. I

find that even if the bail was granted by the Hon'ble High Court in appeal, the accused are being released under section 14A of the SC/ST (POA) Act, the accused are being released under chapter XXXIII of the Cr.P.C. If the argument canvassed by the counsel for these accused is accepted, a trial court can never cancel a bail granted to such accused even if such a accused doesn't appear before court during the course of trial. In my view that is not the spirit of section 14A of SC/ST (POA) Act or section 439(2) of Cr.P.C. I am of the considered view that every accused person are being released on bail or rather deemed to be released on bail under chapter XXXIII of Cr.P.C. A conjoint reading of section 437(5), 439(2) of Cr.P.C and proviso (a) (ii) of section 167 (2) of Cr.P.C make its clear that even if the bail was granted by the superior court the accused can be "released on bail" only under chapter XXXIII of Cr.P.C. If that be so, it is to be found that if there is materials to find that the accused persons have influenced or threatened the witnesses, bail granted to the accused can be cancelled by the trial court and he can be committed to jail.

34 Likewise the counsel for the accused nos 3, 6, 8 to 10, 12 and 16 further cautioned me about the possible consequences that may ensue on cancellation of bail granted by the Hon'ble High Court such as answering of charge memo that may be issued, publication of bad news in media along with photographs of the judge etc. I believe that Hon'ble High Court will never unnecessarily harass sub ordinate officers if the order is supported by valid reasons. Apart from all these every judicial officer is expected to discharge his

...ties without fear or favour. Therefore it is not necessary to discuss much about the anxiety expressed by the counsel.

35. It is true that cancellation of bail is a serious issue affecting personal liberty of accused. But granting bail is not an unfettered freedom given to an accused. It is circumscribed by the authority of court to curtail the freedom if there circumstances so warrants. In the event of tampering or influencing of prosecution witnesses so as to hamper a fair trial of a case before court of justice or if it is found that there is likelihood of accused being flee from justice, then bail granted to the accused can be cancelled and his personal liberty can be curtailed invoking authority under section 437(5) and 439(2) Cr.PC. Thus I am of the considered view that if it is found that the accused has influenced the witnesses during the course of trial every such trial court has jurisdiction to cancel the bail.

36. In support of the contention taken by the accused that bail granted to the accused cannot be cancelled, the counsel for the accused Nos.2 and 5 has relied on several precedents. The counsel relied on the decision of the Hon'ble High Court of Kerala in **Cr.MC.No.2807/2022** dated 10-08-2022, wherein the Hon'ble High Court of Kerala has set aside the order cancelling bail by a Sessions Court. On going through the facts of the case it is found that the accused involved in one crime later committed another crime by violating the conditions of bail order. In that circumstances, the Hon'ble High Court set aside the order of the Sessions Court. A reading of the aforesaid decision of the

Hon'ble High court of Kerala relied on by the counsel for the accused Nos.2 and 5 reveal that the question involved in that case was not with regard to influencing of witnesses and thereby interfering with fair trial of the case. But here the question involved is interfering with fair trial of the case by influencing the witnesses. In such circumstances the decision relied on by the counsel for the accused cannot be applied to the facts of this case in support of the argument canvassed by him.

37. Likewise the learned counsel for the accused nos 2 and 5 relied on the decision of Hon'ble Supreme Court reported in 1994 ICO 4306 and 1978 ICO 313. In both these decisions it is found by the Hon'ble Apex Court that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. In these decisions itself it is found that interfere or attempt to interfere with due course of administration of justice is a ground for cancellation of bail. Here in this case influencing of 14 out of 16 witnesses examined before court can only be said to be interference with due course of administration of justice or matters affecting fair trial. Therefore, I find that these decisions cannot be canvassed to support the claim of the accused rather it will help the prosecution.

38. In order to buttress his argument, the learned Special Public Prosecutor relied on decision of Hon'ble Supreme Court reported in AIR 1978 SC 179 and canvased an argument that if new circumstances arise during the progress of the trial then Sessions Court can cancel a bail granted by the

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Hon'ble High Court. The learned Special Public Prosecutor further relied on decision of the Hon'ble High Court of Kerala in CrI.MC.No.6065/2015. Wherein the Hon'ble High Court of Kerala held that section 439(2) of Cr.PC empowers the Sessions Court to cancel bail granted to the accused on the basis of subsequent conduct of the accused.

39. Apart from all these some other decisions are also brought to my notice justifying this court to cancel the bail if it is found that the accused has influenced the witnesses by violating the conditions of bail. The decision reported in 2012 (3) KHC 520, 2010 (4) KHC 959, 2018 (8) SC 475 and 2022 KHC 6496 are decisions which empowers this court to cancel the bail granted to accused by the Hon'ble High Court on the grounds of influencing the witnesses and thereby interfering with fair trial of the case.

40. It is to be noted that for the last several postings most of the witnesses examined in this case (14 out of 16) are found to have turned hostile to the prosecution case. Actually the witnesses are making not only this court but the whole judicial system a mockery. It seems that the stake holders of this case such as witnesses and accused are under the impression that the whole criminal administrative system, and law and order machinery of the state can be derailed or sabotaged by purchasing the witnesses. Such impression in the minds of the public will defeat the public faith in the judicial system and hence any attempt to thwart away or undermine the justice administrative system is to be nipped in the bud. No one else whether it is the

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accused or the witnesses or even the victim can be permitted to subvert
criminal trial by stating falsehood and resort to contrivances so as to make the
courts of law as the theater of the absurd. Criminal trial is a quest for truth. No
one, whether it is accused or witnesses or even victim can be permitted to
obstruct the endeavor of courts to unearth the truth. It is true that accused is
presumed to be innocent until the contrary is proved. But the accused can
never be permitted to come across the endeavor of courts to find out the truth.
The presumption of innocence is to be balanced with the rights of victim.
Therefore I find that it is the duty of every courts to ensure free flow of
evidence from all channels to find out the truth. No one shall be permitted to
obstruct such free flow of evidence.

41. Now a days the tendency of the witnesses turning hostile to the
prosecution case is increasing rampantly. Some of the accused persons who
are involved in serious crimes are purchasing the material witnesses and
making them to turn hostile to the prosecution case in courts. It is high time to
eradicate such tendency. Accused may ultimately be convicted or acquitted or
may be found guilty of some lessor offence. But at any rate such tendency of
en bloc turning of witnesses at the influence or threat of accused can never be
permitted. It seems that with that object the Parliament has amended the
Indian Penal Code by incorporating section 195 A . In my view while
considering these types of applications Courts are equally bound to protect the
rights of accused and rights of the victim involved in crimes. Courts should not

hesitate to take appropriate action against accused taking into account of their personal liberty, by compromising the equally important right of the victim.

42. Thus on evaluation of the entire materials brought before me by the prosecution I came to the conclusion that the accused persons have influenced the witnesses in this case and attempting to challenge, rather dictate the whole criminal administrative system in the country. That can never be encouraged in a country wherein the rule of law prevails. Any attempt from anyone else whether it is accused, witnesses, or victim to challenge the rule of law is to be seriously dealt with or else it will cause eroding of public faith in the judicial system which in ultimately result in complete collapse of the whole judicial system in the country. Therefore, I am of the considered view that the bail granted to the respondents/accused Nos. 2,3,4,5, 6,7, 9,10,11, 12,15 and 16 are liable to be cancelled and they are to be committed to jail. I find that any further delay in cancellation of the bail of these accused will leave room for influencing of the remaining witnesses in this case and which in turn may result in complete damaging of the prosecution case.

In the result, CMP is allowed. Bail granted to the respondents/accused numbers 2,3,4,5, 6,7, 9,10,11, 12,15 and 16 stands cancelled.

Pronounced by me in Open Court on this the 20th day of August, 2022)

Sd/-
Judge
Special Court for SC/ST (POA) Act Cases,
Mannarkkad.

APPENDIX

Exhibits marked for prosecution :

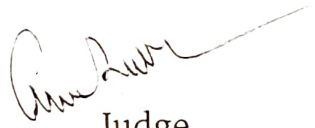
- Ext.P1 series : Call list in digital form and printed form of mobile phone numbers of the accused persons.
- Ext.P2 : Copy of guest register in Bee yem hotel.
- Ext.P3 series : Certified copy of re-verification pre-paid customer application forms issued by the service provider.

Exhibits marked for the defence

- Ext.D1 : Photographs (6 in Nos)
- Ext.D1(a) : Copy of franchisee certificate issued by the E-mithra Seva Kendra.
- Ext.D1(b) : License issued by the Agali Grama Panchayath.

(True copy)

Sd/-
Judge,
Special Court for SC/ST (POA) Act Cases,
Mannarkkad.


Judge,
Special Court for SC/ST (POA) Act Cases,
Mannarkkad.