IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

C.R.M. (M) 1069 of 2025
XXXX
versus
The State of West Bengal & Anr.

For the Petitioner	:	Mr. Sabyasachi Banerjee, Senior Advocate Mr. Anirban Dutta, Advocate Mr. Ayan Mondal, Advocate
For the Opposite Party No.2	:	Mr. Tilak Mitra, Advocate Mr. Praloy Bhattacharyee, Advocate Mr. Soumon Nanda, Advocate Mr. Koushik Roy, Advocate
For the State	:	Mr. Arijit Ganguli, Advocate Mr. Sujan Chatterjee, Advocate
Heard on	:	06.01.2026, 13.01.2026, 20.01.2026, 27.01.2026
Judgment on	:	02.03.2026

Bivas Pattanayak, J. :-

1. This is an application for cancellation of bail granted to the accused-opposite party No.2 by learned Additional Sessions Judge, 1st Court, Contai vide its order dated 20th July, 2024.

2. On 29th May 2024, the mother of the victim girl lodged a written complaint before Inspector-in-charge, Egra Police Station against accused-opposite party no.2 alleging of sexual exploitation of her minor daughter aged about 14 years and of commission of serious offences under the provisions of Protection of Children from Sexual Offences Act, 2012 *(hereinafter referred to as 'POCSO Act')*. On the basis of such complaint,

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FIR was registered as Egra P.S. case no. 340 of 2024 dated 29th May 2024 under section 376 (3) of India Penal Code *(in short 'IPC)* and section 6 of POCSO Act. The accused-opposite party No.2 filed an application seeking anticipatory bail being Criminal Misc case No. 127 of 2024 under section 438 of Code of Criminal Procedure *(in short 'CrPC)*, which was rejected by the learned trial court on 21st June 2024. Subsequent thereto, on 26th June 2024 the accused- opposite party No.2 surrendered and prayed for bail before the learned trial court. Such prayer for bail was fixed for hearing and consideration on 10th July 2024, upon information to the *de facto* complainant. On the said date upon considering the available materials, the bail prayer of the accused- opposite party No.2 was rejected. Thereafter, on 16th July 2024, chargesheet was submitted against the accused-opposite party No.2 vide CS No.376 of 2024. On 20th July 2024, copies were supplied to the accused under section 207 of CrPC and prayer for bail of accused- opposite party No.2 was allowed by the learned trial court. Being aggrieved by and dissatisfied with the aforesaid order granting bail to the accused- opposite party No.2, the petitioner being the *de facto* complainant has filed the present application seeking cancellation of bail.

3. Mr. Sabyasachi Banerjee, learned Senior advocate along with Mr. Anirban Dutta, learned advocate appearing for the petitioner submitted that the accused-opposite party No.2 was working as a civic volunteer in the said police station, however, surprisingly he was not arrested by the investigating agency upon initiation of FIR. On 21st June 2024, considering the seriousness of the allegations and the stage of investigation, the learned trial court rejected the prayer of the accused seeking anticipatory

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bail. Upon surrender before the trial court, the accused sought for regular bail, which was also rejected by the learned trial court taking into consideration the gravity of the offence and the stage of investigation. On 16th July 2024, a chargesheet was filed with extraordinary haste within 48 days of registration of the FIR, though several aspects of investigation remained incomplete, including non-seizure of mobile phone of the accused and non-collection of vital medical records of the victim girl which are foundational in a criminal proceeding under POCSO Act. On 20th July 2024, the learned trial court which all along on the earlier dates rejected the prayer of the accused for bail on the ground of gravity of the offence, allowed the prayer for bail of the accused on the sole ground that chargesheet has been submitted treating such submission of chargesheet as a determinative factor for grant of bail. The accused was granted bail within 24 days from the date of his surrender in court. The petitioner-*de facto* complainant on the said date raised objection to such bail prayer of the petitioner and also filed an application before the learned court with the contention that the investigating agency has not collected necessary papers relating to the treatment of the victim girl and prayed for necessary order. However, without considering the objections raised and the contention of such petition, the learned trial court proceeded to grant bail to the accused-opposite party No.2 in a mechanical manner ignoring the seriousness of the offence, the vulnerability of the victim, the likelihood of witness intimidation and the possibility of tampering with evidence. The order dated 20th July 2024, granting bail to the accused-opposite party No.2 is patently perverse. In the instant case, the learned trial court

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completely failed to apply the parameters governing grant of bail including heinous and grave nature of offence, the severity of punishment prescribed, the likelihood of accused tampering with evidence, the imminent possibility of threatening or influencing witnesses and the vulnerability of child witness. To buttress his contention, he relied on the following decisions.

(i) ***State of Karnataka versus Sri Darshan & Ors[1];***

(ii) ***Kaushalendra Pratap Singh versus State NCT of Delhi and Another[2];***

(iii) ***XYZ versus State of Maharashtra and Another[3];***

(iv) ***In the matter of: State of West Bengal[4]***.

Moreover, the learned trial court failed to take into account the presumption envisaged under Section 29 of the POCSO Act which provides that the Special Courts must presume an accused is guilty of committing, abetting or attempting to commit offences under Sections 3, 5, 7, and 9 unless the contrary is proved. Non-consideration of presumption under Section 29 of the POCSO Act strikes at the very root of the order granting bail and, therefore, the impugned order under challenge is infirm and not sustainable in law. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Bihar versus Rajballav Prasad Alias Rajballav Prasad Yadav Alias Rajballabh Yadav[5].***

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[1] ***2025 SCC OnLine SC 1702***
[2] ***2024 SCC OnLine Del 5272***
[3] ***2021 SCC OnLine Bom 12401***
[4] ***2023 SCC OnLine 4563***
[5] ***(2017) 2 SCC 178***

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Further, subsequent to his release, the accused misused his liberty of bail by threatening the victim girl on 5th August 2024 and a general diary was lodged on the subsequent date at the police station in respect of the said incident being GDE No.296 dated 6th August 2024. The investigating officer sought permission to conduct an enquiry. However, the learned trial court was of the opinion that the offence alleged in the said general diary falls under Bharatiya Nyay Sanhita, 2023 *(in short, 'BNS')* and therefore it is not the appropriate forum to pass any order in such regard and instead advised the investigating agency to file proper application before the concerned Magistrate. Thereafter, two applications were filed by the petitioner, one for cancellation of bail and another for further investigation before the learned trial court. Since the application for further investigation was not taken up by the learned trial court, the petitioner was constrained to file a writ petition before this Hon'ble Court being WPA 3674 of 2025 for early disposal of the same and upon direction of this Hon'ble Court both the applications were disposed of on 3rd April 2025. Though the application for cancellation of bail was turned down however, the learned trial court directed for further investigation. Upon further investigation, more materials have been collected by the investigating agency leading to filing of supplementary charge-sheet against the accused.

In light of his aforesaid submissions, he prayed for cancellation of the bail granted by the learned trial court to the accused-opposite party No.2 and commit the accused to custody forthwith for ends of justice.

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4. In reply to contention raised on behalf of the petitioner, Mr. Tilak Mitra, learned advocate appearing for accused-opposite party No.2 submitted that precisely the petitioner has taken two grounds for cancellation of the bail, *firstly*, a threat committed by the accused which was not taken into consideration by the learned trial court for cancellation of the bail of the accused and *secondly*, that the investigation has not been carried out in the manner in which it should have been carried out. The ground of misuse of the condition of bail was canvassed before the learned trial court, which has elaborately examined the contention of the general diary lodged in relation to the incident of threat and has rejected the prayer for cancellation of bail on the said ground on 3rd April 2025. The petitioner has not challenged the said order of the learned trial court dated 3rd April 2025, however, surprisingly in paragraph No. 11 of the affidavit-in-reply the petitioner states that she has challenged the said order. The order by which the learned trial court rejected the prayer for cancellation of bail and the reason shown therein are all relevant considerations before this Hon'ble Court as well and until and unless the said order is challenged before this court, the reason shown therein cannot be interfered with and the said order of the learned trial court would stand. The petitioner herein has challenged the order granting bail dated 20th July 2024 when the incident of 6th August 2024 alleging of threat has not seen the light of the day. Therefore, there cannot be any perversity or illegality in order dated 20th July 2024 for not considering the alleged incident which has taken place subsequently. In such backdrop, the

application for cancellation of bail on the ground of misconduct is not maintainable.

Further, the general diary in question does not really disclose any grievous offence and that has only been taken out in order to harass the accused. The allegations made therein have not been corroborated by any sustainable materials. No case has been made out to cancel the liberty which has been granted to the accused-opposite party No.2. Where the grounds of intimidation being the only ground is not satisfactorily proved, the court cannot cancel the bail granted to the accused. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Samarendra Nath Bhattacharjee versus State of W.B. and Another.***[6]

In order to sustain an application for cancellation of bail there has to be special and supervening circumstances which are extremely exceptional and there should be a gross misuse of liberty. A bail once granted cannot be cancelled mechanically. To buttress his contentions, he relied on the following decisions of the Hon'ble Supreme Court.

(i) ***State (Delhi Administration) versus Sanjay Gandhi***[7]***;***

(ii) ***Dolat Ram and Others versus State of Haryana***[8];

(iii) ***Subhendu Mishra versus Subrat Kumar Mishra and Another***[9]***;***

(iv) ***Central Bureau of Investigation, Hyderabad versus Subramani Gopalakrishnan and Another***[10]***;***

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[6] *(2004) 11 SCC 165*
[7] *(1978) 2 SCC 411*
[8] *(1995) 1 SCC 349*
[9] *2000 SCC (Cri) 1508*
[10] *(2011) 5 SCC 296*

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(v) ***Vipan Kumar Dhir versus State of Punjab and Another***[11]***;***

(vi) ***Raghubir Singh and Others versus State of Bihar***[12]***;***

(vii) ***Imran versus Mohammed Bhava and Another***[13]

Relying on the decision of Hon'ble Supreme Court passed in ***Aslam Babalal Desai versus State of Maharashtra***[14] he submitted that rejection of bail stands on one footing but cancellation of bail is harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

Moreover, the two paramount considerations while dealing with an application seeking for cancellation of bail are namely the likelihood of accused fleeing from justice and tampering of evidence. In the instant case, none of the aforesaid two grounds are attracted. Thus, the prayer for cancellation of bail of the accused- opposite party No.2 is not sustainable. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in ***Gurcharan Singh and Others versus State (Delhi Administration)***[15].

Furthermore, the presumption as enumerated in Section 29 of POCSO Act is a rule of evidence which can only come into effect at the time of trial of a proceeding. The presumption under Section 29 of the Act is not conclusive and is rebuttable. The section allows the court to draw presumption against the accused only at the time of trial upon giving the accused an opportunity to rebut/dislodge the said presumption of evidence at the time

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[11] ***(2021) 15 SCC 518***
[12] ***(1986) 4 SCC 481***
[13] ***(2022) 13 SCC 70***
[14] ***(1992) 4 SCC 272***
[15] ***(1978) 1 SCC 118***

of trial. The provisions of the said Section do not have any application at any stage of the proceeding except trial. The present proceedings before this Hon'ble Court are at pre-trial stage and, therefore, the provisions of the said Section will not be applicable at this stage. While dealing with the provisions of section 139 of the Negotiable Instruments Act which also postulates of a rebuttable presumption, the Hon'ble Supreme Court in its decision in ***Shiv Kumar Alias Jawahar Saraf versus Ramavtar Agarwal***[16] has held that rebuttable presumption cannot have any effect in any stage but only at the time of evidence.

In view of his aforesaid submissions, he prayed that the application for cancellation of bail is deserved to be rejected summarily.

5. On the contrary, Mr. Dutta, learned advocate for the petitioner submitted that it is a settled practice, firmly grounded in law, that when a bail application is rejected by a Court of Sessions, the aggrieved accused does not challenge the rejection by filing a revision petition. Instead, a bail application is filed before the Hon'ble High Court with disclosure of earlier rejection. This is because the High Court is not exercising the revisional/appellate powers over the Sessions Court but its own original jurisdiction. The same principle applies with equal force to application seeking cancellation of bail. The present application before this Hon'ble Court is not a challenge to the decisions of the order dated 3rd April 2025 refusing to cancel bail but an independent invocation of this Hon'ble Court's original power under Section 439(2) of CrPC to examine whether the accused deserves to remain in bail and whether the order dated 20th

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[16] (2020) 12 SCC 500

July 2024 is sustainable in law. The distinction between review by the same court and cancellation by a superior court has been lucidly explained by the Hon'ble Supreme Court in *Gurusharan Singh (supra).* The Hon'ble Supreme Court has held that where cancellation of bail is sought on the ground of violation of bail conditions or subsequent change in circumstances, the same court which granted bail may be approached under Section 437(5) CrPC or Section 439(2) CrPC, as the case may be. However, where the challenge is that the order granting bail is itself illegal, unjustified or perverse the same court cannot sit in judgment over its own order, as such an exercise would amount to review and would attract the bar under Section 362 of CrPC. In such cases the only efficacious remedy lies before the superior court. Therefore, the petitioners approached this Hon'ble Court, which is not only permissible but is legally mandated course, seeking the Hon'ble Court to exercise its inherent powers.

Relying on the decision of Hon'ble Supreme Court in ***Puran versus Rambilas and Another***[17], he submitted that where the bail has been granted on irrelevant considerations or by ignoring material aspects, the superior Court is fully competent to cancel bail even in the absence of supervening circumstances. It further clarified that in such cases it is futile to approach the same court again as the proper course is to invoke the jurisdiction of the High Court under Section 439(2) of CrPC.

Moreover, the decision cited on behalf of the accused- opposite party No. 2 of the Hon'ble Supreme Court in *Shiv Kumar (supra)* relating to rebuttable

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[17] (2001) 6 SCC 338

presumption pertains to section 139 of the Negotiable Instruments Act and not to POCSO Act and thus is not applicable to the instant proceedings. The proposition in other cited decisions adduced on behalf of the accused-opposite party No.2 are settled propositions which cannot be disputed and denied, however, those are not applicable to the facts of the present case.

6. Mr. Sujan Chatterjee, learned advocate for the State submitted that on an application of the *de facto* complainant the learned trial court issued direction for further investigation. Pursuant thereto the investigating agency caused investigation and on completion of the same, has submitted supplementary chargesheet against accused-opposite party no.2.

7. Upon hearing the learned advocates for respective parties following issues have fallen for consideration:

(i) Whether the instant application for cancellation of bail is maintainable or not?

(ii) Whether the impugned order dated 20th July 2024 of the learned trial court granting bail to the accused-opposite party no.2 is sustainable or not?

8. With regard to the first issue relating to maintainability of the application, it is found that the principle contention, which is vouched, is that the petitioner has not challenged the order of the learned trial court dated 3rd April 2025 whereby the prayer of the petitioner for cancellation of bail of the accused was rejected. Thus, the said order of the learned trial court would stand until and unless it is set aside by a higher Court. The question, which is to be examined, is whether perversity in the order granting bail can be examined independently without there being any

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challenge to order of the learned trial court rejecting the prayer for cancellation of bail.

9. At the outset it should be borne in mind that the concept of setting aside an unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has mis-conducted himself or because of some subsequent new facts necessitating for cancellation of bail. The above position is made clear by the Hon'ble Supreme Court in *Gurcharan Singh (supra)*, the relevant observation is reproduced hereunder.

> *"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-a- vis the High Court."*

10. Further in *Puran (supra)* following the decision in *Gurcharan Singh (supra),* the Hon'ble Supreme Court observed as follows:

> *"**13.** Our view is supported by the principles laid down in the case of Gurcharan Singh & Others, etc. vs. State (Delhi Administration) reported in 1978 (1) S.C.C. 118. In this case it has been held, by this Court, that under Section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere.*
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> ***14.** Mr. Lalit next submitted that a third party cannot move a Petition for cancellation of the bail. He submitted that in this case the Prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of the bail. He relied upon the cases of Simranjit Singh Mann vs. Union of India and another reported in AIR 1993 S.C. 280 and Janata Dal, etc. etc. vs. H.S. Chowdhary and others, etc. etc. reported in 1991 (3) S.C.C. 356. Both these cases dealt with Petitions under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This Court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. It was held that the Petitioner, who was a total stranger, had no 'locus standi' to challenge the conviction and the*

> *sentence awarded to the convicts in a Petition under Article 32. The principle laid down in these cases have no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of R. Rathinam vs. State by DSP, District Crime Branch, Madurai District, Madurai and anr. reported in 2000 (2) S.C.C. 391, needs to be seen. In this case Bail had been granted to certain persons. A group of practising advocates presented petitions before Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the advocates was not maintainable. This Court held that the frame of sub-section (2) of Section 439 indicates that it is a power conferred on the Courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves by a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court. It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High Court to remind it of the need to exercise its power suo motu. It was held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. It was held that if the High Court considered that there was no need to cancel the bail then it could dismiss the Petition. It was held that it was always open to the High Court to cancel the bail if it felt that there were sufficient enough reasons for doing so."*

11. From the above proposition it manifest that the frame of sub-section (2) of Section 439 of CrPC indicates that a power of cancellation of bail is conferred on the High Court or the Court of Sessions. Under Section 439 (2) of CrPC, the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere. Moreover, where a party is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those which already existed, it is futile for the said party to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. In *Puran (supra)* it is also observed by Hon'ble Apex court that there was no barrier either in Section 439 of CrPC or in any other law which inhibits

a person from moving the High Court to have such powers exercised *suo motu*. The application for cancellation of bail before the learned trial court was sought for on the ground of misconduct, which was rejected by the concerned Court. During hearing it has vociferously been pressed into service by learned advocate for the petitioner that the order granting bail by the learned trial court is perverse as the same has been granted on irrelevant consideration. Bearing in mind the proposition of the Hon'ble Supreme court in the present context, this court is of the view that even if the order of the trial court rejecting the prayer of the petitioner for cancellation on the ground of misconduct is not challenged, the infirmity in the order granting bail can be examined by the High Court under Section 439(2) of the CrPC. Accordingly, the present application is maintainable before this court.

12. With regard to the second issue pertaining to the sustainability of the order granting bail, let me examine the impugned order in the light of available materials on record.

12.1. The instant case is initiated against the accused-opposite party no.2 under Sections 376 (3) of IPC and Section 6 of POCSO Act. The POCSO Act is a specialized legislation in India aimed at addressing child sexual abuse with child-centric procedures. A child victim's statement is not that of an accomplice but of a victim suffering physical, psychological, and emotional trauma, and stands on a higher pedestal than even an injured witness's testimony and as such is relevant and highly significant.

12.2. In such backdrop, let me appraise the nature of allegations made by the minor victim girl, aged 14 years, in her statement recorded by the

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learned Judicial Magistrate under Section 164 of CrPC. Upon going through the aforesaid statement of the victim girl, it is found that she has categorically implicated the accused, who was her English tutor, of causing penetrative sexual assault upon her. There are also allegations against the accused of capturing obscene objectionable photographs of the victim girl and blackmailing her on the basis of such photographs and coercing her into repeated sexual assault. Ultimately the victim girl reported the fact to her grandmother. Moreover, it is stated by the victim girl before the learned Judicial Magistrate that due to such act of the accused person she became mentally ill and she tried to commit suicide and was admitted to Egra Super Speciality Hospital. The medical examination report also notes the fact that the victim has gone through sexual intercourse with her tutor in the month of August 2023.

12.3. On 10th July 2024 after considering the statement of the victim girl and other available materials as well as the statement of the victim girl made before the attending doctor that she has gone through sexual intercourse with her tutor in the month of August 2023, the learned trial court rejected the bail prayer of the accused with an observation that there is indication that the accused might have established physical relationship with the victim with the knowledge that she has not attained 18 years. However, by the impugned order dated 20th July 2024, the learned trial court just after 10 days despite finding that there are materials in the case diary against the accused, yet granted bail to him on the sole ground that upon completion of investigation chargesheet has been submitted and that there is no other material which is presumably required to bring home the

charge against the accused person. It is seen from the order under challenge that the learned trial court has not dealt with the allegations revealed from the statement of the victim girl and materials concerning the gravity of the offence. It is surprising to note that the same court which held in its earlier order that there are sufficient incriminating materials against the accused, proceeded to grant bail to accused after 10 days without any change in the circumstances save and except filing of the chargesheet.

12.4. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case may not be undertaken, however, there is a need to indicate in such orders the reasons for *prima facie* concluding why bail was being granted particularly where an accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances the following factors:-

(i) Whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;

(ii) Nature and gravity of the charge;

(iii) Severity of punishment in the event of conviction;

(iv) Danger of accused absconding or fleeing from justice, if released on bail;

(v) Character, behaviour, means, position and standing of the accused;

(vi) Likelihood of offence being repeated;

(vii) The impact that the release of the accused may make on the prosecution witnesses, its impact on the society;

(viii) Reasonable apprehension of tampering with witness or apprehension of threat to the complainant;

(ix) *Prima facie* satisfaction of the court in support of the charge.

[See Prahlad Bhati versus State (NCT of Delhi)[18]; Anil Kumar Yadav versus State (NCT of Delhi)[19]].

12.5. It is pertinent to note that none of the above parameters have been taken into consideration by the learned trial court while granting bail to the accused-opposite party no.2 save and except the fact that upon completion of investigation chargesheet has been submitted therefore further detention of the accused is not required. The above parameters need to be adhered to and disposed of by a reasoned and speaking order. ***[See Kalyan Chandra Sarkar versus Rajesh Ranjan @ pappu Yadav & Anr[20]]***. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to facts and circumstances of each case. The court should not be impressed by irrelevant considerations. Discretionary jurisdiction of the court should be exercised carefully and cautiously thereby balancing the rights of the accused and the interests of the society. The learned trial court failed to consider the seriousness of the offence under the POCSO Act. Needless to say, that commission of offence against the children should be viewed as heinous and serious offence and

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[18] (2001) 4 SCC 280
[19] (2018) 12 SCC 129
[20] (2004) 7 SCC 528)

should not be taken lightly as offence of private nature and in fact such offences are bound to be taken as an offence against the society. At this stage it would be profitable to reproduce the relevant observation of Hon'ble Supreme Court in ***Ramji Lal Bairwa & Anr versus State of Rajasthan & Ors***[21] taking into consideration the object of the POCSO Act, as hereunder.

> *"17. The Objects and Reasons for the enactment of the Pocso Act, as extracted above, would undoubtedly show that quashment of proceeding initiated under the Pocso Act abruptly by invoking the power under Section 482CrPC without permitting it to mature into a trial, except on extremely compelling reasons ex facie mala fide initiated or initiated solely to settle the score, etc. would go against the very intention of the legislature behind the enactment. As noted earlier, it is the inadequacy of the existing laws to address certain issues relating to sexual offences against the children that made the legislature to come up with the aforesaid legislation with a view to protect and respect the privacy and confidentiality of children and to ensure their physical, emotional, intellectual and social development.*
> *18. The Pocso Act also addressed the lack of provisions defining various offences against the children and also adequate penal provisions therefor. A careful scanning of the various provisions under the Pocso Act would reveal that with a view to achieve the aforesaid objects and purposes various offences against the children are specifically defined and provisions for adequate penalisation are also inserted in the Act. Obviously, rubbing the breast of a child would constitute an offence of "sexual assault" under Section 7 of the Pocso Act, punishable with imprisonment of either description for a term which shall not be less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as heinous and serious. Needless to say, that commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to be taken as offences against the society.*
> *19. In the decision in Attorney General v. Satish [Attorney General v. Satish, (2022) 5 SCC 545 : (2022) 2 SCC (Cri) 409] at para 38, this Court held thus: (SCC p. 574)*
> *"38. The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in Balram Kumawat v. Union of India [Balram Kumawat v. Union of India, (2003) 7 SCC 628 : (2004) 134 STC 626] , the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law."*

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[21] ***(2025) 5 SCC 117***

12.6. Bearing in mind the above observation of the Hon'ble Court, it appears that the learned trail court has granted bail to the accused as a matter of course without considering the gravity of the offence and the object behind the enactment of POCSO Act which is precisely a specialized legislation in India aimed at addressing child sexual abuse with child-centric procedures. For the reasons as noted above, the impugned order dated 20th July 2024 granting bail to the accused requires intervention by this court as it is not sustainable in law. This court finds substance in the submissions of learned advocate for the petitioner relying on *Sri Darshan (supra), Kaushalendra Pratap Singh (supra), XYZ (supra)* and one decision of this Court.

12.7. Further on the aforementioned date i.e. 20th July 2024, the *de facto* complainant filed a petition before the learned trial court contending that the investigating officer has not collected necessary papers relating to the treatment of the victim girl and prayed for necessary orders. However, the learned trial court has gone on to observe that though the *de facto* complainant asserts that the investigation has not been conducted properly still she has chosen not to pray for any legal remedy regarding the same. Needless to mention that the learned trial court has not made any observations with regard to contentions raised in the aforesaid application of the petitioner-*de facto* complainant particularly when the said application was before the court for consideration. In that event the observation of the learned trial court that the *de facto* complainant did not choose to take any legal remedy does not hold good. It is also not understandable to this Court the reasons for not considering the prayers

made by the *de facto* complainant on the said date raising displeasure in the manner the investigation has been undertaken by the investigating agency.

13. It has been strenuously argued on behalf of accused-opposite party no.2 relying on *Samarendra Nath Bhattacharjee (supra)* that grounds of intimidation for cancellation have to be satisfactorily proved and further relying on *Sanjay Gandhi (supra), Dolat Ram (supra), Subhendu Mishra (supra), Subramani Gopalakrishnan (supra), Vipan Kumar Dhir (supra), Raghubir Singh (supra), Imran (supra),* he submitted that in order to sustain an application for cancellation of bail there has to be special and supervening circumstances which are extremely exceptional and there should be a gross misuse of liberty. Although such propositions are accepted ones but these need not be dealt with separately in a case of this nature where bail has been granted on irrelevant consideration without considering the nature, gravity and seriousness of the offence and there is infirmity in the impugned order granting bail to the accused.

14. Relying on the decision of *Aslam Babalal Desai (supra)* it has been vociferously argued on behalf of the accused-opposite party no.2 that rejection of bail stands on one footing but cancellation of bail is harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. Although there cannot be any quarrel with regard to such proposition yet such principle is not relevant when the court finds that the order granting bail proceeded on certain irrelevant consideration.

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15. Relying on the decision in *Rajballav Prasad Alias Rajballav Prasad Yadav Alias Rajballabh Yadav (supra)* it has been argued on behalf of the petitioner that the learned trial court failed to take into account the presumption envisaged under Section 29 of the POCSO Act which strikes at the very root of the bail order and, therefore, the impugned order granting bail is infirm and not sustainable in law. On the contrary, learned advocate for the accused-opposite party no.2 relying on *Shiv Kumar (supra)* argued that rebuttable presumption cannot have any effect in any stage but only at the time of evidence.

15.1. In order to examine the question raised as aforesaid, it would be profitable to reproduce the observation of Hon'ble Supreme Court in ***Sambhubhai Raisangbhai Padhiyar versus State of Gujarat***[22] as follows:

> *"33. It is clearly established in evidence that the deceased was subjected to a brutal sexual assault. The injuries as evidenced in the post-mortem report Ext. P-28 particularly Injury clearly indicate that the deceased was subjected to aggressive penetrative sexual assault. The injury on the prepuce of the penis of the accused along with the matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption under Sections 29 and 30 of the Pocso Act.*
> *34. Sections 29 and 30 of the Pocso Act read as under:*
> *"29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*
> *30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
> *(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."*

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> *35. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault is. The relevant sections are extracted hereinbelow:*
> *"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—*
> *(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*
> ***
> *5. Aggravated penetrative sexual assault.—(a)-(h) * * **
> *(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or*
>
> ***
> *(m) whoever commits penetrative sexual assault on a child below twelve years; or*
> *6. Punishment for aggravated penetrative sexual assault.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.*
> *(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."*

From the above proposition it manifest that the presumption under Section 29 of the POCSO Act is activated only if the prosecution proves the foundational facts. In other words, the presumption is triggered only after the prosecution has laid sufficient groundwork by establishing the basic facts. The decision in *Rajballav Prasad Alias Rajballav Prasad Yadav Alias Rajballabh Yadav (supra)* does not lay down any proposition that the presumption under section 29 of POCSO Act starts to operate upon initiation of the FIR itself. Thus, the argument advanced on behalf of the petitioner in this regard does not hold good.

16. For the reasons as above, the impugned order of the learned trial court granting bail to the accused-opposite party no.2 is not sustainable.

17. Accordingly, the bail granted to the accused-opposite party no.2 by learned Additional Sessions Judge, 1st Court, Contai vide order dated 20th July, 2024 stands cancelled.

18. The accused-opposite party no.2 is directed to surrender before the learned trial court within a period of 10 days from date of this order, failing which, the learned trial court shall take appropriate coercive steps for committing the accused to custody.

19. The copy of the case diary be returned to the learned advocate representing the State.

20. Accordingly, **C.R.M. (M) 1069 of 2025** stands disposed of.

21. All concerned parties shall act in terms of the copy of the judgment duly downloaded from the official website of this Court.

22. Urgent Photostat certified copy of the judgment, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)