

(2020) 12 GAU CK 0018

In the Gauhati High Court

Case No : Criminal Review Petition No. 59 Of 2020

Dr. Munni Effa

APPELLANT

Vs

State Of Arunachal Pradesh And Anr

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Code Of Criminal Procedure Act, 1973 — Section 164, 397, 401, 438, 439(2), 482
Indian Penal Code, 1860 — Section 34, 149, 376(1), 354, 506

Citation : (2020) 12 GAU CK 0018

Hon'ble Judges : N. Kotiswar Singh, J; Mir Alfaz Ali, J

Bench : Division Bench

Advocate : A.M. Bora, A. Das, V.A. Choudhury, N.N. B. Choudhury, A. Chandran, K.N. Choudhury, P.D. Nair

Final Decision : Allowed

Judgement

Mir Alfaz Ali, J

1. This revision is directed against the order dated 28-10-2019 passed by the learned Sessions Judge, West Sessions Division, Yupia, Papumpare,

Arunachal Pradesh in Anticipatory Bail Application No. 112/2019.

2. The facts giving rise to the present revision are that :-

An FIR was lodged on 13-10-2019 by the petitioner with Women Police Station, Itanagar. It was alleged in the FIR, that the petitioner was working at

Primary Health Centre, Bameng as In-Charge Medical Officer. On 12-10-2019, the respondent No. 2, herein, who was an MLA from Bameng

constituency called her to discuss about certain issues relating to Bemeng Primary Health Centre and accordingly, she came to PXBSS hotel as per

direction of the respondent No. 2. The victim was called to the hotel room by the respondent No. 2, where instead of discussing the issue of the

primary health centre, the respondent No. 2 insisted her to consume liquor and forcibly committed rape on her. She was also assaulted by the

respondent No. 2 on her raising objection to the sexual activities. On the basis of the said FIR, police registered Itanagar P.S. case No. 83/2019 u/s

376 (1)/354/506 IPC. Having come to know about the registration of police case, the respondent No. 2, herein, filed an application u/s 438 CrPC

before the learned Sessions Judge, West Sessions Division, Yupia, Papumpare, Arunachal Pradesh, which was registered as A.B. No. 112/2019.

Learned Sessions Judge initially granted interim pre-arrest bail by order dated 16-10-2019. Thereafter, the impugned order dated 28-10-2019 was

passed, whereby the interim order of pre-arrest bail was made absolute.

3. Aggrieved by the order of pre-arrest bail, the informant/petitioner has preferred the instant application u/s 397 read with Section 401 as well as

Section 439 (2) and 482 CrPC praying for setting aside the impugned order and cancellation of the pre-arrest bail granted to the respondent No. 2.

4. In the revision petition, the petitioner/informant stated that the impugned order of pre-arrest bail was illegal, improper and perfunctory, as the

learned Sessions Judge passed the impugned order hurriedly granting pre-arrest bail to the respondent No. 2 in a serious offence like rape without

considering the objection raised by the learned Public Prosecutor and without taking into consideration the relevant materials. It was also stated that

during the pendency of the bail application at the instance of the respondent No. 2, the Chairman, Pordung Welfare Society had issued two letters to

the Chairman of Pangteh Welfare Society requesting for an amicable settlement of the issue between the petitioner and the respondent No. 2 through

local ordeal and thereby creating pressure on the petitioner to settle the matter outside the court. It was further stated that at the behest of the

respondent No. 2, several persons approached the petitioner and her husband to exert pressure upon them for withdrawal of the FIR.

5. The respondent No. 2 in his affidavit-in-reply denied the allegations made in the FIR and stated that physical relationship between the petitioner and

the respondent No. 2 was consensual and that the consensual sexual activities between two adults do not constitute any offence. It was also stated

that the respondent No. 2 never pressurized or tried to influence the petitioner or her husband to withdraw the case. As regard the letter issued by

Produng Welfare Society, it was stated that the respondent No. 2 had no role in issuing the said letters, inasmuch as, the same were issued by one

community to the other community as per the tradition of â??Nissi? community.

6. The SIT also filed an affidavit, wherein it was stated that there was sufficient evidence including the injury on the body of the victim and

investigation revealed sufficient materials against the respondent No. 2. It was also alleged that the respondent No. 2 being a MLA, there was

possibility of influencing the witnesses by inducement or threat by using money and political power and that the petitioner was also involved in the

criminal activities in the past.

7. We have heard Mr. A.M. Bora, learned Senior counsel for the petitioner, Mr. N.N.B. Choudhury, learned P.P., Arunachal Pradesh for the

State/respondent No. 1 and Mr. K.N. Choudhury, learned senior counsel for the respondent No. 2.

8. Learned Sr. counsel for the petitioner, Mr. A.M. Bora submitted that the impugned order of pre-arrest bail passed by the learned Sessions Judge

was illegal and improper, inasmuch as, the order was passed by the learned Sessions Judge hurriedly without assigning any reason and also without

taking into consideration the relevant materials, though the offence alleged was a heinous one. Further contention of Mr. Bora was that the

respondent, being a MLA, has been trying to exert pressure on the petitioner and her husband to compromise the case and also trying to influence the

witnesses.

9. To argue, that the impugned order of anticipatory bail warrants cancellation for being illegal and improper as well as mis-use of the liberty of bail by

the respondent No. 2, the learned counsel placed reliance on the following decisions :-

(i) Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Others. (2011) 1 SCC 694

(ii) Jai Prakash Singh Vs. State of Bihar and Anr. (2012) 4 SCC 379.

(iii) Kanwar Singh Meena Vs. State of Rajasthan and Anr. (2012) 12 SCC 180.

(iv) Puran Vs. Rambilas and Anr. (2001) 6 SCC 338.

10. Mr. K.N. Choudhury, learned senior counsel for the accused/respondent No. 2 would submit, that the petitioner and the respondent No. 2, both

being adult and they had consensual sexual relationship, and as such, no offence could be stated to have been committed, inasmuch as, the consensual

physical relationship between the two adults, though, may be immoral, does not constitute any offence of rape. It was the petitioner herself, who

repeatedly called the respondent No. 2 to the hotel and had physical relationship with the respondent No. 2 on her own will and consent. Further

submission of Mr. Choudhury is that bail once granted cannot be cancelled unless there is some supervening circumstances. To argue, that bail cannot

be cancelled in absence of any supervening circumstances, Mr. Choudhury placed reliance on the following decision :-

(i) *Dolat Ram and Others Vs. State of Haryana* (1995) 1 SCC 349.

(ii) *Sami Ullah Vs. Superintendent, Narcotic Control Bureau* (2008) 16 SCC 471.

(iii) *Ramcharan Vs. State of M.P.* (2004) 13 SCC 917.

11. In *Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Others* (supra), the Apex Court, while dealing with the factors for consideration of

anticipatory bail u/s 438 CrPC, has laid down the following factors and parameters for considering an application for anticipatory bail :-

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in

respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role

of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should

consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to

be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.â??

12. In *Jai Prakash Singh Vs. State of Bihar and Anr.*(supra), the Apex Court, while reiterating the above factors and parameters laid down in *Siddharam Satlingappa Mhetre's* case, observed, that court must record reason while granting the extraordinary relief of pre-arrest bail in a serious offence. The Apex Court held in paragraph 19 as follows : -

â??19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (*D.K. Ganesh Babu â?"Vs.- P.T. Manokaran*, (2007) 4 SCC 434, *State of Maharashtra â?" Vs. Mohd. Sajid Sajid Hussain*, (2008) 1 SCC 213 and *Union of India Vs. Padam Narain Agarwal*, (2008) 13 SCC 305)â??

13. In *Kanwar Singh Meena Vs. State of Rajasthan* (supra), the Apex Court dealing with the grounds for cancellation of bail observed that â??while cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes, because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail.â??

14. In *Puran Vs. Rambilas and Anr.* (supra), the Apex Court distinguished between the rejection of bail at the initial stage and cancellation of bail already granted and also reminded that the concept of setting aside an illegal, unjustified or perverse order of bail is totally different from cancelling an order of bail on the ground that the accused had mis-conducted himself or because of some supervening circumstances warranting such cancellation.

The Apex held in paragraph 10,11 and 13 as follows :

â??10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relied upon the authority in the case of *Dolat Ram & Ors. State of Haryana* . In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against

principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)* reported in AIR 1978 SC 179. In that case the Court observed as under:-

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 S. 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.â??

13. Our view is supported by the principles laid down in the case of *Gurcharan Singh & Others, etc. vs. State (Delhi Administration)*. 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.â??

15. In *Dolat Ram and Ors. Vs. State of Haryana (supra)*, the Apex Court observed that â??rejection of bail in a non-bailable case at the initial stage and cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the

due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances had rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.â??

16. Ramcharan Vs. State of M.P.(supra), the Apex Court held as follows : -

â??The order of bail can be cancelled on existence of cogent and overwhelming circumstances, but not on re-appreciation of evidence, as was done by the High Court. No supervening circumstance has been brought to our notice, which may warrant the recalling of the order dated 11-01-2002. The principles that have to be kept in view for recording the order of bail are set out in Dolat Ram's case.â??

17. In Sami Ullah Vs. Superintendent, Narcotic Control Bureau (supra), the Apex Court, while taking the view that bail once granted cannot be cancelled, unless, there are supervening circumstances rendering the liberty of bail non-conducive to a fair trial, reiterated the observation of the Supreme Court in State (Delhi Administration) Vs. Sanjay Gandhi, (1978) 2 SCC 411 and held in paragraph 18 as under :

â??18. Furthermore, for the purpose of cancellation of bail the statutory requirement must be satisfied. The appellant has failed to do so. We may notice that in State (Delhi Administration) Vs. Sanjoy Gandhi, this court held : (SCC P.P. 418-19, para- 13).

13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. A brother, a sister or a parent who has seen the commission of crime,

may resile in the Court from a statement recorded during the course of investigation. That happens instinctively, out of natural love and affection, not out of persuasion by the accused. The witness has a stake in the innocence of the accused and tries therefore to save him from the guilt. Likewise, an employee may, out of a sense of gratitude, oblige the employer by uttering an untruth without pressure or persuasion. In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr. Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent.

18. In *Prakash Kadam and Ors. Vs. Ram Prasad Gupta* reported in (2011) 6 SCC 189, the Apex Court, while making distinction between cancellation of bail and consideration for grant of bail and also the factors on which bail can be cancelled, observed as under :

18. In considering whether to cancel the bail, the court has to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisionsal court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail.

That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.â??

19. In *Abdul Basid Alias Raju & Ors. Vs. Abdul Kader Choudhury*, (2014) 10 SCC 75 4the Apex Court distinguished between the concept of

cancellation or setting aside an illegal or perverse order of bail and cancellation of bail on the ground of supervening circumstances. Relying on the

earlier decision in *Puran Vs. Rambilas and Anr. (supra)*, *Narendra K. Amin Vs. State of Gujarat*, (2008) 13 SCC 58 4(Three Judge â?"Bench) and

Ranjit Singh- Vs. State of M.P., (2013) 16 SCC 797, the Apex Court held in paragraph 19 as under :

â??19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the

ground of accused?s misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the

aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court

superior to the court which granted the bail and not by the same court.â??

20. In *Vikramjit Singh â?"Vs.- State of Madhya Pradesh* (1992) 3 SCC 6 2the Apex Court observed that a co-ordinate Bench has no authority to

upset the earlier order of bail of the High Court on the basis of the same materials and under the same facts and circumstances. Judgment of the

earlier Bench became final so far the High Court is concerned. However, if the accused misuse the liberty of bail or new materials come to light then

only it would be open for a co-ordinate Bench or the same Bench to cancel or review the earlier order of bail.

21. The broad principles, deduced from the aforementioned authorities may be summarized as under :

(a) Rejection of bail at the initial stage and cancellation of bail, once granted are not the same, and they need to be considered on different basis.

(b) overwhelming and very strong ground is required to cancel the bail once granted.

(c) Bail can be cancelled in the following two circumstances :

(i) When the accused mis-use the liberty of bail, or there is any other supervening circumstance rendering the liberty of bail non-conducive to fair trial

or when some new facts comes to light.

(ii) When the order of granting bail suffers from illegality, impropriety or serious infirmity causing mis-carriage of justice for not considering the

relevant factors or for taking into account irrelevant factors.

(d) Cancellation of bail on the ground (c) (ii) is permissible only by a court superior to the court, which granted bail and not by the same court.

22. Cancellation of bail in the instant case is sought, both on the ground of illegality and infirmity in the impugned order as well as the supervening

circumstances. The factors which may warrant cancellation of bail as emerged from various authorities as discussed above makes it abundantly clear

that supervening circumstances or the fresh materials are not the sole consideration for cancellation of bail. Even in absence of supervening

circumstances rendering the liberty of bail non-conducive to fair trial, bail can be cancelled, if the order of bail suffers from illegality or serious

infirmity causing miscarriage of justice for not considering the relevant factors or for taking into account the irrelevant factors. Therefore, we reject

the submission of Mr. K.N. Choudhury that bail can be cancelled, only when the accused misuse the liberty of bail or there is some supervening

circumstances warranting cancellation of bail.

23. Needless to say, that the nature and gravity of the offence, amongst others, is a vital factor to be considered while granting or refusing an

anticipatory bail. In the instant case, the accusation against the respondent No. 2 was that of rape. From the bail order, it appears that the accused

was already granted interim bail and the learned Public Prosecutor raised strong objection when interim order of anticipatory bail was sought to be

made absolute, on the ground, that the statement of the victim u/s 164 CrPC was yet to be recorded and the CDR was not analyzed. However,

learned Sessions Judge passed the impugned order making the interim anticipatory bail absolute primarily taking into account the CDR, which, without

analysis could hardly throw any light. Though statement of the victim recorded u/s 164 CrPC could be a very relevant material for consideration of

anticipatory bail in a case of serious offence like rape, learned Judge did not feel the necessity to wait at least for recording the statement of the victim

u/s 164 CrPC despite strong objection by the learned public prosecutor and passed the impugned order. When the respondent No. 2 was already

granted interim bail, it was expected, that while considering bail finally, the court would take into account all the relevant materials collected in course of the investigation. However, learned Sessions Judge hurriedly passed the impugned order without considering the relevant materials that too, without recording reason. True it is, granting or refusing bail falls within the discretion of the court. Needless to say, that the discretion must be judicious and not arbitrary. We are also conscious of the fact that detailed documentation and elaboration of all facts are neither required nor desirable in an order of bail. However, the court is obliged to record reasons for granting or refusing bail, because, any order without reason is a bad in law. On perusal of the impugned order we find that learned Sessions Judge has not recorded any reason as to why the relevant materials were not considered, nor even felt the necessity of showing minimum courtesy of writing even a single word as to why the objection of the P.P. did not find favour to him. We also fail to understand as to what compelled the learned Judge to pass the impugned order hurriedly without considering the relevant materials; when the accused was already on interim bail. Having considered all these facts and circumstances, we are of the view that the order impugned has suffered from serious infirmity and illegality for not recording proper reason and also for not taking into consideration the material factor, and as such, calls for interference.

24. So far the supervening circumstances are concerned, in the affidavit filed by the SIT, it has been alleged that the accused respondent being a MLA, there is possibility of his inducing and threatening the witnesses using money and political power. It was further alleged that Sri Akhiya Pordung, Chairman, Pordung Welfare Society made an appeal vide letter dated 21-10-2019 to the Chairman of Pordung Welfare Society requesting for an amicable settlement between the victim/petitioner and the accused/respondent No. 2 through local ordeal, which according to the petitioner as well as the SIT is an indirect inducement by the accused/respondent No. 2 through Pordung Welfare Society to settle the matter outside the court. Further allegation was that the petitioner was involved in another case being Seppa P.S. 17/97. In the revision petition also, besides, stating about the appeal/letter issued by the Pordung Welfare Society, it has been alleged that several persons were approaching the petitioner and her husband at the

behest of the accused and thereby exerting pressure upon them for withdrawal of the FIR. The above allegations of influencing or threatening the

witnesses have been denied by the respondent No. 2. As regards the appeal made by Pordung Welfare Society, it has been stated by the respondent

No. 2 in his affidavit, that he was no way related to such appeal as the same was between the two communities of Arunachal Pradesh and that by the

aforesaid letter dated 21-10-2019 no inducement or threat was given to anyone. It was further stated that such an appeal for amicable settlement of

the issue was a traditional customary practice of the 'Nissi' tribe in East Kameng District of Arunachal Pradesh. It was also stated that the

respondent No. 2 never requested the society for writing such a letter for amicable settlement. What we notice is that except the issuance of letter by

the Chairman of Produng Welfare Society and the allegation of threatening or influencing the witnesses, no other material is produced before us to

substantiate the allegation of influencing or threatening witnesses. Since consequence of cancellation of bail is very serious, inasmuch as the same

would result in curtailing the liberty of the accused, mere assertion that accused misconducted or misused the liberty of bail by influencing or

threatening witness is not enough for cancellation of bail. Cogent and actionable materials are necessary to substantiate the allegation, that the

accused has mis-conducted by influencing or threatening the witnesses (See Mehboob Dawood Shaikh-Vs. State of Maharashtra, (2004) 2 SCC 362.)

However, we have been informed during the course of hearing, that the SIT has already completed investigation and submitted charge sheet.

Therefore, material, if any, to substantiate the allegation of misconduct or any other supervening circumstances perhaps, may be traced in the case

diary accompanying the charge-sheet which is now before the trial court. Therefore, it would not be feasible at this stage, on our part to examine the

allegations regarding the respondent No. 2 mis-using the liberty of bail by influencing or threatening the witnesses without going through the materials

in the case diary.

25. Since the charge-sheet is already filed and the case is not committed as yet, we deem it appropriate to remand the matter to the learned Sessions

Judge to consider the bail of the respondent No. 2 afresh on merit, by taking into account all the materials brought on record by way of filing charge-

sheet. Accordingly, we set aside the impugned order dated 28-10-2019, whereby, the interim order of anticipatory bail was made absolute. We

however, provide that the respondent No. 2 shall continue to enjoy the privilege of interim bail, granted initially, until, the learned Sessions Judge

decides the bail of the petitioner finally on merit.

26. The parties shall appear before the court of learned Sessions Judge. On receipt of the record and the learned Sessions Judge shall decide and

dispose of the bail application of the petitioner finally after giving opportunity of being heard to both the sides.

27. With the above direction and observation, this petition is disposed of. Send down all records.

N. Kotiswar Singh, J

I have gone through the erudite judgment rendered by Brother Justice Mir Alfaz Ali and respectfully concur with the reasoning and conclusion arrived

at. However, I wish to add a few lines considering the cryptic nature of the order passed by the learned Sessions Judge, Yupia in making absolute the

earlier interim bail granted to the accused.

2. As evident from the impugned order, the learned Sessions Judge had recorded the submissions advanced by the counsel for the accused, the

learned PP as well as for the victim. After recording the same, the learned Sessions Judge without analysing the rival contentions made, arrived at the

conclusion as follows:

“Having heard rival submission of all the learned counsels and on perusal of the case diary, more particularly the CDR made available therein as

well as documents annexed with the objection petition, I find the accused applicant entitled to absolute bail.

And accordingly the interim bail granted to the accused/applicant on 16.10.19 is hereby made absolute with same bail condition.

With the above direction, this application stands allowed and disposed of. Return the case diary.”

3. It is clearly evident that the said finding is devoid of any reasoning as to how the learned Sessions Judge arrived at the satisfaction upon hearing the

rival submissions of the parties. There was neither any analysis on merit of the submissions advanced and about the materials on records, viz., the

CDR as well as documents as to how these support the plea of the accused. The

submissions advanced by the accused or by the learned PP or the

victim girl had not been critically examined, and no finding as to whether any of the reasons assigned either for grant or denial of bail are reasonable or

not. No specific reasons have been assigned for accepting the plea of the accused or rejecting the plea of the learned PP or the victim. Thus, it

appears to be a case of total absence of application of mind.

4. In this regard, one may refer to the decision rendered by the Hon^{ble} Supreme Court in *Anwari Begum Vs. Sher Mohammad and Anr.*, (2005) 7

SCC 326, wherein it was observed as follows,

“8. There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was

charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances,

the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the court in support of the charge.

Any order devoid of such reasons suffers from non-application of mind as was noted by this Court in *Ram Govind Upadhyay v. Sudarshan*

Singh (2002) 3 SCC 598 : 2002 SCC (Cri) 688, *Puran v. Rambilas* (2001) 6 SCC 338: 2001 SCC (Cri) 1124, and in *Kalyan Chandra Sarkar v. Rajesh*

Ranjan (2004) 7 SCC 528 : 2004 SCC (Cri) 1977 : JT (2004) 3 SC 442

9. The above position was highlighted by this Court in *Chaman Lal v. State of U.P.* (2004) 7 SCC 525 : 2004 SCC (Cri) 1974 : JT (2004) 6 SC 540

10. Above being the position, the cryptic non-reasoned order of the High Court, is clearly indefensible.

11. The inevitable conclusion is that the grant of bail to the respondent by a non-speaking and non-reasoned order was not proper. Therefore, we set

aside the order of the High Court. The bail granted to Respondent 1 stands cancelled. Respondent 1 shall surrender to custody forthwith.”

Further, in *Ram Govind Upadhyay Vs. Sudarshan Singh and Ors.*, (2002) 3 SCC 598, it was observed as follows,

3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.

5. Keeping the aforesaid principle in mind, the impugned order being devoid of reasons is vitiated and cannot be sustained and is accordingly, set aside.