

X

v.

The State of Uttar Pradesh & Another

(Criminal Appeal No. 164 of 2026)

09 January 2026

[B.V. Nagarathna and R. Mahadevan,* JJ.]

Issue for Consideration

Issue arose whether the High Court erred in granting bail to respondent no. 2-accused without due consideration of the heinous nature of the acts alleged to have been committed against the minor victim-gang-rape and sexual assault threatening with deadly weapon and recording of the incident.

Headnotes[†]

Protection of Children from Sexual Offences Act, 2012 – ss.5(I), 6, 9(g) and 10 – Bharatiya Nyaya Sanhita, 2023 – ss.65(1), 74, 137(2) and 352 – Code of Criminal Procedure, 1973 – Cancellation of bail in POCSO offence – Commission of offence of gang-raping a minor and sexual assault threatening her with deadly weapon and recording of the incident on a mobile phone, by respondent no. 2 and his friends – Registration of FIR – After investigation, chargesheet filed against respondent no. 2 u/ss.65(1), 74, 137(2) and 352 BNS and ss. 5(I), 6, 9(g) and 10 POCSO Act and against A2 to A4, u/ss.74 and 352 BNS and ss.9(g) and 10 POCSO Act – Respondent no.2 sought bail, which was denied by the trial court, however allowed by the High Court – Justification:

Held: Impugned judgment suffers from serious infirmities – Submission regarding consensual relationship between the parties wholly untenable in law – Statements of the victim recorded u/s.183 BNSS read with the Medico-legal examination report *prima facie* establish the commission of the alleged offences – Mere filing of chargesheet does not, by itself, preclude consideration of an application for bail – However, while assessing such an application, the Court duty-bound to have due regard to the nature and gravity of the offence and the material collected during investigation – Offences alleged are heinous and grave involving repeated

* Author

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penetrative sexual assault upon a minor victim committed under armed intimidation and accompanied by recording of the acts for the purpose of blackmail – Such conduct has a devastating impact on the life of the victim and shakes the collective conscience of society – High Court, while granting bail to respondent no. 2 failed to take into account the nature and gravity of the offences, vulnerability of the victim, likelihood of witness intimidation and the statutory rigour under the provisions of the POCSO Act – Omission to notice that the chargesheet had already been filed, coupled with the *prima facie* material emerging from the victim's statements renders the exercise of discretion by the High Court manifestly erroneous – Also, victim resides in the same locality as respondent no. 2 and counselling report of the Child Welfare Committee records that the victim is under fear and psychological distress – Post-release presence of respondent no. 2 gives rise to a real and imminent apprehension of intimidation and further trauma to the victim – In offences involving sexual assault against children, the likelihood of tampering with evidence or influencing witnesses constitutes a grave and legitimate concern – Safety of the victim and the need to preserve the purity of the trial process assume paramount importance – While bail is not to be refused mechanically, it must not be granted on irrelevant considerations or by ignoring material evidence – Grant of bail by the High Court is vitiated by material misdirection and non-consideration of relevant factors rendering the same manifestly perverse – Impugned judgment cannot be sustained in law and is set aside – Bail granted to respondent no. 2 cancelled. [Paras 11-19]

Case Law Cited

Deepak Yadav v. State of Uttar Pradesh and Another [2022] 4 SCR 1 : (2022) 8 SCC 559; *State of U.P. v Sonu Kushwaha* [2023] 10 SCR 993 : Criminal Appeal No. 1633 of 2023 dated 05.07.2023; *Ramji Lal Bairwa and Another v. State of Rajasthan and Others*, 2024 INSC 846 : [2024] 11 SCR 641; *Mahipal v. Rajesh Kumar and Another* [2019] 14 SCR 529 : (2020) 2 SCC 118; *Arjun Jalba Ichke v. State of Maharashtra*, Criminal Appeal No. 268 of 2025 dated 17.01.2025; *Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak and Another* [2023] 11 SCR 469 : (2023) 13 SCC 549; *Satender Kumar Antil v. Central Bureau of Investigation* [2022] 10 SCR 351 : (2022) 10 SCC 51; *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595 : [2024] 8 SCR 1061; *Padmausundara Rao (Dead) and Others v. State of Tamil Nadu and*

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Others [2002] 2 SCR 383 : (2002) 3 SCC 533; *State of Bihar v. Rajballav Prasad @ Rajballav Pd. Yadav @ Rajballabh Yadav* [2016] 9 SCR 652 : (2017) 2 SCC 178 – referred to.

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Protection of Children from Sexual Offences Act, 2012; Code of Criminal Procedure, 1973.

List of Keywords

Bail; Heinous nature of acts committed against minor; Gang-rape; Sexual assault; Deadly weapon; Recording of the incident on mobile phone; Cancellation of bail in POCSO offence; Counselling report; Child Welfare Committee; Medico-legal evidence; Repeated penetrative sexual assault.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 164 of 2026

From the Judgment and Order dated 09.04.2025 of the High Court of Judicature at Allahabad in CRMBA No. 9829 of 2025

Appearances for Parties

Advs. for the Appellant(s):

Md. Ali, Ms. Shalu.

Advs. for the Respondent(s):

Vishwa Pal Singh, Ghanshyam Singh, Adesh Kr. Gill, Akas Gothwal, Dr. Reji Kumarr., Anurag Pandey, Suraj Pal Singh Mina, Nagenra Singh, Ms. Akansha, Naman Raj Singh, Sparsh Choudhary, Ms. Srishti Mishra, Ms. Anjali Saxena, Dr. Amardeep Gaur.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

Leave granted.

2. The present criminal appeal has been filed challenging the final judgment and order dated 09.04.2025 passed by the High Court of

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Judicature at Allahabad¹ in Criminal Miscellaneous Bail Application No. 9829 of 2025, whereby the High Court granted bail to Respondent No. 2 – accused in connection with FIR No. 426/2024 registered with Police Station Kandhla, District Shamli, Uttar Pradesh for offences punishable under Sections 65(1), 74, 137(2) and 352 of the Bharatiya Nyaya Sanhita, 2023² and Sections 5(l), 6, 9(g) and 10 of the Protection of Children from Sexual Offences Act, 2012³.

3. The case of the appellant as projected in this appeal is as follows:
 - 3.1. Respondent No. 2 by name Arjun – accused was known to the minor victim for about six months prior to the incident. As per the statement of the minor victim, Respondent No. 2 repeatedly established physical relations with her by threatening her and pointing a locally made firearm (katta) at her. It is further stated that along with Respondent No. 2, his friends namely Goldi, Amit, Rupak and Vedansh used to abuse and molest the minor victim and also attempted to establish physical relations with her.
 - 3.2. On 01.12.2024 at around 05.30 p.m., when the minor victim was walking near her residence, the accused persons Arjun and Amit abducted her on their motorcycle, again molested her and ultimately abandoned her at Baraut Bus Stand, from where she contacted her uncle using a stranger's mobile phone. Thereafter, the minor victim narrated the entire incident including the sexual assault committed by the accused persons over the past six months to her family members. Immediately, the family members of the minor victim rushed to the police station to lodge a complaint. However, the police failed to register the FIR on 01.12.2024 and instead advised the minor victim and her family members to compromise and settle the matter with the accused persons. Ultimately, FIR No. 426/2024 came to be registered on 02.12.2024 under Sections 75(2), 79 and 137(2) of the BNS and Sections 9(g) and 10 of the POCSO Act against five accused persons including Respondent No. 2.

1 Hereinafter referred to as "the High Court"

2 For short, "BNS"

3 For short, "POCSO Act"

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- 3.3. During the course of investigation, on 03.12.2024, the statements of the minor victim and her uncle were recorded under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁴ (corresponding to Section 161 of the Code of Criminal Procedure, 1973⁵). The investigating officer obtained a certificate from Inter College, Ailum, District Shamli, certifying the date of birth of the minor victim as 18.07.2010, which established that she was around 14 years of age at the time of the commission of the offence. On 05.12.2024, the statement of the minor victim was recorded under Section 183 of the BNSS (corresponding to Section 164 Cr.P.C.) before the learned Magistrate, District Shamli, Uttar Pradesh. Thereafter, on 08.12.2024 the minor victim was medically examined and a medico-legal examination report was obtained, which revealed the gravity of the sexual offence committed against her.
- 3.4. Due to the influence exerted by the family members of the accused, Respondent No. 2 was not arrested immediately after registration of the FIR dated 02.12.2024 and was arrested only on 03.01.2025. Subsequently, he filed bail application which came to be dismissed by the learned District and Sessions Judge, Shamli on 13.02.2025.
- 3.5. Upon completion of investigation, the investigating officer filed chargesheet on 19.02.2025 for offences punishable under Sections 65(1), 74, 137(2) and 352 of the BNS and 5(l), 6, 9(g) and 10 of the POCSO Act. Thereafter, Respondent No. 2 approached the High Court by filing Criminal Misc. Bail Application No. 9829 of 2025. By the impugned judgment dated 09.04.2025, the High Court allowed the said application and enlarged Respondent No. 2 on bail, subject to certain conditions. Feeling aggrieved, the appellant has preferred the present appeal seeking cancellation of the bail granted to Respondent No. 2.
4. The learned counsel appearing for the appellant submitted that the High Court erred in granting bail to Respondent No. 2 without

4 For short, "BNSS"

5 For short, "Cr.P.C"

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due regard to the seriousness and gravity of the charges framed against him. It was contended that Respondent No. 2 is accused of committing a heinous and grave offence of repeatedly gang-raping a minor victim aged about 14 years by threatening her with a deadly weapon (katta) and recording the acts on a mobile phone.

- 4.1. It was further submitted that Respondent No. 2 deliberately suppressed a crucial and material fact before the High Court, particularly the filing of the chargesheet prior to the consideration of the bail application. Such suppression, it was urged, amounts to an abuse of the process of law and constitutes an independent ground for cancellation of bail.
- 4.2. The learned counsel contended that the statement of the minor victim recorded under Section 183 of the BNSS before the learned Magistrate discloses a consistent and detailed account of repeated sexual assault, the use of a katta to threaten the minor victim and the recording of the acts for the purpose of blackmail. Further, the medico-legal examination report prepared by the E.M.O., District Women Hospital, Saharanpur, Uttar Pradesh records the gravity of offence and trauma suffered by the minor victim *viz.*, gang-rape, penetrative assault, physical violence and threats thereby fully corroborating the victim's version.
- 4.3. It was also pointed out by the learned counsel that although the FIR was registered on 02.12.2024, Respondent No. 2 was arrested only on 03.01.2025 owing to his influential social status and during this intervening period, he remained at large in the same village where the minor victim resides exposing her to intimidation and trauma.
- 4.4. The learned counsel contended that the High Court failed to consider the victim's detailed statement under Section 183 of the BNSS, the medico-legal evidence corroborating repeated sexual assault, the counselling reports of the Child Welfare Committee reflecting the fear and trauma suffered by the victim and the documentary proof of her date of birth. Instead, undue reliance was placed on irrelevant considerations such as the alleged delay in lodging the FIR and speculative observations regarding the victim's age.

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- 4.5. Further, the learned counsel placed reliance on the decision of this Court in **Deepak Yadav v. State of Uttar Pradesh and another**⁶, particularly paragraph 33, which holds that bail may be cancelled even in the absence of supervening circumstances, *inter alia*, where relevant material is ignored, irrelevant considerations are taken into account, the influential position of the accused *vis-a-vis* the victim is overlooked, or where the order granting bail is whimsical, capricious, perverse or unjustified given the seriousness of the charges.
- 4.6. Thus, the learned counsel submitted that the grant of bail to Respondent No. 2 is perverse, unreasonable and contrary to settled principles of law governing bail in serious offences against minor victims and is accordingly liable to be set aside.
5. The learned counsel appearing for the State submitted that the impugned judgment granting bail to Respondent No. 2 – accused is legally unsustainable and warrants interference by this Court.
- 5.1. It was submitted that FIR No. 426/2024 was registered at Police Station Kandhla, District Shamli based on the complaint lodged by the uncle of the minor victim. The charges framed against the accused were under Sections 65(1), 74, 137(2) and 352 of the BNS and Sections 5(l), 6, 9(g) and 10 of the POCSO Act alleging commission of rape and sexual assault upon a minor victim aged about 14 years. According to the learned counsel, the allegations are grave, specific and directly attribute culpability to the accused thereby attracting stringent provisions of the POCSO Act.
- 5.2. The learned counsel further submitted that in her statement recorded under Section 183 of the BNSS before the learned Magistrate, the victim categorically stated that she had known Respondent No. 2 for about six months and he had established physical relations with her. On earlier occasions also, he had established physical relations with her by threatening that he would make her photographs public. She discontinued communication with Respondent No. 2 when her family

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members became aware of it. It was further alleged that on the date of the incident, the accused committed rape by threatening her with a firearm. These allegations, according to the State, disclose a clear *prima facie* case of sexual assault under the POCSO Act.

- 5.3. The learned counsel emphasized that the victim's date of birth was recorded as 18.07.2010 in her educational certificate. The medical examination also assessed her age to be approximately 16-17 years. Thus, there is no dispute that the victim was a minor on the date of the incident i.e. 01.12.2024.
- 5.4. Given the statutory presumption under the POCSO Act and the undisputed minority of the victim, the learned counsel submitted that consent, if any, is legally irrelevant.
- 5.5. It was argued by the learned counsel that the trial Court rightly rejected the bail application of Respondent No. 2 after considering the seriousness of the allegations, the vulnerability of the victim, and the statutory mandate governing offences under the POCSO Act. However, the High Court failed to accord due weight to these material factors and erroneously granted bail to Respondent No.2.
- 5.6. Reliance was placed on the judgments of this Court in ***State of U.P. v. Sonu Kushwaha***⁷ wherein it was observed that the POCSO Act was enacted to provide stringent punishment for offences involving child abuse and to safeguard children from sexual exploitation and in ***Ramji Lal Bairwa and another v. State of Rajasthan and others***⁸ wherein it was reiterated that offences under the POCSO Act cannot be treated as private disputes and must be regarded as serious offences against society at large.
6. *Per contra*, the learned counsel appearing for Respondent No. 2 – accused submitted that this respondent is innocent and has been falsely roped into the present case due to personal animosity and pressure exerted by the family members of the minor victim, who

7 Criminal Appeal No. 1633 of 2023 dated 05.07.2023

8 2024 INSC 846

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disapproved of her alleged association with the respondent. It was argued that the present case is nothing but a malicious attempt to criminalise a consensual acquaintance and to harass an innocent young man.

- 6.1. It was contended that the FIR was lodged with unexplained delay despite the police station being situated merely half an hour away from the alleged place of occurrence. Importantly, the initial allegations did not refer to rape; the accusation escalated only later allegedly after legal consultation. This delay and escalation seriously undermine the credibility of the prosecution's case. Further, there are glaring inconsistencies between the FIR, the statement of the victim under Section 180 of the BNSS and the statement under Section 183 of the BNSS. In her statement under Section 180 of the BNSS, the minor victim refrained from specifying any act of sexual assault or molestation by the respondent. However, in her later statement before the Magistrate, she acknowledged knowing the respondent for a considerable period and referred to her family's displeasure over her association with him. These contradictions, according to the learned counsel, strike at the root of the prosecution's version.
- 6.2. The learned counsel submitted that there is no medical corroboration of rape. The medico-legal examination conducted on 08.12.2024 revealed no injuries on the body of the minor victim. The absence of medical evidence further weakens the prosecution's case, especially given the seriousness of the allegations.
- 6.3. It was further highlighted that during the investigation and medical examination, the minor victim disclosed that she had known Respondent No. 2 for the past two years, had been in regular communication with him and had visited cafés with him on multiple occasions. She also admitted that she stopped communicating with Respondent No. 2 only after her family became aware of their association. According to the learned counsel, the victim later introduced entirely new and inconsistent versions of alleged rape, filming of the incident and involvement of additional persons, which render the prosecution's case unreliable.

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- 6.4. The learned counsel submitted that the dispute was triggered solely after the family of the minor victim discovered her alleged relationship with the respondent. The FIR was lodged by the paternal uncle of the victim with *mala fide* intention, without regard to the severe and irreversible impact that false allegations of this nature could have on the respondent's life, reputation and future.
- 6.5. It was further contended that the respondent was not present at the alleged place of occurrence on the date of the incident as he was out of the city from 28.11.2024 to 02.12.2024. The respondent's father furnished material evidence supporting the plea of alibi; however, the prosecution failed to properly verify or investigate this crucial aspect.
- 6.6. The learned counsel also emphasized that the respondent was only 18 years and 1 month old on the date of the alleged incident, had no criminal antecedents and had already remained in custody for a considerable period. Given his young age and formative stage of life, any adverse order would cause irreparable harm to his education, future prospects, and chances of reformation.
- 6.7. It was submitted that Respondent No. 2 has fully cooperated with the investigation and duly complied with all the bail conditions. Further, there is no allegation of misuse of liberty.
- 6.8. The learned counsel relied on the decision in ***Mahipal v. Rajesh Kumar and another***⁹, wherein this Court held that interference with an order granting bail is warranted only when the order is perverse, unreasoned, or ignores material considerations. In the present case, the High Court passed a well-reasoned order after independently assessing the facts and material on record.
- 6.9. Reference was also made to ***Arjun Jalba Ichke v. State of Maharashtra***¹⁰ wherein bail was granted despite invocation of stringent provisions. The respondent herein being similarly situated, the learned counsel sought parity.

9 (2020) 2 SCC 118

10 Criminal Appeal No. 268 of 2025 dated 17.01.2025

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- 6.10. Finally, the learned counsel submitted that the object of bail is not punitive but to secure the presence of the accused during trial. Therefore, the impugned judgment of the High Court granting bail to Respondent No. 2 does not warrant any interference by this Court.
7. We have heard the learned counsel appearing for all the parties and perused the documents placed before us.
8. The record reveals that the prosecution was instituted against Respondent No. 2 – accused on the basis of a complaint lodged by the uncle of the minor victim *inter alia* alleging commission of gang-rape, sexual assault and recording of the incident on a mobile phone for the purpose of blackmail. Initially, FIR No. 426/2024 was registered against five accused persons namely Respondent No. 2 Arjun (A1), Amit (A2), Goldi (A3), Rupak (A4) and Vedansh (A5). After investigation, chargesheet no. 38/2025 came to be filed on 19.02.2025 against Respondent No. 2 (A1) under Sections 65(1), 74, 137(2) and 352 of the BNS and Sections 5(l), 6, 9(g) and 10 of the POCSO Act and against A2 to A4, excluding A5 under Sections 74 and 352 of the BNS and Sections 9(g) and 10 of the POCSO Act. The present case pertains to Respondent No.2 (A1) alone.
- 8.1. It further discloses that the date of birth of the victim was ascertained from her educational records as 18.07.2010 and the medical officer assessed her age to be between 16-17 years. Though the FIR came to be registered on 02.12.2024, Respondent No. 2 was arrested only on 03.01.2025. His bail application was rejected by the District and Sessions Judge, Shamli upon consideration of the victim's statement under Section 183 of the BNSS. However, by the impugned judgement, Respondent No. 2 came to be released on bail. Hence, the present criminal appeal has been filed by the appellant.
9. The principal plank of the submissions urged on behalf of the appellant is that the High Court erred in granting bail to Respondent No. 2 – accused without due consideration of the heinous nature of the acts alleged to have been committed against the minor victim. In support thereof, the learned counsel invited our attention to the nature and gravity of the offence alleged against Respondent No. 2 – accused and the maximum punishment prescribed under the applicable provisions of law, as follows:

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S. No.	Acts	Sections	Nature of offence	Maximum punishment prescribed
1	BNS	137(2)	Kidnapping from lawful guardianship	7 years
2	POCSO Act	9(g)	Aggravated sexual assault more than once or repeatedly	7 years
3	POCSO Act	10		
4	BNS	65(1)	Punishment for rape on a woman under sixteen years of age	Imprisonment for life which shall mean imprisonment for the remainder of the convict's natural life
5	BNS	74	Assault or use of criminal force to woman with intent to outrage her modesty	5 years
6	BNS	352	Intentional insult with intent to provoke breach of peace	2 years
7	POCSO Act	5(l)	Aggravated penetrative sexual assault on the child more than once or repeatedly	Death or imprisonment for life which shall mean imprisonment for the remainder of the convict's natural life
8	POCSO Act	6		

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- 9.1. Further, the learned counsel strongly relied on the statements of the minor victim recorded before the learned Magistrate and the Medical Officer, which, according to him, would categorically demonstrate the alleged acts of sexual assault, physical violence and recording of the incident for the purpose of blackmail. Therefore, it was submitted that the grant of bail to Respondent No. 2 – accused is wholly unjustified and unsustainable in law.
- 9.2. The learned counsel also moved an application seeking to place on record that subsequent to being released on bail, Respondent No. 2 has been continuously threatening and intimidating the minor victim. It was stated that both reside in the same village and that Respondent No. 2 stalks the victim whenever she goes to school or outside, intimidates her by glaring and showing a katta (country-made pistol), and plays songs glorifying violence to instill fear. Owing to such conduct, the victim has become afraid and has stopped attending school. A complaint dated 02.09.2025 in this regard has been lodged with the concerned police station and intimated to other authorities including the school authorities. Therefore, the learned counsel sought cancellation of the bail granted to Respondent No. 2.
10. Refuting the allegations levelled against Respondent No. 2, particularly in relation to his alleged post-bail conduct, the learned counsel submitted that Respondent No. 2 has scrupulously complied with the bail conditions imposed by the High Court and has been fully cooperating with the proceedings.
11. Having given our consideration to the rival submissions and the materials placed on record, we are of the considered view that the impugned judgment suffers from serious infirmities. The present case involves allegations of gang rape of a minor coupled with the recording of sexual assault and threats of circulation. The submission advanced on behalf of Respondent No. 2 regarding a consensual relationship is wholly untenable in law, particularly where the allegations extend beyond a single accused and involve coercion, intimidation and multiple perpetrators. The statements of the victim recorded under Section 183 of the BNSS read with the Medico-legal examination report *prima facie* establish the commission of the alleged offences.

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12. It is settled law that the mere filing of a chargesheet does not, by itself, preclude consideration of an application for bail. However, while assessing such an application, the Court is duty-bound to have due regard to the nature and gravity of the offence and the material collected during investigation. The offences alleged in the present case are heinous and grave involving repeated penetrative sexual assault upon a minor victim committed under armed intimidation and accompanied by recording of the acts for the purpose of blackmail. Such conduct has a devastating impact on the life of the victim and shakes the collective conscience of society.
13. The High Court, while granting bail to Respondent No. 2 – accused, failed to take into account the nature and gravity of the offences and the statutory rigour under the provisions of the POCSO Act. The omission to notice that the chargesheet had already been filed, coupled with the *prima facie* material emerging from the victim's statements renders the exercise of discretion by the High Court manifestly erroneous. In **Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak and another**¹¹, in the context of cancellation of bail in a POCSO offence, this Court has reiterated that bail granted without due consideration of material factors warrants interference. The following paragraphs are pertinent:

“13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail, cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducting to allow fair trial. This proposition draws support from the judgment of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237], Kashmira Singh v. Duman Singh [Kashmira Singh v. Duman Singh, (1996) 4 SCC 693 : 1996 SCC (Cri) 844] and X v. State of Telangana [X v. State of Telangana, (2018) 16 SCC 511 : (2020) 1 SCC (Cri) 902].

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16. *No doubt each case would have unique facts peculiar to its own and the same would hold key for adjudication of bail matters including cancellation thereof. There may be circumstances where interference to or attempt to interfere with the course of administration of justice or evasion or attempt to evade to due course of justice are abuse of concession granted to the accused in any manner.*

17. *The offence alleged in the instant case is heinous and would be an onslaught on the dignity of the womanhood and the age old principle of यत्र नार्यस्तु पूज्यन्ते स्मन्ते तत्र देवता: (where women are respected Gods live there) would recede to the background and the guilty not being punished by process of law or accused persons are allowed to move around freely in the society or in spite of there being prima facie material being present they are allowed to move around freely in the society before guilt is proved and are likely to indulge in either threatening the prosecution witnesses or inducing them in any manner to jettison the criminal justice system, then the superior court will have to necessarily step in to undo the damage occasioned due to erroneous orders being passed by the courts below.*

....

21. *In this background, the contention or plea of delay being fatal to the prosecution when examined, it would, prima facie, indicate that in the complaint/FIR which has been registered on 25-3-2022 relevant to the incident dated 24-2-2021 the reason has been assigned, namely, constant threat posed by the accused persons as stated in the complaint itself. It is in this background it will have to be seen as to whether in the societal circumstances the minor girl was placed, her tender age, then prevailing circumstances and the purported video depicting her nudity and the constant threat being posed to victim of video of rape which had been recorded being made viral in the event of prosecutrix informing anyone of the incident are factors which cannot be brushed aside which resulted in delay in filing the complaint. In other words, delay by itself would not be fatal for all times to come and the criminality*

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attached to the incident would not evaporate into thin air or get extinguished by virtue of such delay. It all depends upon facts that may unfold in given circumstances and same would vary from case to case. On the other hand, if the prosecution attempts to improvise its case stage by stage and step by step during the interregnum period, in such circumstances the accused would be justified in contending that delay was fatal to stave off the proceedings initiated against such accused. Thus, it depends on facts that would unfold in a given case. In the aforesaid background the fact of delay in the instant case prima facie cannot be held against the prosecution or in other words on the ground of delay in lodging FIR the genuineness of the complaint cannot be viewed with coloured glasses nor it can be held that by itself would be sufficient ground to enlarge the accused on bail.”

14. Moreover, the High Court failed to apply the settled parameters governing the grant of bail including the gravity of the offence, the vulnerability of the victim and the likelihood of witness intimidation. Instead, reliance was placed on **Satender Kumar Antil v. Central Bureau of Investigation**¹² and **Manish Sisodia v. Directorate of Enforcement**¹³. While *Satender Kumar Antil* laid down general guidelines for the grant of bail, *Manish Sisodia* turned on the peculiar facts of prolonged incarceration and inordinate delay in trial. In the present case, however, Respondent No. 2 had remained in custody for only a few months. That apart, mechanical reliance on precedent without factual correlation is impermissible as authoritatively held by the Constitution Bench in **Padmausundara Rao (Dead) and others v. State of Tamil Nadu and others**¹⁴.
15. It is also important to point out that the victim resides in the same locality as Respondent No. 2. The counselling report of the Child Welfare Committee records that the victim is under fear and psychological distress. The post-release presence of Respondent No. 2 gives rise to a real and imminent apprehension of intimidation

¹² (2022) 10 SCC 51

¹³ 2024 INSC 595

¹⁴ (2002) 3 SCC 533

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and further trauma to the victim. In offences involving sexual assault against children, the likelihood of tampering with evidence or influencing witnesses constitutes a grave and legitimate concern. The safety of the victim and the need to preserve the purity of the trial process assume paramount importance. In ***State of Bihar v. Rajballav Prasad @ Rajballav Pd. Yadav @ Rajballabh Yadav***¹⁵, this Court underscored that such factors must weigh decisively while considering bail in serious sexual offences. The following paragraphs are apposite:

“23. Keeping in view all the aforesaid considerations in mind, we are of the opinion that it was not a fit case for grant of bail to the respondent at this stage and grave error is committed by the High Court in this behalf. We would like to reproduce following discussion from the judgment in Kanwar Singh Meena v. State of Rajasthan [Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180 : (2013) 4 SCC (Cri) 614] : (SCC pp. 186 & 189, paras 10 & 18)

“10. ... 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-recognised principles underlying the power to grant bail. Such orders are legally infirm and

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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.

18. Taking an overall view of the matter, we are of the opinion that in the interest of justice, the impugned order granting bail to the accused deserves to be quashed and a direction needs to be given to the police to take the accused in custody.”

24. *As indicated by us in the beginning, prime consideration before us is to protect the fair trial and ensure that justice is done. This may happen only if the witnesses are able to depose without fear, freely and truthfully and this Court is convinced that in the present case, that can be ensured only if the respondent is not enlarged on bail. This importance of fair trial was emphasised in Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] while setting aside the order of the High Court granting bail in the following terms : (SCC pp. 147-48, para 13)*

“13. We have given our careful consideration to the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the

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society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

16. It is equally well settled that while bail is not to be refused mechanically, it must not be granted on irrelevant considerations or by ignoring material evidence. Where an order granting bail is founded on an incorrect appreciation of facts or suffers from material omissions or where it results in miscarriage of justice, this Court is empowered to interfere. In the present case, the grant of bail by the High Court is vitiated by material misdirection and non-consideration of relevant factors rendering the same manifestly perverse.
17. In such view of the matter, the impugned judgment dated 09.04.2025 passed by the High Court cannot be sustained in law and is accordingly set aside. Consequently, the bail granted to Respondent No. 2 – accused is cancelled. Respondent No. 2 – accused is directed to surrender before the jurisdictional Court within a period of two weeks from today. In the event of his failure to do so, the trial Court shall take appropriate steps in accordance with law to secure his custody.
18. This Court is conscious of the fact that the POCSO Act is a beneficial legislation enacted to protect children from sexual offences and that proceedings under the said Act warrant prompt and sensitive handling. This Court has consistently emphasized the need for expeditious disposal of POCSO cases. At the same time, it is equally imperative that prosecutions must be subjected to careful judicial scrutiny so

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as to ensure that the process of law is not rendered oppressive. Accordingly, the trial Court is directed to give priority to the present case, conclude the trial and pass appropriate orders on its own merits and in accordance with law, as expeditiously as possible.

19. With the aforesaid directions, this criminal appeal is allowed.
20. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain