THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.4173/2022
Smt. Meghna Agarwal Vs. Anurag Bagadiya and another

Gwalior, Dated:19/04/2022

Shri Imran Khan, Advocate for applicant.

Shri S.K. Shrivastava, Advocate for respondent no.1.

Shri C.P. Singh, Panel Lawyer for respondent No.2/State.

This application under Section 439 (2) of Cr.P.C. has been filed for cancellation of bail granted to the respondent no.1 by order dated 5/10/2021 passed by First Additional Sessions Judge, Ganj Basoda, District Vidisha in Bail Application No.407/2021.

2. The necessary facts for disposal of the present application in short are that the complainant/applicant has lodged an FIR against the respondent no.1, who is her husband, and other in-laws on the allegations that she got married to the respondent no.1-Anurag Bagadiya on 20/1/2020 as per Hindu rites and rituals. An amount of Rs.20,21,000/- in cash, diamond jewelry, silver utensils etc. were given in dowry. She was kept properly for few days after her marriage, but thereafter respondent no.1 and her in-laws started harassing her on the ground that the applicant/complainant is the only daughter of her father and her father is a big food grain merchant, therefore, she should bring an Audi car and an amount of Rs.50,00,000/- and only then they would keep her properly in her matrimonial house. For demand of dowry the respondent no.1-Anurag Bagadiya and her in-laws started harassing her physically and mentally. When she refused to bring additional dowry, then she was beaten by respondent no.1-Anurag Bagadiya and Smt. Manju

Bagadiya. In order to save the pride of her parents, she was silently tolerating the physical and mental harassment and did not narrate the incident to her parents. It was further alleged that her husband was regularly asking for indulging in unnatural sex. On 5/8/2020 her husband came to her parental home to attend the death rituals of her grandmother and both were staying in one room, where her husband committed unnatural sex with her. When she objected to it, then she was threatened by her husband that in case if this fact is narrated to anybody, then he would kill her. In order to protect the pride of the family as well as on account of threat to her life, she did not narrate the incident to anybody and after sometime she went to her matrimonial house. Again in the matrimonial home at Katni she was treated like servant. When her in-laws came to know about the unnatural sex done by her husband-respondent no.1, then they said that the applicant has to live as per the wishes of her husband and she is under obligation to accept all the demands of her husband, otherwise she would continue to suffer beating. Her in-laws have kept all her jewelry and money and ousted her from her matrimonial home on 16/11/2020. Under a belief that everything would improve, she did not lodge the report, but now on 21/9/2021 she has narrated the entire incident to her mother and accordingly, an FIR was lodged.

3. The respondent no.1 filed an application under Section 438 of Cr.P.C. It appears that the applicant also filed her objection to the application.

4. The Court below by the impugned order has granted anticipatory bail to the respondent no.1.

5. It is submitted by the counsel for the applicant that the Court below while granting anticipatory bail to the respondent no.1 has held that the complainant came back to her parental home on 16/11/2020 and she is residing there from thereafter and the written complaint was made on 21/9/2021, i.e. after 10 months of her coming back to her parental home and after 13 months from the date on which she was subjected to unnatural sex. No injury was found on medical examination. It is submitted that by making such an observation the Court below has given a finding that the allegations of unnatural sex is delayed. However, the Court below failed to see that the applicant, who is the wife of the respondent no.1, is primarily interested in saving her married life and it is not expected from her to rush to the police station for each and every individual act of harassment or cruelty or any act of unnatural sex. If a girl is trying hard to save her married life, then such conduct cannot be taken to her discredit for disbelieving the allegations of unnatural sex being delayed in nature. Unless and until an allegation is barred by limitation, the Court below should not have given any finding with regard to the delayed allegations at the stage of grant of bail. Furthermore, the Court below has committed a material illegality by holding that the custodial interrogation of respondent no.1 was not required. It is further submitted that the applicant is being harassed

for demand of Rs.50,00,000/- and an Audi car and she was also subjected to unnatural sex and, therefore, the Court below has committed material illegality by granting anticipatory bail to the respondent no.1 by ignoring the seriousness of the allegations made against him.

6. *Per contra,* the application is vehemently opposed by the counsel for the State. It is submitted by the counsel for the applicant that the criteria for cancellation of bail is completely different from the criteria for grant of bail. There is no allegation that after the anticipatory bail was granted, the respondent no.1 has misused the liberty or has not cooperated with the investigation.

7. Heard learned counsel for the parties.

8. So far as the criteria for cancellation of bail is concerned, the submissions made by the counsel for the respondent no.1 are not correct. In a case where the liberty granted by the Court is misused by the accused, then the bail can be cancelled by the same Court. However, if the complainant/victim is of the view that the Court has granted bail by ignoring the material available on record, then the prosecution/complainant/victim can always challenge the said order before the superior Court.

9. The Supreme Court in the case of **Manoj Kumar Khokhar Vs. State of Rajasthan and another by judgment dated 11/1/2022 passed in Cr.A. No.36/2022** has held as under:-

"**14.** Before proceeding further, it would

be useful to refer to the judgments of this Court in the matter of granting bail to an accused as under:

"a) In ***Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh-*** **(1978) 1 SCC 240**, Krishna Iyer, **J.**, while elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial, has laid down the key factors that have to be considered while granting bail, which are extracted as under:

"7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance."

b) In ***Prahlad Singh Bhati vs. NCT of Delhi & ORS*** **– (2001) 4 SCC 280** this Court highlighted the aspects which are to be

considered by a court while dealing with an application seeking bail. The same may be extracted as follows:

> "The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

c) This Court in ***Ram Govind Upadhyay vs. Sudarshan Singh*** **– (2002) 3 SCC 598,** speaking through Banerjee, **J.,** emphasized that a court exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail cannot be granted as a matter of course, bereft of cogent reasoning, this Court 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. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

d) In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.*** **– (2004) 7 SCC 528**, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail.

e) In ***Prasanta Kumar Sarkar vs. Ashis Chaterjee*** **- (2010) 14 SCC 496** this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under:

"It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and

> strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that,
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> among other circumstances, the factors to be borne in mind while considering an application for bail are: (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 accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

f) Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in ***Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr. – (2012) 9 SCC 446,*** the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the acused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.

g) In ***Neeru Yadav vs. State of UP & Anr. – (2016) 15 SCC 422,*** after referring to a catena of judgments of this Court on the considerations to be placed at balance while deciding to grant bail, observed through Dipak Misra, **J.** (as His Lordship then was) in paragraphs 15 and 18 as under:

> "15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal

> antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A historysheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.
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> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

h) In ***Anil Kumar Yadav vs. State (NCT of Delhi)* – (2018) 12 SCC 129**, this Court, while considering an appeal from an order of cancellation of bail, has spelt out some of the significant considerations of which a court must be mindful, in deciding whether to grant bail. In doing so, this Court has stated that while it is not possible to prescribe an exhaustive list of considerations which are to guide a court in deciding a bail application, the primary requisite of an order granting bail, is that it should result from judicious exercise of the court's discretion. The findings of this

Court have been extracted as under:

> "17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

i) In ***Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli) and Ors.,*** **(2021) 6 SCC 230** this Court after referring to a catena of judgments emphasized on the need and importance of assigning reasons for the grant of bail. This Court categorically observed that a court granting bail could not obviate its duty to apply its judicial mind and indicate reasons as to why bail has been granted or refused. The observations of this Court have been extracted as under:

> "35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties "do not press for a further reasoned order". The grant of bail is a matter which implicates the liberty of the Accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application Under Section 439 of the Code of Criminal Procedure would not launch upon a detailed evaluation of the facts on merits since a criminal

trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the Accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order". If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. Grant of bail Under Section 439 of the Code of Criminal Procedure is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail-as in the case of any other discretion which is vested in a court as a judicial institution-is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought

process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice."

j) Recently in ***Bhoopendra Singh vs. State of Rajasthan & Anr. (Criminal Appeal No. 1279 of 2021),*** this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail. i.e. this Court distinguished between setting aside a perverse order granting bail vis-a-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting ***Mahipal vs. Rajesh Kumar*** **(2020) 2 SCC 118,** this Court observed as under:

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."

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l) The most recent judgment of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is in the case of ***Brijmani Devi vs. Pappu Kumar and Anr.*** **– Criminal Appeal No. 1663/2021** disposed of on 17th December, 2021, wherein a three-Judge Bench of this Court, while setting

aside an unreasoned and casual order of the High Court granting bail to the accused, observed as follows:

> "While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a *prima facie* conclusion. While considering an application for grant of bail a *prima facie* conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused."

15. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in ***Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.* – (2010) 9 SCC 496**, wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

> "(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> (b) Recording of reasons also operates as a valid restraint on any

possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘‘rubber-stamp reasons’’ is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision- making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37)

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.

16. The Latin maxim "*cessante ratione legis cessat ipsa lex*" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite.

17. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail

> application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.
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> **18.** Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

10. The Supreme Court in the case of **Ms. Y Vs. State of Rajasthan and another by judgment passed today in Criminal Appeal No.649/2022** has held as under:-

> **11.** Once bail has been granted, the Appellate Court is usually slow to interfere with the same as it pertains to the liberty of an individual. A Constitution Bench of this Court in ***Bihar Legal Support Society v. Chief Justice of India*****, (1986) 4 SCC 767** observed as follows:
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> > **"3**. … It is for this reason that the Apex Court has evolved, as a matter of selfdiscipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail.…**We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter."**
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> > **(emphasis supplied)**
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> **12.** The above principle has been consistently followed

by this Court. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee,*** **(2010) 14 SCC 496** this Court held as under:

> "**9.** We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
> (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 accusation;
> (iii) severity of the punishment in the event of conviction;
> (iv) danger of the accused absconding or fleeing, if released on bail;
> (v) character, behaviour, means, position and standing of the accused;
> (vi) likelihood of the offence being repeated;
> (vii) reasonable apprehension of the witnesses being influenced; and
> (viii) danger, of course, of justice being thwarted by grant of bail.
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> xxx xxx xxx
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> **10.** It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal….."

13. In ***Mahipal v. Rajesh Kumar*****, (2020) 2 SCC 118** this Court followed the holding in ***Prasanta Kumar Sarkar*** *(supra)* and held as follows:

> **"17**. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of

> mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment…"

14. Recently, a three Judges' Bench of this Court in ***Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr***. in **Criminal Appeal No. 632 of 2022,** has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the abovementioned section. This Court observed as follows:

> **"28**. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following wellestablished principles, and not in a cryptic or mechanical manner."

15. It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439 CrPC in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyze whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. In ***Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508** this Court held as follows:

> **"12.** We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It

> is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."

11. If the facts of the present case are considered, then it is clear that there are specific allegations of demand of dowry and physical and mental harassment on account of non-fulfillment of said demand. It is specifically alleged that on 5/8/2020 she was subjected to unnatural sex. This Court cannot lose sight of the fact that a wife is slow in rushing to the police station for making complaint of each and every act of harassment or maltreatment. The first intention of the wife is to save her married life and to give sufficient time to her in-laws as well as her husband, so that the situation may improve. The patience shown by the wife should not be treated as a weakness or an attempt to create a false story. Thus, if the applicant kept quiet for one year and did not disclose to her parents about the unnatural sex committed by the applicant, then it cannot be said that her

conduct of keeping mum was nothing but an attempt to explain the delay. Even otherwise, there is specific allegation in the FIR that this act of committing unnatural sex by her husband was disclosed by the applicant to her parents-in-laws, therefore, by no stretch of imagination it can be said that the applicant kept quiet about the unnatural sex committed by the respondent no.1. Further in the light of judgment passed by Supreme Court in the case of **Rupali Devi vs. State of U.P.** reported in **(2019) 5 SCC 384**, compelling a married woman to live in her parental home on account of non-fulfillment of demand of dowry is also a cruelty.

12. Accordingly, this Court is of the considered opinion that the observation made by the Court below with regard to delayed disclosure of offence under Section 377 of IPC is unwarranted and has been made in a casual manner without appreciating the surrounding circumstances.

13. Looking to the seriousness of the allegations of demand of dowry as well as of committing unnatural sex with the applicant, this Court is of the considered opinion that the Court below committed a material illegality by granting anticipatory bail to the respondent no.1. Accordingly, the order dated 5/10/2021 passed by First Additional Sessions Judge, Ganj Basoda, District Vidisha in Bail Application No.407/2021 is hereby set aside.

14. The respondent no.1-Anurag Bagadiya is directed to immediately surrender before the Investigating Officer latest by 30th

April, 2022.

15. With aforesaid observations, the application succeeds and is hereby **allowed.**

(G.S. Ahluwalia)
Judge

Arun*