R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

WRIT PETITION NO.2910/2021(GM-RES)

BETWEEN

KUM. DEEPIKA
AGED ABOUT 30 YEARS
D/O LATE YOGANANDA
R/AT NO.14/3, 2ND CROSS
SHANKARPURAM
BENGALURU-560004

... PETITIONER

(BY SMT. DEEPIKA, PARTY-IN-PERSON)

AND

1. STATE OF KARNATAKA
   BY DHARMASTHALA POLICE STATION
   REPRESENTED BY STATE PUBLIC PROSECUTOR
   HIGH COURT OF KARNATAKA
   BENGALURU-560001

2. THE PRINCIPAL SECRETARY
   HOME DEPARTMENT
   VIDHANA SOUDHA
   BENGALURU-560001

3. DIRECTOR GENERAL OF POLICE
   NRUPATHUNGA ROAD
   BENGALURU-560001

4. STATE POLICE COMPLAINT AUTHORITY
   VISHVESHWARAIAHTOWER
   BENGALURU-560001

5 . INSPECTOR GENERAL OF POLICE
NEAR FORUM FIZA MALL
MANGALURU-575001

6 . SRI VISHWANTH BIRADAR
S/O SHARANAGOWDA BIRADARA
AGED ABOUT 27 YEARS
R/A HANDIGANOOR VILLAGE AND POST
HANDIGANOORA, BIJAPURA-586120
INTER-ALIA,
SUB-INSPECTOR OF POLICE
CHAMARAJPET P S
BENGALURU-560018

7 . THE POLICE COMMISSIONER
BENGALURUCITY
INFANTRY ROAD
BENGALURU-560001

... RESPONDENTS

(BY SRI NAMITHA MAHESH B.G., HCGP FOR R1 TO R5;
SRI SANDESH J. CHOUTA, SENIOR COUNSEL FOR
SRI TEJAS N., ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C PRAYING TO QUASH THE ANTICIPATORY BAIL GRANTED TO THE R-6 IN C MISC.NO.674/2020 DATED 09.12.2020 BY THE 6TH ADDITIONAL DISTRICT AND SESSIONS JUDGE DK MANGALURU IN CRIME No.82/2020 FILED BY DHARMASTALA P.S., FOR THE OFFENCES PUNISHABLE UNDER SECTION 323 AND 376 OF IPC WHICH IS AT ANNEXURE-A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.04.2021 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Articles 226 and 227 of Constitution of India read with Section 482 of Cr.P.C. by the petitioner, who is the party-in-person seeking the following reliefs:-

a) to quash the anticipatory bail granted to respondent No.6 in C.Misc.No.674/2020 dated 9.12.2020 by VI Additional District and Sessions Judge, DK, Mangaluru in Crime No.82/2020 filed by Dharmastala P.S. for the offence punishable under Sections 323 and 376 of IPS, which is at Annexure-A.

b) to issue direction to respondent No.3 to refer the Crime No.82/2020 to COD.

c) to issue direction to initiate action against Mr.Sandesh, the Inspector of Police and Mr.Pavan, the Sub-Inspector of Police Dharmastala P.S. and staff Radha, Aslam and others, who were on duty on the date of the incident.

d) to grant such other order/relef as deems fit to grant in the interest of justice and equity.

2. The factual matrix of the case is that the petitioner in the petition has contended that in the month of August, 2020, she had lodged the complaint with the Chamarajpet P.S. for having lost her laptop. Based on the complaint, she was following up the matter with the police station and FIR is also registered in Crime No.80/2020. Respondent No.6, who was investigating the matter collected the phone number of the petitioner and in the pretext of investigating the case, started calling the petitioner and also messaging her in the night. He sought for financial assistance of Rs.12 lakhs from the petitioner which she refused. Then he expressed that he is in love with her which she did not encourage. Then he started behaving like a good guy and expressed his desire to meet her personally for which she refused. Later he called her for investigation and took her to COD office. Then on 08.11.2020, he called her and requested to meet and then they both met, had lunch and he requested her to marry him and then at 8.00 p.m. took her to his house to meet his parents and since the door was locked, he took her to

the terrace and forced her for sexual intercourse for which she resisted and said that it is only after marriage. Respondent No.6 proposed to get her married at Dharmastala and told her that he would meet on 09.11.2020 for shopping for the marriage and also to book train ticket. Then when the petitioner called him at the time of booking ticket, he told that he is on duty and held up with work, and so asked her to book the ticket. Believing him, the petitioner booked the ticket on her own and later, when she was at the Lalitha Jewelers, Malleshwaram, she again called him as he promised her that he would come to buy jewelry. He gave the same answer and said that he would meet her at the railway station at 6 p.m. Thus, he made her to spend the amount on the assurance of marrying her.

3. Both of them went to Dharmastala to get married with the arrangement being made by the petitioner like buying Thali and Chain and booking train ticket. The jewelry receipt and train tickets are produced herewith as Annexures-C and C1 and that on 10.11.2020,

at about 3.30 a.m., they reached Dharmastala and he booked a room at Gangothri and at that time, respondent No.6 tired to have sexual intercourse. The petitioner resisted the same. However, he had sexual intercourse with her against her wish and committed rape on her. Later, he pacified her and both of them went to Dharmastala Temple to get married, but the respondent No.6 had not brought any document for the marriage. So they came out and on enquiry with the flower vendor, they came to know that in a place called Kuthayaru, they will perform marriage without document and however, they will give in writing about the performance of marriage so that one can register the marriage in any place. Accordingly, they bought cloths, ring to the toe and other things required for the marriage. At that time, respondent No.6 said he has kidney stone for which petitioner took him to the doctor and doctor gave him ORS juice and medicine, by spending Rs.1000/- from her pocket. Then after reaching room, respondent No.6 drank ORS Juice and vomited and made the petitioner to clean. When she was

busy cleaning, respondent No.6 took her mobile and deleted the conversation and messages that had taken place between them which was not in her knowledge. Later they went to the place called Kuthayaru along with the flower vendor and met the priest, who fixed muhurtham for marriage on 11.11.2020 and told that it would cost Rs.13000/- and took advance of Rs.1000/- which she paid.

4. After fixing muhurtham, respondent No.6 told that he was already married to one Ganga in 2019. However, he said that even if he wants to marry petitioner, there should not be any photos and registration. The petitioner was shocked to hear this from respondent No.6 and felt betrayed, cheated and decided to lodge a complaint at Dharmastala P.S. At that time, he told her not to register any complaint. When she gave complaint in the police station, one Mr. Pavan-PSI enquired respondent No.6, who agreed to have committed an offence, for which he thrashed him and kept him in lock up. Then PI, Sandesh came to the police station and made enquiry and

after coming to know the fact, he suggested the petitioner to get married with respondent No.6. When the petitioner told him that he is already married, Sandesh told her that he is only engaged with one Ganga. After suggesting her to get married to respondent No.6, Sandesh sent the petitioner along with Smt.Radha, a woman Constable to stay in her house and retained respondent No.6 in the station.

5. Next day, the petitioner was surprised to see the parents of respondent No.6 along with Charamarajapet PSI and police Sunil in the police station. The parents of respondent No.6 begged the petitioner to forgive respondent No.6 and not to lodge any complaint against him, as it would have wrong effect on his life. Even police authorities do felt unhappy as things did not work as they expected. None of them had any empathy/sympathy over the petitioner. Hence, they made her to narrate the story to the male constable although female constable was available. In spite of it, the petitioner was made to wait to lodge the complaint. The complaint was registered for the

offence punishable under Sections 323 and 376 of IPC in Crime No.82/2020. The police, who accompanied the parents of respondent No.6 also abused and threatened the petitioner. By the time the complaint was lodged, it was almost 9.30 p.m. They dragged to file a case against respondent No.6. In the meanwhile, the complaint of respondent No.6 was registered. All of them threatened the petitioner and took her to Gayathri Lodge along with the police constable.

6. It is also contended that on 13.11.2020, the petitioner had lodged a complaint with Dy. SP, Bantwala regarding the theft of the article from her bag and life threat being caused by respondent No.6. Again, the Inspector-Sandesh called and scolded her for lodging the complaint with Dy.S.P. On the next day also, when the petitioner went to police station, Inspector-Sandesh abused her, misbehavied with her and assaulted her and beaten her with rifle on her head and slapped her and other staffs also bet her with lathi, hand and leg mercilessly and assaulted the petitioner for hours. Then

she caught hold of their legs and requested to leave her. The Inspector continuously assaulted and threatened her with dire consequences and told that he would kill her and throw her into Nethravathi River and also threatened to kill her mother at Bangalore. Later, on seeing mobile call details of the petitioner, where she had called women's cell and other higher authorities, Inspector-Sandesh was scared that if something happens to the petitioner, he would be put in trouble, so he warned the petitioner to listen to him and took signatures on white papers and asked to give statements before the magistrate.

7. It is also alleged in the petition that the petitioner was sent to Gayathri Lodge, at that time, she locked the room and called Dy.SP, SP, Control Room, friends and relatives seeking for the help. Around 10.00 p.m., the door was knocked staging that they are from control room and asked the petitioner to open the room door. The petitioner believing their words, opened the door and Smt.Radha, a woman Constable snatched her mobile, dragged the petitioner outside the room, closed the mouth

of the petitioner by hand. Then control room police and Aslam assaulted the petitioner. Inspector-Sandesh slapped on her face and kicked her with legs, abused and took video of giving statement forcefully stating that they have not detained her unlawfully and not given torture. They took her out of the lodge by informing public that she is a prostitute and defamed the name of the petitioner in the eye of the public. In this situation, friends and media were calling the petitioner over phone and I.O.-Sandesh only answered those calls and spoke badly about the petitioner with them and disconnected the call. Then they assaulted the petitioner, forcefully put her in the car and dropped her to her mother's house at Bengaluru on 15.11.2020. Then she went and took treatment at KIMS Hospital, Bengaluru where they registered it as MLC.

8. The petitioner also sent the registered complaint to the higher authorities i.e., IGP Mangaluru, Chief Minister, Home Minister, State Police Authority and DGP Head Quarters Bengaluru on 20.11.2020 explaining the harassment meted out to her by the police at

Dharmastala P.S.. Petitioner also relied upon the documents Annexures-'D' to 'G4'.

9. It is contended in the petition that inspite of the complaint being given to all the higher ups, they failed to take any action against respondent No.6, P.I. and other staffs of Dharmastala Police Station. She also forwarded the complaint to the Principal Civil Judge and JMFC, Belthangady explaining her grievances in terms of Annexure-G5. It is also alleged in the complaint that the P.I. had taken the complaint from respondent No.6 and registered the same as Crime No.81/2020 for the offence punishable under Section 389 of IPC and the FIR is marked as Annexure-H. Thereafter, respondent No.6 filed an application seeking anticipatory bail and the same was allowed by granting bail. The torture to the petitioner was continued. Being aggrieved by the grant of anticipatory bail in favour of respondent No.6 and also the torture meted out to her by Dharmastala police, the present petition is filed.

10. The main contention urged in the petition is that respondent No.1, hand in glove with respondent No.6, has helped him to obtain the anticipatory bail. When the petitioner had filed the complaint, respondent No.6 was very much present before the police authorities and they had not arrested him, instead, they helped him to go scot-free and also filed a false complaint against the petitioner. It is also contended that the police authorities helped respondent No.6 to destroy the documentary evidence like lodge bills, medical evidence etc., harassed the petitioner and assaulted the petitioner by hand and lathi and rifle. The fact that Investigating Officer assaulted the petitioner is evident in the medical records of KIMS Hospital.

11. Though respondent No.6 has been officially suspended, it is likely that he would tamper the evidence, if he is out on bail as he is having the money power and police friends and colleagues. Besides, the petitioner sees a life threat from him as he had threatened her with dire consequences at the time of filing the complaint. The petitioner is living with fear every day. Under the guise of

investigating into the theft case filed by the petitioner, respondent No.6 tried to take undue advantage of the petitioner, who is a lonely lady living with her mother, who is aged about 70 years.

12. The petitioner, who was a victim of circumstances, has to undergo mental trauma at the hands of the police authorities for the fault of raising her voice for justice. Her basic rights were infringed by the authorities and no actions were taken by the competent authorities. Hence, expecting no fair investigation would be done by the authorities, sought for transfer of the case to COD with the concerned department. Inspite of various letters sent to the authorities including the Chief Minister, Home Minister, Director General of Police, IGP, Police Complaint Authority and also the prosecution, no actions were taken and hence, she is entitled for the relief as sought in the petition.

13. The party-in-person also reiterated the grounds urged in the petition and in her oral arguments

also, she says that she was forced to give statement before the Magistrate and news channel also telecasted the statements, which have been given at the instance of the police. She was under surveillance of the police from day one. She was dragged, assaulted and was forcibly dropped to her house at Bengaluru with their surveillance after three days of her illegal custody and then she took treatment at KIMS Hospital. She also sought for CCTV footages and the same was rejected stating that no such CCTV cameras were working. Instead of that they registered the case and counter case alleging that she demanded Rs.12 lakhs from respondent No.6. It is contended that she was not subjected to medical examination when she was in the illegal custody of the police and no enquiry is conducted in respect of the treatment which she had taken at KIMS Hospital. In respect of laptop case 'C' report has been filed.

14. The petitioner also submits that she was subjected to character assassination, torture and agony which should not happen to anybody else. Hence, she

approached the Court seeking cancellation of the bail granted to respondent No.6 and also to transfer the case to COD for fair investigation as she is not expecting any fair investigation in the hands of a person, who has been indulged in assaulting her and causing life threat.

15. Learned counsel appearing for the respondent No.6 would vehemently contend that for cancellation of anticipatory bail, the Court could invoke Section 482 of Cr.P.C only under special circumstances. No representations were given to the DGP requesting for transferring of the case to COD. The petitioner is having other alternative remedy. She is portrayed as an innocent, but the true fact is different. The petitioner marriage was solemnized in the year 2010 and in the year 2011, she gave a complaint against her husband and in the year 2015, both of them obtained the decree of divorce on mutual consent. The petitioner immediately had lodged the complaint on 22.04.2015 against one Santhosh, on which FIR was registered for an offence under Section 376 of IPC and investigation was conducted and charge sheet was

filed. The said accused Santhosh had filed the application for discharge and the said application was also allowed.

16. The petitioner is having the habit of filing the complaint against others. In the year 2015, the case has been registered against Assistant Commissioner of Police and other persons for the offence punishable under Sections 506 and 504 of IPC. The report is also clear that the laptop, which is alleged to have been lost is 12 years old. The petitioner demanded a ransom from respondent No.6 and hence, a compiaint was lodged against the petitioner by respondent No.6 and no case is made out to cancel the anticipatory bail granted in his favour.

17. Learned counsel would submit that respondent No.6 is under suspension. It is further contended that in the statement of objections, the very antecedents of the petitioner has been narrated in detail. The document produced clearly discloses that the petitioner is an habitual complainant and the case which has been registered at the instance of the petitioner is also produced along with

statement of objections, which reflects that she had filed three cases in total for the offence punishable under Section 376 of IPC and other offences and now she is claiming that she is an innocent, but the fact is otherwise. Hence, there cannot be any relief in favour of the petitioner either for cancellation of the bail granted in favour of respondent No.6 or entrusting the matter to COD for investigation.

18. Learned counsel appearing for respondent No.6 in support of his arguments, relied upon the judgment of the Apex Court in the case of ***Bhagirath Singh v. State of Gujarat*** reported in ***(1984) 1 SCC 284*** and brought to the notice of this Court para No.7 of the judgment wherein the Apex Court held that the High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of

decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed.

19. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Dolat Ram and Others v. State of Haryana*** reported in ***(1995) 1 SCC 349*** and brought to the notice of this Court para Nos.4, 5 and 6, wherein the Apex Court discussed with regard to rejection of bail and cancellation of bail, and held that 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 cancellation of the bail by the High Court was observed as not justified.

20. Learned counsel also relied upon the judgment of this Court in the case of ***Anuradha Baliga v. Mangalapady Naresh Shenoy and Another*** reported in

2019 SCC Online Kar. 3003 and brought to the notice of this Court para No.10, wherein this Court discussed the judgment of Dolat Ram's case and followed the principles laid down therein.

21. Learned counsel also relied upon the judgment of this Court in ***Crl.P.No.4593/2020*** between ***Ms. X v. State of Karnataka,*** wherein this Court rejected the petition filed for cancellation of bail.

22. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Ash Mohammad v. Shiv Raj Singh Alias Lalla Babu and Another*** reported in ***(2012) 9 SCC 446*** and brought to the notice of this Court para Nos.16, 25, 31 and 32, wherein the Apex Court discussed in detail with regard to the scope of cancellation of the bail.

23. Learned counsel relied upon the judgment of the Apex Court in the case of ***State of Orissa v. Mahimananda Mishra*** reported in ***(2018) 10 SCC 516*** and brought to the notice of this Court para No.10 wherein

the Apex Court discussed that the respondent fled to Thailand to avoid arrest and was arrested only on deportation pursuant to the issuance of a look-out circular, which probabilises the apprehension of the police regarding future attempts of the accused to escape.

24. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Prabhakar Tewari v. State of Uttar Pradesh and Another*** reported in ***(2020) 11 SCC 648*** and brought to the notice of this Court para No.7 of the judgment with regard to improper exercise of discretion on part of High Court in granting bail.

25. Learned counsel also relied upon the judgment of this Court in the case of ***State of Karnataka v. Sri. Thammaiah and Others*** reported in ***(1998) SCC Online Kar. 460*** and brought to the notice of this Court para No.9, wherein discussed with regard to entrusting the investigation to the COD and further observed that it is also reported that large number of Courts are directing the COD without there being any reason whatsoever to

investigate under Section 156(3) of Cr.P.C. It is also noticed that the offences for which the Magistrate direct them to investigate by the COD also are not the offences which come under the scheme to be specially investigated. Ordinary cases wherein the dispute between two individuals or group of individuals, if referred to the COD and if they are to conduct the investigation, their valuable service and time would be lost.

26. Learned counsel for respondent No.6 also relied upon the judgment of the High Court of Punjab and Haryana at Chandigarh passed in ***CRM-M No.14954/2020 (O&M)*** decided on ***16.03.2021*** between ***PritpalKaur v. State of Punjab and another***, wherein the Punjab and Haryana High Court in detail discussed the judgments of the Apex Court and also the other judgments and comes to the conclusion that the proceedings initiated by the petitioner are false and frivolous. It is further observed that it clearly establishes that an attempt has been made to not only abuse the process of law but also overawe the authorities. In the

case on hand also, an attempt is made by the petitioner making the false allegation and hence, this judgment is aptly applicable to the case on hand.

27. The petitioner also produced some other documents with regard to statement of the petitioner recorded under Section 164 of Cr.P.C. and contended that under Section 164 of Cr.P.C. a detailed statement has been made before the Magistrate. The petitioner also relied upon the notices issued on 20.03.2021 and 24.03.2021.

28. The learned High Court Government Pleader appearing for the State would submit that the matter is under investigation and the medical evidence collected discloses that she was subjected to sexual act and the report is positive. The statement of the victim was also recorded under Section 164 of Cr.P.C. and all steps in conducting fair investigation has been taken. Hence, there cannot be any relief for transferring the case to COD as prayed in the petition.

29. The High Court Government Pleader appearing for the State, in view of the direction of this Court, filed the report regarding furnishing the status of the complaint filed by the petitioner before different authorities and in respect of Annexure-G, complaint has been made to the Hon'ble Home Minister of Karnataka on 20.11.2020 and the same was numbered and forwarded to the Superintendent of Police, Dakshina Kannada for enquiry and the enquiry being completed, the report has been given in terms of Annexure-R1 to the office of the DGP and IGP for further action. The report does disclose about Annexure-G1, the complaint given to the IGP, Mangaluru on 20.11.2020 and so also with regard to Annexure-G2, the complaint dated dated 20.11.2020 given to the State Police Complaint Authority, Bengaluru. Annexure-G3 is also the copy of the complaint dated 20.11.2020 given to the Hon'ble Chief Minister, State of Karnataka and Annexure-G4 is the copy of the complaint dated 19.11.2020 given to the DGP and IGP. Annexure-J is the copy of the letter dated 16.12.2020 addressed to the

Home Minister, State of Karnataka seeking for COD inquiry and the same was also forwarded to the office of the Commissioner of Police, Bengaluru for necessary action and the same was in turn forwarded to the office of the Superintendent of Police, Dakshina Kannada. The report dated 07.04.2021 of the Superintendent of Police, Dakshina Kannada reflects that the prayer of the petitioner is rejected, in terms of Annexure-R2.

30. The learned High Court Government Pleader with respect to whether the CCTV cameras were working in the Darmasthala Police Station, produced the copy of the report dated 15.10.2019 submitted by the Superintendent of Police, Dakshina Kannada addressed to the DG and IG regarding the working status of the CCTV Cameras installed in Dakshina Kannada, which is marked as Annexure-R3. With regard to the complaint of the complainant in respect of Crime No.82/2020, it is reported that the charge sheet is ready to be filed before the Trial Court and produced the same as Annexure-R4. Insofar as the complaint by the petitioner against Police Sub-

Inspector, Basavanagudi making similar allegations in Crime No.20/2020 registered in Women's Police Station, Basavanagudia is concerned, a report was submitted by Rohini Katach, Dy. Commissioner of Police, South West, Bengaluru on 17.07.2020, wherein it is held that the petitioner is an habitual complainant and the said document is produced as Annexure-R5.

31. Learned High Court Government Pleader appearing for the State would vehemently contend that the representations are given by the petitioner to the Home Minister, which is forwarded to the concerned departmental head and reports are also submitted. The entire reports submitted are pointing out against the petitioner herein that she is having an habit of filing the complaint in one or the other way and she is an habitual complainant.

32. In reply to the arguments of respondent No.6 and also the State, the petitioner would submit that an application was filed in the year 2011 itself for judicial

separation and then a joint petition was filed in the year 2015. The very contention that the petitioner is portraying as an innocent but she is otherwise an habitual complainant, is nothing but tarnishing the image of the petitioner. When a woman was subjected to all these kind of torture and sexual harassment, and files a complaint, if she is branded as an habitual complainant, then what is the remedy available to the petitioner so as to seek for justice. When the grievance has been raised by a woman and cried for justice, she will be branded as a prostitute. She has been targeted both by the police and also by the authorities and no fair investigation has been conducted.

33. Having heard the learned counsel for the petitioner, who is a party-in-person as well as learned counsel for respondent No.6 and also the learned High Court Government Pleader for State, this Court has to analyze the material available on record in view of the reliefs sought in the petition.

34. It is the main contention of the petitioner that she had approached respondent No.6 in connection with theft of laptop. It is also not in dispute that the case has been registered in the month of August, 2020 in terms of Annexure-B on 09.08.2020. It is the allegation against respondent No.6 by the petitioner that he had taken her phone number and also that she was taken to the COD office. It is also her allegation that when he took her to his house, the house was locked and an attempt was made to rape her on the terrace of the house, but she did not allow him to do such act. Later, he promised to marry her. The records also disclose that both of them have traveled to Dharmastala in terms of Annexure-C1 on 09.11.2020. It is also important to note that a gold mangalya chain was also purchased on the very same day on 09.11.2020 in terms of Annexure-C.

35. It is also her allegation that when they reached Dharmastala, they booked a room at Gangotri, where he committed sexual act on her forcibly. Thereafter, they went to the temple to get married and in the temple, they

demanded documentary proof, which respondent No.6 had not brought. Thereafter, they went to Kuthayaru temple and he insisted not to take any photographs. The complainant suspected the act of respondent No.6 and thereafter, they went to the police station. In the police station, she was subjected to torture for a period of 2 days. It is also the allegation that she was made to stay in the house of a woman constable and thereafter, took a separate accommodation in the lodge. It is also the specific allegation against the police of Dharmastala Police Station that they were hand in glove with respondent No.6. The complainant was subjected to torture and also records reveal that she was under the surveillance of the Dharmastala Police and later, she was dropped to her parental house in Bengaluru after 3 days.

36. It is clear that she was under the police surveillance and no opportunity was given to her to seek any help from any body and she was subjected to torture. The MLC report issued by the KIMS Hospital marked as Annexure-F discloses that she had sustained injuries when

she was dropped to Bengaluru. On the next day, she went to the hospital on 16.11.2020 and took treatment. The report submitted by the respondent-State, which is the report of the Assistant Commissioner of Police as well as the Superintendent of Police is nothing but an eye wash. They had examined only the police personnel, who were present at Dharmastala Police Station. The specific allegations are made against the Inspector and Sub-Inspector and all the police personnel that they subjected the petitioner for torture. When such allegations are made against the Superintendent of Police and also Dy.SP for not taking the steps, the report and statements in favour of the petitioner cannot be expected. The electronic evidence and CDRs are not secured and nothing is whispered in the report of the S.P. except the statement of the police personnel of the said station, against whom the allegations have been made.

37. On going through the entire report, it depicts that an attempt is made to close the case by coming to the conclusion that there was no role of the police personnel

who alleged to have indulged in torturing the petitioner herein. This Court should also take note of the other aspect that the petitioner herein has sought for the CCTV footages of the police station, for which the petitioner had received the reply vide document No.5 dated 09.03.2021, wherein it is stated that the CCTV Cameras installed in Dharmastala P.S. was not working since 30.04.2020 and hence, they were unable to furnish the footages of the CCTV Cameras installed therein for the period from 10.11.2020 to 15.11.2020.

38. The learned High Court Government Pleader produced the report regarding the working status of the CCTV cameras installed in all the police station of the District submitted by the Superintendent of police, Dakshina Kannada addressed to the Director General of Police and Inspector General of Police, which is dated 15.10.2019 and wherein it is stated that all the CCTV Cameras installed in the concerned police station at Dakshina Kannada District were working satisfactorily as per Anneuxre-R3.

39. Having perused the material on record, it is clear that respondent No.6 went to Dharmastala accompanying the complainant and after reaching Dharmastala, they went and stayed in a room wherein as alleged by the complainant, she was subjected to sexual act of committing of rape on her. The petitioner gave a complaint, when respondent No.6 did not marry after having the sexual intercourse. The records also reveal that both of them went to local police station at Dharmastala. It is the allegation against the entire staff of the particular police station stating that the complainant was subjected to torture and assault by them. No doubt, the complainant was made to undergo medical examination for having subjected her for sexual harassment. The fact that she had been for medical examination at KIMS hospital itself is clear that she was subjected to assault and she had sustained injuries. The medical record, which has been produced before the Court as Annexure-F discloses the said fact. It is also important to note that cases are registered against respondent No.6 and also against the

complainant. It is to be noted that on perusal of the FIR, the case against the petitioner herein had been registered at the first instance and subsequently case has been registered against respondent No.6. The complainant was tortured and abused at the police station. In an ingenious method, the case has been registered at the first instance against the complainant, who suffered at the hands of respondent No.6. It clearly discloses that the local police have favoured respondent No.6, who is none other than the police officer.

40. It is also important to note that when the complaint has been received by the Investigating Officer, he was very much present in the police station. When the allegations are made against him that he has committed rape on her, respondent No.6 must have been arrested and produced before the Court. But he has not been arrested and no action has been taken against him. Instead, severe allegations are made against her, who was subjected for sexual act. When a heinous offence of rape has been alleged against respondent No.6, he was left

scot-free and also helped him in obtaining the anticipatory bail, which was taken after almost one month and till date, he has not been apprehended or arrested. The Investigating Officer, who conducted the investigation in this case has favoured respondent No.6. It is also clear that he discharged his duties on the behest of respondent No.6 and not discharged his duties when the victim lady was subjected to sexual act at the hands of respondent No.6. It is a classic example of how the police allow the accused person, who commits the heinous offence to go scot-free, instead of arresting him when he himself was available in the police station. The records also disclose that on 12.11.2020, 13.11.2020 and 14.11.2020, respondent No.6 and the petitioner herein were present within the limits of the jurisdiction of the police station and ultimately, she was brought to her parent's house at the surveillance of the police on 15.11.2020. Thereafter, she took medical treatment at KIMS hospital.

41. It is also important to note that though several representations are given from the cadre of Dy.SP to DGP

and when the victim lady had requested all the higher authorities, the accused was not arrested and no steps were taken except doing a postman job by sending the complaint to the District Superintendent of Police. The District Superintendent of Police, inspite of severe allegations being made against the local police, allowed the very local police to conduct the investigation in the matter. When the specific allegations are made against the Inspector, Sub Inspector and other staff, the District Superintendent of Police ought to have changed the Investigating Officer in order to conduct a fair investigation and the same has not been done. It is also important to note that the specific allegation is also against the Inspector-Mr.Pavan, who assaulted her when she was in the police station. Apart from him, the petitioner was also assaulted by a woman constable. These factors are evident from Annexure-F, which is the medical record of KIMS hospital that she was subjected to assault by the police.

42. It is also the specific allegations in the complaint that she was made to stay in the house of a woman constable Smt.Radha and all of them have conspired together in taking away her clothes, which contains the Sperm of respondent No.6 when she was subjected to sexual intercourse and also instructed her to take bath to destroy the medical evidence. It has to be noted that though the complaint was given to the Dy.S.P., Bantwal on 13.11.2020 itself, again she was called to the police station on 14.11.2020. The main allegation against the police personnel is that she was assaulted and she was forced to give statement before the Magistrate in the line of their convenience. It is also the allegation that she was dragged and thereafter, dropped to her house. When these allegations are made and when the document of the KIMS hospital shows that she was subjected to assault and threatened and when the same has been narrated by lodging complaint to the police including IGP and DGP, none of them have taken any action when a woman makes the complaint alleging the sexual abuse on her by the

police officer and causing torture, that too, in the police station. Instead of that they referred the complaint to the Superintendent of Police. As I have already pointed out, Superintendent of Police also conducted the investigation only by recording the statement of the persons, who were there in the police station but not changed the Investigating Officer. However comes to the conclusion that the complainant is having an habit of complaining against others. Merely because she has lodged the complaint against persons at whose instance she was subjected to harassment and also that she was subjected to sexual harassment by taking advantage of the loneliness of a woman, she cannot be branded as an habitual complainant. It is pertinent to note that when the petitioner was subjected to sexual harassment and she was assaulted, no medical evidence has been collected by the I.O. with regard to the assault and torture when the case was entrusted to the Police Inspector-Sandesh. Hence, it is clear that the Police Inspector was also hand in glove with accused, who has committed an heinous offence

of rape on a woman. Instead of conducting the thorough investigation, a report was filed stating that the laptop which was stolen is a 12 year old laptop. All the police machinery have come to the conclusion that she is having the bad character. Even assuming for a moment that she is having a bad character, whether the person, who is obligated to protect the people, could abuse his powers. Respondent No.6 had accompanied the complainant to Dharmastala and in Dharmastala, she was there in the police station for 3 days and managed all the affairs in the police station itself where he was present and no action was taken against the said person, though he had committed a serious offence. Merely because respondent No.6 is suspended, it cannot be said that a fair investigation has been conducted by the police.

43. It is also important to note that a request was also made to the Public Prosecutor for cancellation of the anticipatory bail granted in favour of the respondent No.6. It has to be noted that learned Judge also while considering the anticipatory bail comes to the conclusion

that there was no prima facie material against the accused. It appears that the police have stage managed in not producing the records before the learned Judge that she was subjected to sexual harassment. It is also not in dispute that as per the medical evidence, she was subjected to the sexual abuse. Though charge sheet is not filed, the report submitted by the learned HCGP is clear that they have collected the medical evidence and she was subjected to sexual harassment by respondent No.6. When such being the case and when she was subjected to medical examination, the concerned records must have been placed before the jurisdictional Court but the same has been withheld by not producing the same before the Court. Learned Judge ought to have taken note of the fact that the police officer has been indulged in committing the sexual harassment, that too, on a woman who approached the police seeking for a help and to investigate the matter, for having lost the laptop, by abusing the powers vested with him. These are the factors not taken note of by the

learned Judge while granting the anticipatory bail in favour of respondent No.6.

44. This Court would like to rely upon the judgment of the Apex Court in the case of ***Neeru Yadav v. State of Uttar Pradesh and Another*** reported in ***(2016) 15 SCC 422***, wherein the Apex Court in para No.11 held that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors, which is extracted hereunder:-

> *"11. It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge.*

45. This Court also would like to refer to the judgment of the Apex Court in the case of ***Mahipal v. Rajesh Kumar Alias Polia and Another*** reported in

(2020) 2 SCC 118, wherein the Apex Court in para Nos.16 and 17 discussed with regard to the powers vested with the Constitutional Courts and the same is extracted hereunder:-

> *"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 and 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. In Neeru Yadav v. State of U.P., the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held:*
>
> > *"12……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".

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 suffers from a non-application 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. The order of the High Court in the present case, insofar as it is relevant reads: (Rajesh Kumar Case, SCC OnLine Raj paras 2-4)

> *—2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.*
>
> *3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.*
>
> *4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail".*

46. Having perused the principles laid down in the judgment referred supra and when the powers are vested with the constitutional Courts and the victim was subjected to serious offence of sexual assault, that too, by a police officer, who abused his official powers and taken shelter after committing the offence and made used of the Police Department to suppress his acts and true facts and so also the police personnel, who are his friends/colleagues also assisted him in the serious offence of committing rape on her against her wishes and they did not come to the rescue of a woman, who was subjected to an heinous offence of sexual assault and when the true facts have been suppressed before the Court while obtaining an order of anticipatory bail, where also the Court failed to take note of the relevant factors which ought to have been taken into consideration while dealing with the application for bail, which has not been done and the Court also failed to take note of the fact that bail is founded on irrelevant considerations, indisputably, the Superior Court can set aside the order of grant of bail. Such a case belongs to a

different category and is in a separate realm. The Court also while exercising the discretionary powers under Section 438 of Cr.P.C. with regard to the heinous offence under Section 376 of IPC failed to take note of the fact that accused, who indulged in such an act, is the police officer. The Court, without dwelling upon the factual aspects of the case and also not taking note of the fact that the offence is committed by a police officer, exercised its discretion and granted bail, that too, an anticipatory bail in a case where the ingredients of the under Section 376 of IPC has been invoked against a police officer. Hence, I am of the opinion that it is a fit case where this Court can exercise the powers in setting aside the anticipatory bail granted by the Trial Court, which has been passed without looking into the relevant factors which ought to have been taken into consideration while dealing with the application for bail.

47. In the case on hand, when an heinous offence has been alleged against the police officer, learned Judge has taken the same in a casual manner and exercised the

discretion though the victim was subjected to the sexual harassment at the instance of respondent No.6, who is police officer. Hence, I am of the opinion that granting of anticipatory bail in favour of the accused requires to be set aside, forthwith.

48. It is also important to note that 164 statement of the victim was also recorded by the learned Magistrate and in the said statement also, she has reiterated that she was subjected to the sexual harassment by the police official. Having taken note of the entire material available on record, it is a classic case of how the Police Department functions when the complaint is lodged before them. From the level of Dy.S.P, Bantwal to DGP, the police officials handed over the case in a casual manner and like a postman sent the complaint to the District Superintendent of Police, who in turn, continued the very same Investigating Officer without changing him when the serious allegations are made against the Investigating Officer that he had hand-in-glove with the very accused, and allowed him to conduct the investigation.

49. Having considered the material available on record, I am of the opinion that it is a fit case to exercise the powers under Articles 226 and 227 of Constitution of India read with Section 482 of Cr.P.C. This Court has to come to the rescue of a woman, who was subjected to sexual harassment by the police officer when no steps are taken by the police officials from the lower level to the higher level, though the complaint is forwarded to the Home Minister as well as the Chief Minister. Merely because she lodged two complaints earlier against other persons, the same would not be a ground in coming to the conclusion that she is not having a good character and it cannot be said that no such incident of sexual harassment was taken place. The act of the police officials is nothing but allowing a person, that too, a police officer, who has committed a serious offence of sexual harassment to go scot-free. Except registering the case against the accused, the officers of the Police Department as stated supra helped the accused to escape from the clutches of law. The victim, who was subjected to all sorts of harassment

though made an attempt to get the electronic records in proof of subjecting her for torture, that too, in the police station, nothing could be procured. It is very clear that the police officials have helped a person, who is a culprit.

50. This Court also would like to refer to the judgment of the Apex Court in the case of ***Manohar Lal Sharma v. Principal Secretary and Others*** reported in ***AIR 2014 SC 666,*** wherein the Apex Court discussed that the powers to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The Courts ordinarily do not interfere in the matters of investigation by the police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the Court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper

use of the power or there is abuse of investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens.

51. This Court also would like to rely upon the judgment of the Apex Court in the case of ***P.Suganthi and Another v. V.Engamman and Ors*** reported in ***AIR 2011 SC 3010*** with regard to the inherent powers under Section 482 of Cr.P.C. and wherein it is held that order directing investigation by CBI – complaint of cheating against police officer – grievance of complainant was that investigation was not done by local police properly – Direction for CBI investigation given by Court under Section 482 and not under Article 226 of Constitution – not case where liberty of complainant was at stake – order for CBI investigation improper – High Court should have directed Superintendent of Police to entrust investigation to Senior Police Official.

52. Having perused the principles laid down in the judgments referred supra with regard to the relief sought for entrusting the matter to COD and in the case on hand, as this Court held above that though the investigation is conducted by the very same officer against whom the allegation has been made that he was hand-in-glove with accused and other staffs of the particular Police Station were having favourism at the behest of the accused suppressing the right of a woman, who was subjected to sexual assault. The specific allegation is made against the Investigating Officer, who conducted the investigation.

53. This Court has already pointed out that the District Superintendent of Police has also not taken any proper decision in changing the Investigating Officer and instead, allowed him to continue with the investigation inspite of making the allegations against the Inspector and other staffs of the particular police station. It is also to be noted that insofar as the report which has been furnished by the learned High Court Government Pleader is concerned, this Court is of the view that the report of

District Superintendent of Police is nothing but an eye wash and has recorded the statement of the persons, who were in the police station and indulged in helping the accused. As held by this Court supra, despite the accused was much available in the station for a period of three days after committing an heinous offence of rape on a woman, he was not arrested, which has also not been taken note of by the District Superintendent of Police. The very entrustment of the investigation into the matter and continuing the investigation by him would not amounts to a fair investigation. Hence, this Court finds a force in the contention of the petitioner seeking for an order to entrust the matter to an independent agency i.e., COD. Taking note of the factual aspects of the case, as allegation is against the police officer, investigation conducted by the police is also at the behest of the accused. If the investigation is continued by the same police, who favoured the report of the S.P., a fair investigation cannot be expected. The respondent is also directed to initiate the disciplinary proceedings against the Investigating

Officer and his sub-ordinates, who had indulged in subjecting the complainant for torture and screening the evidence and submit the report to this Court within three months.

54. In view of the discussion made above, I proceed to pass the following:-

ORDER

(i) The writ petition is hereby allowed.

(ii) The anticipatory bail granted in favour of respondent No.6 in C.Misc. No.674/2020 dated 19.12.2020 by VI Additional District and Sessions Judge, Dakshina Kannada, Mangaluru in Crime No.82/2020 for the offence punishable under Sections 323 and 376 of IPC is hereby quashed.

(iii) The Investigating Officer is directed to take the accused into custody and produce him before the concerned jurisdictional Court.

(iv) The prayer with regard to issue of a direction to respondent No.3 to refer the Crime No.82/2020 to COD is hereby allowed. The respondent is directed to entrust the

investigation to COD, forthwith and submit the final report not later than four months from the date of the order.

(v) The prayer with regard to issue of a direction to initiate action against the Inspector of Police – Mr.Sandesh and Mr.Pavan, the Sub-Inspector of Police and other sub-ordinates is hereby allowed and the District Superintendent of Police is directed to initiate action against the said police personnel for the lapse on their part as observed in the order and to submit report before this Court, within three months from today.

Sd/-
JUDGE

PYR