

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION No.7180/2025

BETWEEN :

SMT. BHAGYALAXMI
AGED 65 YEARS
SHIRALAKOPA TOWN
SHIKARIPURA, SHIVAMOGGA
KARNATAKA- 577 428

... PETITIONER

(BY SRI. ASHOK N. NAIK, ADVOCATE)

AND :

1. STATE OF KARNATAKA
BY SHIRALAKOPPA P.S
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001
2. KOTESHA @ KOTESHWARA
@ ELUKOTESHWARA
S/O DYAMAPPA
AGED ABOUT 41 YEARS
R/O CHANNAPURA VILLAGE

SORABA TALUK
PIN:577 429

... RESPONDENTS

(BY SRI. M.R. PATIL, HCGP FOR R1;
SRI. SYED AKBAR PASHA, ADVOCATE FOR
SRI. PARAMESWARAIAH D.C, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF THE Cr.P.C PRAYING TO SET ASIDE ORDER GRANTING BAIL DATED 20.03.2025 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, IN S.C.No.18/2023 FOR OFFENCE PUNISHABLE UNDER SECTIONS 504, 506, 448, 232, 302, 307, 326 OF I.P.C AND ACCUSED MAY BE DIRECTED TO SURRENDER BEFORE THE TRIAL COURT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.01.2026, THIS DAY, **SHIVASHANKAR AMARANNAVAR J**, DELIVERED THE FOLLOWING;

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CAV ORDER

1. This petition is filed by the defacto complainant under Section 439(2) of Cr.P.C. praying to cancel the bail granted by III Additional District and Sessions Judge, Shivamogga, by order dated 20.03.2025 passed in S.C. No.

18/2023 and direct the accused to surrender before the trial Court.

2. Heard learned counsel for petitioner – defacto complainant and learned counsel for respondent No. 2 – accused.

3. Learned counsel for petitioner – defacto complainant would contend that respondent No. 2 – accused was facing trial in S.C. No. 18/2023 on the file of III Additional District and Sessions Judge, Shivamogga, for offence under Sections 504, 506, 448, 323, 303, 307, 326 of IPC. Respondent No. 2 – accused was in judicial custody. Bail application came to be filed on 30.12.2024 by advancing the case. The bail application came to be filed when the trial was in progress and prosecution had already examined 4 witnesses as P.W.1 to P.W.4. On 05.03.2025, in the cross-examination of P.W.6 by the learned Public Prosecutor there was a suggestion that money had been offered to give false evidence and produced pen drive containing conversation.

The trial Court recorded the same in the order sheet of 05.03.2025 and referred the matter to the concerned CPI, Shiralkoppa Police Station along with the said pen driver for proper investigation and suitable action. Thereafter the matter came to be adjourned to 20.03.2025 for examination of C.W.11 to C.W.12 and passing of order on bail application of the accused. On 20.03.2025 when the said mater regarding inducing C.W.6 by offering money to give false evidence was pending consideration the trial Court has allowed the bail application and granted bail to respondent No. 2 – accused. The offence alleged against respondent No. 2 – accused is heinous offence punishable under Section 302 of IPC and also under Section 307 of IPC. The bail has been granted by cryptic order only on the ground that the Investigating Officer did not produce property seized along with the FSL report in time. As trial could not be commenced on time and also on the ground that material witnesses have already been examined and there is no reason that respondent No. 2 –

accused may tamper the prosecution witnesses. Respondent No. 2 – accused is in judicial custody for more than three years. Therefore, order passed by the trial Court is perverse, suffers from serious infirmities resulting in miscarriage of justice. The trial Court has ignored the relevant materials indicating prima facie involvement of respondent No. 2 – accused and taken into account irrelevant material, i.e., not furnishing the material objects and FSL report in time and respondent No. 2 – accused is in judicial custody for more than three years. Learned counsel for petitioner further submits that as the order has been passed by the Sessions Court, the petition seeking cancellation of bail before this Court is maintainable and on that point he placed reliance on the following decisions:

A. Puran Vs. Rambilas and another, 2001 (3) SC 860

B. Ansar Ahmad Vs. State of Uttar Pradesh and another,
2023 Supreme (SC)1236

C. State of Karnataka Vs. Sri. Darshan, 2025 Supreme (SC) 1201

On these grounds he prayed to allow the petition and cancel bail granted to respondent No. 2 – accused.

4. Learned counsel for respondent No. 2 – accused would contend that cancellation of bail can be sought only if the accused had violated any of the conditions imposed while granting bail and if there are allegations of tampering the prosecution witnesses and destroying of evidence. He placed reliance on the decision of a coordinate Bench of this Court in the case of ***Devibai, W/o Channappa Chinnarathod Vs. The State of Karnataka and another, Crl.P. No. 200940/2025*** decided on **24.06.2025**. He further contended that respondent No. 2 – accused was in judicial custody for more than 3 years and all material witnesses were examined. Delay in trial has been caused as the Investigating Officer had not produced the material objects and FSL report in time. Petitioner, if aggrieved by the order granting bail, has

to challenge the same under Section 482 of Cr.P.C. On these grounds he prayed to reject the petition.

5. Having heard learned counsel for the parties, this Court has perused the materials placed on record.

6. Respondent No. 2 – accused is facing trial in S.C. No. 18/2023 pending on the file of III Additional District and Sessions Judge, Shivamogga registered for offence under Sections 504, 506, 448, 323, 303, 307, 326 of IPC. As per chargesheet case of the prosecution is that on 27.08.2022, at about 10.40 am, when deceased Dayanand A.R. and C.W.2 were doing work in Passage Bar Lane, respondent No. 2 – accused saw the same and thought that if they were allowed to do the work they will not give money, took a knife kept on the table in front of Sri. Vijaya Stores, kept it hidden in pant pocket, at about 10.45 am entered the said Passage Bar Lane, quarreled with the deceased Dayanand and C.W.2, abused them, took out the knife kept in the pant pocket and assaulted with the same on left side chest of C.W.2 and on

left hand six times and when C.W.2 screamed, the deceased Dayanand came to rescue him and at that time respondent No. 2 – accused assaulted with the said knife on the stomach of deceased and pressed his neck with hand and pushed him to the ground. Said Dayanand was taken to hospital and the Doctor who examined him told that he was dead.

7. C.W.2 is the injured and eye witness to the incident. C.W.3 to C.W.5 are eye witnesses to the incident. Respondent No. 2 – accused was in judicial custody since 02.09.2022. Bail order has been passed on 20.03.2025.

8. Cancellation of bail has been sought on the ground that order passed by the Sessions Court is cryptic, perverse and pending consideration of the fact of inducing P.W.6 to give false evidence after receiving money and considering relevant material of delay in commencing the trial for non-production of material objects and FSL report. Whether the said grounds can be considered for cancellation of bail requires consideration.

9. The Hon'ble Apex Court in the case of ***Kanwar Singh Meena vs. State of Rajasthan and Another***, reported in **(2012) 12 SCC 180** has held as under:

10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair

trial. While cancelling the 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 the 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 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 the 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.

10. The Hon'ble Apex Court in the case of **Abdul Basit vs. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754** has held as under:

"14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety,

etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last mentioned case, one would expect very strong grounds indeed. (Raghubir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511 : 1987 Cri LJ 157].)

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] .

16. In Gurcharan Singh case [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short "the old Code") and elucidated the position of law vis-à-vis powers of the courts granting and cancelling the bail. This Court observed as under: (SCC pp. 123-24, para 16)

"16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498 Cr.P.C of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already

admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is

competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.”

(emphasis supplied)

17. In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Narendra K. Amin v. State of Gujarat [(2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124]

has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court."

11. The judgment relied on by learned counsel for petitioner in the case of ***Puran Vs. Rambilas*** reported in **(2001) 6 SCC 338** has been considered in the aforesaid judgment at paragraph No. 17.

12. Learned counsel for petitioner has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Ansar Ahmad vs. State of Uttar Pradesh and Another 2023 Supreme(SC) 1236*** has held as under:

"15. We are not at all impressed by the aforesaid submission of Mr.Basant as it is well settled position of law that cancellation of bail is not limited to the

occurrence of any supervening circumstances. In Ash Mohammad vs. Shivraj Singh @ Lalla Babu and Another. (2012) 9 SCC 446, this Court has observed that there is no defined universal rule that applies in every single case. Hence, it is not the law that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of an abuse of bail. The Court before whom the order of grant of bail is challenged is empowered to critically analyse the soundness of the bail order. The Court must be wary of a plea for cancellation of bail order vs. a plea challenging the order for grant of bail. Although on the face of it, both situations seem to be the same yet, the grounds of contention for both are completely different. Let's understand the different conditions in both the situations.

16. In an application for cancellation of bail, the court ordinarily looks for supervening circumstances as discussed above. Whereas in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. The illegality of due process is questioned on account of improper or arbitrary exercise of discretion by the court while granting bail. So, the crux of the matter is that once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if

there is any illegality in the order, or can apply for cancellation of bail if there is no illegality in the order but a question of misuse of bail by the accused. In Puran vs. Rambilas and Another, 2001 (6) SCC 338, this Court has observed "the concept of setting aside as unjustified, illegal or perverse order is totally different from the canceling an order of bail on the ground that the accused had mis-conducted himself, are because of some supervening circumstances warranting such cancellation."

13. Considering the above decisions this Court can cancel the bail granted to the accused if the order of grant of bail is perverse; the order granting bail suffers from serious infirmities resulting in miscarriage of justice; when irrelevant materials have been taken into consideration by the Court for granting bail.

14. The co-ordinate Bench of this Court in Devibai (supra) in the petition filed under Section 483(3) of BNSS seeking cancellation of bail has dismissed the said petition as not maintainable. The co-ordinate Bench has observed as under:

11. As a general rule, application seeking cancellation of the bail is to be filed before the Court, which granted bail, inasmuch as, it is that Court which is exclusive knowledge of facts for grant of bail or rejection thereof.

12. Even though concurrent powers vested in this Court along with the Special Court or the Sessions Court to grant or cancel the bail, the application seeking cancellation of bail shall not be construed as if it is an appeal over the order of grant of bail.

13. Scheme of the statute does not provide for such an eventuality. Even in BNSS, 2023, no such provision is carved out by the legislature so as to vest the power of either revision or appeal over the discretionary order of grant of bail.

14. Section 483(3) of BNSS, 2023 is retained in verbatim of Section 439(2) of Cr.P.C. If at all the legislature is of the opinion that even in case of a discretionary order, if no proper discretion is exercised by a Court, then such orders could also be subject matter of either revision or appeal, necessarily the legislature would have carved out such power in the higher Courts namely, the High Court as against the Sessions Court or the Special Court.

15. In the absence of any such power being vested in the higher Courts either under Section 483(3) of BNSS, 2023 or any other provision of BNSS, 2023 and no such power being carved out in the POCSO Act as well, this Court is of the considered opinion that bail once granted cannot be cancelled just for asking.

16. No doubt, if there is a grave and serious error that has been committed by the Court while granting the bail, same can be questioned under the supervisory power under Article 227 of the Constitution of India and by invoking inherent power of this Court under Section 482 of Cr.P.C.

17. Reserving such liberty for the petitioner/complainant, the present petition in the considered opinion of this Court is not maintainable.

15. The co-ordinate Bench has not considered the judgments of the Hon'ble Apex Court referred to supra. The said judgments of the Hon'ble Apex Court have not been cited before the co-ordinate Bench. Considering the judgments of the Hon'ble Apex Court, the petition filed under Section 439(2)/483(3) of BNSS is maintainable only on the grounds mentioned in para 13 supra.

16. The Sessions Court while granting bail to respondent No. 2 – accused has observed as under:

*"9. As could be seen from the records, the accused is in judicial custody from 02.09.2022. It cannot be disputed that the accused is allegedly involved in heinous offence namely the offence punishable under section 302 of IPC along with other penal provisions. Since the Investigating Officer did not produce the property seized in this matter along with FSL report, the trial could not be commenced on time. Finally the trial was commenced on 18.09.2024. This Court has already examined the material witnesses and now there is no reason that the accused may tamper the prosecution witnesses. The accused is in judicial custody from more than 3 years. The accused is said to be the permanent resident of Soraba and he has undertaken to abide by any condition that may be imposed by this Court at the time of granting bail and he is ready to offer surety to the satisfaction of this Court. Therefore, it is the considered view of this Court that bail may be granted to accused and the apprehension of the prosecution is that if the applicant is released on bail, he may abscond and tamper the prosecution witnesses. Such apprehensions could be meted out by imposing certain stringent conditions. With these observations, the point No.1 is answered in the **Affirmative.**"*

17. Considering the above aspect bail has been granted to respondent No. 2 – accused on the following grounds:

- a) Investigating officer did not produce property seized along with the FSL report and therefore trial could not be commenced on time and it commenced on 18.09.2024.
- b) Prosecution has already examined material witnesses and therefore there is no apprehension of respondent No. 2 – accused tampering the prosecution witnesses.
- c) Respondent No. 2 – accused is in judicial custody for more than three years.

18. C.W.1 –complainant, C.W.2 – injured, C.W.3 to C.W.5 are eye witnesses to the incident. Said witnesses are examined as P.W.1, P.W.2, P.W.6, P.W.4, P.W.3 respectively. Said witnesses are material witnesses and they are examined as on the date of grant of bail by the trial Court. In the chargesheet there are totally 31 witnesses and out of them,

the prosecution has already examined 12 witnesses. Remaining witnesses, C.W.13 to C.W.31 are formal, official witnesses and Investigating Officers.

19. Chargesheet itself indicate that respondent No. 2 – accused was arrested on 02.09.2022 and he was in judicial custody since then. Charge has been framed on 18.06.2024. The Investigating Officer has submitted FSL report on 23.07.2024 and on the same day itself the Court has issued summons to C.W.1 and C.W.2 and trial has commenced on 18.09.2024.

20. Considering the above aspects it cannot be said that bail has been granted by cryptic order or by taking into consideration irrelevant material.

21. Even though pen-drive has been produced regarding inducing P.W.6 to give false evidence by offering money, same is under consideration before the Investigating Officer as on the date of passing of the bail order by the Sessions Court. If anything is found by the report of the

Investigating Officer after examining the pen-drive the Court can suo motu take the matter regarding cancellation of bail granted or the defacto complainant can also make an application for cancellation of bail.

22. There are no allegations against respondent No. 2 – accused of he violating any conditions of bail.

23. Considering the above aspects there are no grounds made out for cancellation of bail as sought.

In the result, petition is dismissed.

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**

LRS