

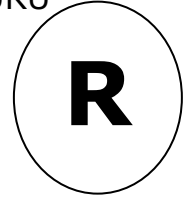
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

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

CRIMINAL PETITION NO.151/2024



BETWEEN:

SHABANA TAJ  
D/O PYARE JAN  
AGED ABOUT 27 YEARS  
R/AT NO.19, 2<sup>ND</sup> CROSS  
SRINIVAS NAIDU HOUSE  
LAKLSHMI SAGAR LAYOUT  
BEHIND BBMP OFFICE  
MAHADEVAPURA  
BANGALORE - 48.

... PETITIONER

(BY SRI RAGHAVENDRA GOWDA K., ADVOCATE FOR  
SRI MOHANKUMARA D., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA  
BY MAHADEVAPURA POLICE STATION  
REP. BY ITS STATE PUBLIC PROSECUTOR  
HIGH COURT COMPLEX  
BENGALURU - 560001
- 2 . FAKIRAPPA HATTI  
S/O MAHADEVAPPA HATTI  
AGED ABOUT 27 YEARS  
R/AT C/O MAHESHWARA'S HOUSE  
3<sup>RD</sup> CROSS, MAHESHWARI NAGAR  
MAHADEVAPURA, BANGALORE

NATIVE OF NEGINHAL  
VILLAGE AND POST  
BAILAHONGALA TALUK  
BELAGAVI DISTRICT – 591102.

... RESPONDENTS

(BY SRI K.NAGESHWARAPPA, HCGP FOR R1;  
SRI M.R.NANJUNDA GOWDA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.PC PRAYING TO CANCEL THE BAIL ORDER DATED 30.06.2023 PASSED IN FAVOUR OF RESPONDENT NO.2 IN CRL.MISC.NO.5631/2023 BY THE LEARNED LIII ADDITIONAL CITY CIVIL AND SESSIONS SPECIAL JUDGE, BENGALURU, FOR THE OFFENCES P/U/S.376, 417, 323 AND 506 OF IPC, REGISTERED BY THE RESPONDENT MAHADEVAPURA POLICE STATION IN CR.NO.80/2022.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.02.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

This petition is filed under Section 439(2) of Cr.P.C praying this Court to cancel the bail order dated 30.06.2023 passed in favour of respondent No.2 in Crl.Misc.No.5631/2023 by the LIII Additional City Civil and Session Special Judge, Bengaluru for the offences punishable under Section 376, 417, 323 and 506 of IPC

registered by the Mahadevapura Police Station in Cr.No.80/2022.

2. The factual matrix of the case of the petitioner before the Trial Court that she has filed a private complaint against respondent No.2 stating that respondent No.2 is working as a police constable in the very same police station i.e., Mahadevapura Police Station. He came in contact with the complainant in connection with the issue of vacating the premises and he has promised the victim that he would marry her and on that guise, respondent No.2 subjected the complainant for sexual act continuously from 2019 till February 2022. When respondent No.2 has not married the complainant, on 14.02.2022, she gave the complaint before respondent No.1-police station. It the case of the complainant that firstly, on 14.02.2022, she had approached the Police Inspector at Mahadevapura Police Station alleging cheating and subjecting her for sexual act by respondent No.2 from 2019 to 2022 and when the action

was not taken, the complainant had approached the Police Commissioner and when the Police Commissioner also failed to take any action against respondent No.2, once again she gave another complaint on 24.02.2022 before the Deputy Commissioner of Police, Bengaluru and on the said complaint also, action was not taken. Hence, without any other alternative, the complainant had approached the jurisdictional Court by filing a private complaint and the learned Magistrate referred the matter for investigation under Section 156(3) of Cr.P.C. Thereafter, respondent No.2 had approached the Sessions Court by filing a petition in CrI.Misc.No.3084/2022 under Section 438 of Cr.P.C and the Sessions Judge granted the anticipatory bail on 04.04.2022. The said order was challenged before this Court by the petitioner in CrI.P.No.4320/2022 and this Court in elaborate discussion, taking into note of the material available on record, cancelled the bail granted by the Trial Court vide order dated 01.07.2022.

3. It is also contended in the present petition that when this Court has cancelled the bail, respondent No.2 by suppressing the said fact, had filed the writ petition in W.P.No.13787/2022 before this Court under Section 482 of Cr.P.C seeking for quashing of FIR filed in Cr.No.80/2022 wherein he had obtained an order of stay on 25.07.2022. Thereafter, the complainant came on record and narrated all the material facts before this Court and accordingly, this Court vacated the stay order granted on 25.07.2022 vide order dated 15.03.2023 wherein an observation is made that by suppressing the order passed by this Court in CrI.P.No.4320/2022, he had obtained an order of stay of the investigation. The counsel also would vehemently contend that respondent No.2 had played fraud upon this Court by suppressing the material facts.

4. The counsel brought to notice of this Court that this Court vide order dated 15.03.2023 having noticed the

suppression of facts and playing fraud on the Court, vacated the interim order when the submission was made by the counsel for petitioner that respondent No.2 is absconding and also complainant counsel brought to notice of this Court that he has managed to evade arrest despite passage of four months. This Court held that it prima facie appears that the concerned have laid a protective umbrella to the petitioner, to evade such arrest, only because respondent No.2 belonged to the police department. Hence, directed to the Deputy Commissioner of Police of the jurisdiction to submit an explanation before this Court as to why respondent No.2 is not taken into custody despite the clear order of this Court that it should be implemented forthwith and the explanation shall be filed by the next date of hearing failing which, the Deputy Commissioner of Police of the jurisdiction shall be present before the Court. Thus, respondent No.2, immediately without any other alternative, surrendered before the Trial Court and filed

Crl.P.No.5631/2023 wherein, he obtained the bail order on 30.06.2023 again suppressing all these orders.

5. The counsel for the petitioner further submits that respondent No.2 had misled both the Trial Court as well as this Court by suppressing all the material facts thereby, respondent No.2 had not approached the Court with a clean hands. Respondent No.2 had played a fraud on the Trial Court as well as this Court and he has committed an offence of fraud and he had obtained the various orders only by narrating the limited and favourable points to him. It is also contended that respondent No.2 was using the petitioner like a slave and sex machine to satisfy his sexual desire and also he was harassing the petitioner both mentally and physically since he is a police constable by misusing his powers. The petitioner is a poor lady and by taking advantage of the same, respondent No.2 forced her to consume the abortion tablets by tying her with ropes and the petitioner is in fear of death as

respondent No.2 has been enlarged on bail and the said order also obtained by suppressing the facts which have been taken place before this High Court. There are many chances that respondent No.2 might threaten the petitioner to withdraw the case as the similar circumstances had taken place earlier. The Court has to take note of the conduct of respondent No.2 and hence, it requires interference of this Court invoking Section 439(2) of Cr.P.C.

6. The counsel in support of his arguments relied upon the additional documents i.e., the orders passed by this Court on 25.07.2022, 15.03.2023 and also on 16.06.2023. The counsel also relied upon the judgment of the Apex Court passed in **CRIMINAL APPEAL NOL.303/2024 DATED 19.01.2024** in the case of **KUSHA DURUKA vs THE STATE OF ODISHA** wherein the Apex Court held that similar circumstances of fraud played on the Court in obtaining an order before the High Court inspite of the bail application was pending before the Apex



Court. The counsel referring this judgment would vehemently contend that in this judgment, the Apex Court discussed several judgments reported in **(2008) 12 SCC 481** in the case of **K.D.SHARMA vs STEEL AUTHORITY OF INDIA LIMITED AND OTHERS**; **(2010)2 SCC 114** in the case of **DALIP SINGH vs STATE OF UTTAR PRADESH AND OTHERS**; **(2013) 9 SCC 199** in the case of **MOTI LAL SONGARA vs PREM PRAKASH @ PAPPU AND ANOTHER** and **SPECIAL LEAVE PETITION (CRIMINAL) No.4876/2022 DT.24.08.2023** in the case of **PRADIP SAHU vs THE STATE OF ASSAM** and brought to notice of this Court to the discussions made in the aforesaid judgments.

7. Per contra, the learned counsel appearing for respondent No.2 has filed statement of objections before this Court contending that the police have investigated the matter and filed the charge sheet and during the investigation, the petitioner has approached the Court

invoking Section 438 of Cr.P.C and the complainant being aggrieved by the order of granting anticipatory bail, filed petition in Crl.P.No.4320/2022 before this Court and obtained the order of cancellation of bail. It is also contended that respondent No.2 surrendered before the Mahadevapura police and he was remanded to judicial custody and thereafter he had filed Crl.Misc.P.5631/2023 and the same was allowed and well reasoned order has been passed. He has not terrorized or threatened any of the prosecution witnesses in any manner and he is regularly appearing before the Court. However, he admits that he had filed W.P.No.13787/2022 for quashing of the proceedings and stay was granted but not extended the interim order, hence, he withdrawn the writ petition on 26.09.2023. It is also contended that present petition is filed with a malafide intention and unless any witnesses are threatened, there cannot be any cancellation of bail and it does not requires any interference and he undertakes to

appear before the Trial Court and if any other conditions that this Court imposes, he is ready to abide by the said conditions. It is also his case that he has already filed an application for discharge under Section 227 of Cr.P.C and after filing of the said application only she has chosen to file the present petition and hence, it does not requires any interference by exercising the powers under Section 439(2) of Cr.P.C.

8. The counsel for respondent No.2 in support of his arguments, relied upon the judgment of the Apex Court reported in **2023 LIVELAW (SC) 587** in the case of **ASHOK KUMAR vs NEW INDIA ASSURANCE CO. LTD.,** wherein it is held that only on the fault of advocate, the complainant cannot be made to suffer. Finally, the dismissal of the complaint was made by the National Commission under the wrong pretext that the earlier complaint had challenged the order of repudiation. Thus, the complaint cannot be thrown out on the threshold of

Order XXII Rule (1)(4) of CPC and in the peculiar facts, it requires consideration on merits.

9. The counsel also relied upon the judgment of reported in **AIR ONLINE 2022 KAR 205** in the case of **RAVI KUMAR vs STATE** wherein this Court held that subsequent to passing of order granting anticipatory bail, no complaint is filed by complainant alleging violation of bail conditions by accused persons either for tampering prosecution witnesses or for any similar offences. No material placed to invoke Section 439(2) of Cr.P.C. In the absence of any violation of bail conditions, anticipatory bail is not liable to be cancelled.

10. The counsel also relied upon the judgment reported in **2020 CRL.L.J 1457** in the case of **MYAKALA DHARMARAJAM AND OTHERS vs STATE OF TELANGANA AND ANOTHER** wherein it is held that no mention about which accused out of 15 indulged in acts of

holding out threats to witnesses or made attempt to tamper with evidence, order canceling bail, unjustified.

11. The counsel also relied upon the judgment reported in **AIR 2018 SC 2466** in the case of **MS. X vs STATE OF TELANGANA** wherein the Apex Court held that bail once granted cannot be cancelled unless cogent case, based on supervening event made out of such nature as would warrant cancellation of bail which was granted by the High Court. Moreover, no supervening circumstances have been made out to warrant cancellation of bail.

12. The counsel for respondent No.2 referring aforesaid judgments would vehemently contend that in the case on hand, the petitioner has not made out the case to invoke Section 439(2) of Cr.P.C. However, he did not dispute the fact of suppression made before this Court in Crl.P.No.4320/2022 and also the subsequent orders passed in W.P.No.13787/2022 with regard to the orders passed by

this Court as well as before the Trial Court in Crl.Misc.Nos.3084/2022 and 5631/2023 which respondent No.2 had filed.

13. Having heard the learned counsel appearing for the respective parties and in keeping the principles laid down in the judgments referred supra, the points that would arise for the consideration of this Court are:

1. Whether the Trial Court committed an error in granting the bail in Crl.Misc.No.5631/2023 and it requires cancellation of bail invoking Section 439(2) of Cr.P.C?
2. What order?

**Point No.1:**

14. Having heard the learned counsel appearing for the respective parties, this Court would like to refer some of the facts which are not in dispute. It is not disputed that a

complaint was filed by the petitioner before the Magistrate Court and also the matter was referred for investigation under Section 156(3) of Cr.P.C and FIR is also registered and immediately after registration of FIR, respondent No.2 had approached the City Civil and Sessions Special Judge by filing CrI.Misc.No.3084/2022. It is important to note that in the private complaint, the specific allegation made that respondent No.2 is working in the very same police station as constable where complaint was lodged and when the complaint was given making allegation against respondent No.2 that he had subjected her for sexual act forcibly and thereafter continued to have the sexual intercourse from 2019 to 2022 under the guise of marriage but he did not marry her, thus, a complaint was given to the concerned police on 14.02.2022. Thereafter, the complainant approached the Commissioner of Police, but no action was taken by them and once again one more complaint was given to the Deputy Commissioner of Police

on 24.02.2022, on that complaint also, no action was taken. Thereafter, the petitioner filed a private complaint before the Trial Court and the Trial Court taking into note of the offences alleged against respondent No.2, case was referred for investigation.

15. It is also not in dispute that an anticipatory bail was granted in favour of respondent No.2 by the Trial Court in Crl.Misc.No.3084/2022 and the same was challenged before this Court in Crl.P.No.4320/2022 by the petitioner and this Court vide order dated 01.07.2022, cancelled the anticipatory bail observing that the Trial Court has not discussed anything about the accusation made against respondent No.2. This Court has directed the concerned to take respondent No.2 to the custody forthwith. Respondent No.2 suppressing the order of cancellation of bail, had approached this Court by filing a writ petition in W.P.No.13787/2022. The cancellation of bail order was passed on 01.07.2022 and immediately within a span of 7



days, he had filed a writ petition and by suppressing the fact of cancellation of bail, he had obtained an order of stay on 25.07.2022. It is not in dispute that in the said writ petition also not stated anything about the order passed by this Court in Crl.P.No.4320/2022. The counsel for respondent No.2 also not disputes the said fact.

16. It is also important to note that the counsel for the petitioner has produced the copy of the order passed by this Court in the writ petition. When this Court noticed that said order is obtained by suppressing the order passed by the co-ordinate Bench in Crl.P.No.4320/2022 on 01.07.2022, declined to extent the interim order and the same was vacated vide order dated 15.03.2023 and the case was posted for final arguments on 05.04.2023. When the case come up before this Court, this Court also noted that on 15.03.2023 when the co-ordinate Bench noticed that respondent No.2 had misled the Court by suppressing the fact that he has suffered an order in

Crl.P.No.4320/2022 wherein bail was cancelled, vacated an interim order granted on 25.07.2022. This Court also observed that in view of vacating of interim order, the order passed by this Court to take respondent nfo.2 into custody would get revived and respondent No.2 has to be taken into custody forthwith. The counsel for the complainant also made the submission that respondent No.2 is absconded and managed to evade arrest despite passage of four months. This Court formed an opinion that prima facie it appears that the concerned have laid a protective umbrella to the petitioner to evade such arrest, only because respondent No.2 belongs to the police department. Hence, this Court directed the Deputy Commissioner of Police of the concerned jurisdiction to submit an explanation before this Court as to why respondent No.2 is not taken into custody despite the clear order of this Court and that it should be implemented forthwith. The explanation is also sought and made it clear that if explanation is not filed the

Deputy Commissioner of Police of the jurisdiction shall be present before the Court.

17. When this Court ordered to list the matter on 05.07.2023, immediately, the petitioner even suppressing the order passed by this Court on 15.03.2023 and also the order dated 16.06.2023, surrendered before the Trial Court and filed the Crl.Misc.No.5631/2023 and obtained the bail order without disclosing the said fact. When the same was addressed to this Court, this Court had summoned the records of the Trial Court in Crl.Misc.No.5631/2023. Having perused the bail petition it discloses that nowhere the petitioner has given any details of the order passed by this Court in Crl.P.No.4320/2022 and with an ingenious method, a mention is made in paragraph 6 that earlier anticipatory bail was granted in Crl.Misc.No.3084/2022 and thereafter, the same is set aside by the High Court and not mentioned the details of order passed by this Court in Crl.P.No.4320/2022 except mentioning the same that

anticipatory bail was cancelled and not stated anything about filing of writ petition before the High Court and obtaining of stay order in the said writ petition. Even not produced any documents of cancellation of order passed by this Court in CrI.P.No.4320/2022 and also the order passed by this Court in W.P.No.13787/2022 vacating of stay order on 15.03.2023 and also the order passed by this Court on 16.06.2023 wherein direction given to the Deputy Commissioner of Police to take respondent No.2 to the custody forthwith and held that, it prima facie appears that concerned have laid a protective umbrella to the petitioner, to evade such arrest only because respondent No.2 belongs to police department and also explanation is also called for and also directed to take him to the custody failing which, Deputy Commissioner of Police shall be present before the Court. In order to avoid explanation called against the Deputy Commissioner, respondent No.2 surrendered and also suppressed all these orders before the Trial Court and

once again obtained bail order by suppressing the same repeatedly.

18. It is also important to note that when this Court had summoned the records from the Trial Court it discloses that Public Prosecutor has filed statement of objections in Crl.Misc.No.5631/2023 except stating the factual aspects of the case. Even Public Prosecutor did not bring it to the notice of the Trial Court with regard to cancellation of earlier anticipatory bail by this Court and also filing of writ petition and obtaining an order suppressing the material facts before this Court and hence, the Trial Court proceeded to pass an order of granting bail and suppression was made by both the end i.e., respondent No.2 herein and also by the prosecution.

19. Having taken note of all these aspects into consideration, it is very clear that respondent No.2 had suppressed the order passed by this Court in

Crl.P.No.4320/2022 canceling of anticipatory bail and except mentioning the same in an ingenious method that the same was cancelled and no details are given in Crl.Misc.No.5631/2023 of order passed in Crl.P.No.4320/2022. Apart from that when this Court cancelled the bail on 01.07.2022, immediately on 07.07.2022, approached the High Court by filing the writ petition invoking Section 482 of Cr.P.C. It has to be noted that while seeking the relief of quashing of proceedings, respondent No.2 has to disclose all the aspects but suppressed. Hence, respondent No.2 has abused the process while invoking of Section 482 of Cr.P.C by suppressing the order passed by this Court in Crl.P.No.4320/2022 that is cancellation of bail passed against him and obtained the stay order in the said writ petition filed under Section 482 of Cr.P.C.

20. The Court has to take note of the very conduct of respondent No.2. When this Court had noticed the same

in the writ petition, the interim order granted was vacated on 15.03.2023 and also this Court in the further order on 16.06.2023 directed the Deputy Commissioner to take him to the custody and also taken note of the protection given to respondent No.2 since he belongs to the police department who is working as a constable in the very same police station in which the complaint was lodged by the complainant and same was not entertained. Thereafter, without any other alternative, the complainant approached the Trial Court by filing a private complaint. These are the facts which have been suppressed by respondent No.2. Not only he had suppressed the order of cancellation of bail before this Court while filing the writ petition and even while filing of regular bail before the Trial Court also, the order passed by this Court in W.P.No.13787/2022 on two different dates i.e., 15.03.2023 and 16.06.2023 also suppressed and nothing is averred in the bail petition with regard to having approached this Court by filing writ

petition invoking Section 482 of Cr.P.C., and also vacating of stay order.

21. No doubt, the Trial Court has granted the bail having considered the pleadings of the bail petition of respondent No.2 since both the learned Public Prosecutor and also the Trial Court has not noticed anything since there was no any pleading about the aforesaid facts. Though in the petition, it is mentioned in an ingenious method that bail was cancelled, Trial Court has not ventured to verify the same but proceeded to grant the bail in favour of respondent No.2. The Trial Court also even did not see anything about the order passed by this Court even though in an ingenious method, a reference was made with regard to cancellation of bail and not insisted respondent No.2 to place the said order before the Court and without looking into the order passed by this Court, the Trial Court granted bail in favour of respondent No.2 who suppressed all these material facts.



22. The learned counsel appearing for respondent No.2 also relies upon the judgments in support of his case wherein in the case of **Ms.X** referred supra, the Apex Court held that once bail granted, cannot be cancelled unless cogent case, based on supervening event made out and no dispute with regard to the principles laid down in the said judgment and so also in the case of **Myakala Dharmarajam's** case referred supra, the Apex Court held that when there is no material about the threats to witnesses or made attempt to tamper with evidence, question of invoking Section 439(2) of Cr.P.C does not arise. No doubt, this Court also when the anticipatory bail was sought to be cancelled, made an observation that in the absence of any violation of bail conditions, the same can be cancelled. However, this Court has to take note of the material available on record. But in the present case, I have already pointed out that there was suppression of facts by respondent No.2 in getting the bail order and not

the case of threat to witnesses and it is a case of fraud on the Court.

23. The counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **Kushal Duruka** (referred supra) wherein it is held that it has to be noted that each case has to be considered depending on the facts and circumstances of the case. The Apex Court in the said judgment, also referred the judgment reported in **(1995) 1 SCC 421** in the case of **CHANDRA SHASHI vs ANIL KUMAR VERMA** wherein in paragraph 1 it is held that the stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. This Court also would like to refer paragraph 2 of the said judgment wherein it is observed

that anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. In paragraph 14 also it is observed by the Apex Court that the legal position thus is that if the publication be with intent to deceive the Court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice.

24. This Court also would like to rely on the decision of the Apex Court in the case of **K.D.Sharma** referred supra wherein the Apex Court in paragraph 39 of the said judgment held that:

**39.** If the primary object as highlighted in *Kensington Income Tax Commrs., [(1917) 1*

**KB 486 : 86 LJKB 257 : 116 LT 136 (CA)]** is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

25. This Court also would like to rely on the decision of the Apex Court in the case of **Dalip Singh** referred supra

wherein the Apex Court in paragraph 2 of the said judgment held that:

**2.** In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

26. This Court also would like to rely on the decision of the Apex Court in the case of **Moti Lal Songara** referred supra wherein the Apex Court in paragraphs 19 and 20 of the said judgment held that:

**19.** The second limb of the submission is whether in the obtaining factual matrix, the

order passed by the High Court discharging the respondent-accused is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ

large. In fact, he has shown his courage of ignorance and tried to play possum.

- 20.** The High Court, as we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”

27. This Court also in **ILR 2022 KAR 3625** in the case of **SRI NANJAPPA vs STATE BY CHIKKAJALA POLICE STATION** dealt with the similar circumstances when the fraud was played on the Court. In the said judgment, this Court referred the judgment of the Apex Court in the case of **KISHORE SAMRITE vs STATE OF UTTAR PRADESH AND OTHERS** reported in **(2013) 2 SCC 398** wherein the Apex Court in paragraph 32 held with regard to practice and procedure, abuse of process of Court/law/fraud on the Court. The principles governing the

obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment. This Court would like to refer paragraph 8 of the said judgment which reads as follows:

**8.** The Apex Court in the case of *Kishore Samrite v. State of Uttar Pradesh* [(2013) 2 SCC 398] held in paragraph 32 with regard to practice and procedure, abuse of process of Court/law/fraud on the Court. The principles governing the obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment. The Apex Court held that the cases of abuse of process of Court and such allied matters have been arising before the Courts consistently. It is observed that this Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the Court for redressal of any grievance and the consequences of abuse of process of Court. We may recapitulate and state some of the principles. It is difficult to state such principles



exhaustively and with such accuracy that would uniformly apply to a variety of case. These are:

*32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.*

*32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.*

*32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.*

32.4. *Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.*

32.5. *A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.*

32.6. *The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.*

32.7. *Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream*

*of justice should not be allowed to be polluted by unscrupulous litigants.*

*32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it.*

28. This Court also taken note of the judgment of the Apex Court reported in **(2014) 8 SCC 470** in the case of **SUBRATA ROY SAHARA vs UNION OF INDIA AND OTHERS** wherein the Apex Court held that calculated psychological offensives and mind games adopted by Counsel to seeks recusal of Judges, held, need to be strongly repulsed (as done herein) such tactics deprecated and similar approach commended to other Courts when

they experience such behaviour, held, any act of bench-hunting or bench-hopping or bench-avoiding cannot be allowed, Judge not to rescue himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement. Further held, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs. Hence, even in the face of calculated psychological offensives and mind games as adopted by Counsel in the present case, oath of office of Judge, to decide every case without fear or favour, requires the Judge concerned to press on with the hearing of the matter and bear the burnt of rhetoric of the Counsel or party seeking to dissuade him/her from hearing the matter.

29. This Court also taken note of the judgment of the Apex Court reported in **(2016) 3 SCC 70** in the case of **SCIEMED OVERSEAS INC. vs BOC INDIAN LIMITED AND OTHERS** wherein the Apex Court observed with

regard to imposition of exemplary costs filing of false or misleading affidavit, imposition of cost fully justified of Rs.10 lakh on petitioner for filing a false or misleading affidavit in Court and also observed that there is no reason to interfere with the impugned judgment and time granted to the petitioner to make deposit of costs.

30. While disposing of the said petition, this Court even given direction to the concerned Director of Prosecution of the State to instruct the Public Prosecutor of the State that they are duty bound to supply necessary information to the concerned Court regarding pendency or decision of an earlier bail application of the accused in the same offence after taking information from the concerned IO/Police official. In spite of the said direction, in the case on hand also, prosecution department fails to provide necessary information to the concerned Court with regard to the suppression of material facts i.e., the order passed by this Court in CrI.P.No.4320/2022 so also in

W.P.No.13787/2022 and the same has resulted in obtaining the bail order by respondent No.2. The prosecution department also not properly bring it to the Trial Court notice of earlier proceedings except filing a formal statement of objections which leads exercising of the discretion in favour of respondent No.2.

31. This Court taken note of the judgment of the Apex Court in the case of **Kishore Samrite** referred supra wherein the Apex Court held with regard to the practice and procedure, abuse of process of Court/law/fraud on the Court. The principles governing the obligations of a litigant while approaching the Court and the consequences of abuse of process enumerated in this judgment and also the Court has to take note of the fact that the cases of abuse of process of Court and such allied matters have been arising before the Courts consistently and also an observation is made that this Court has many occasions where it dealt with the cases of this kind and it has clearly stated the

principles that would govern the obligations of a litigant while approaching the Court for redressal of any grievance and the consequences of abuse of process of Court. This Court also would like to extract the observations made by the Apex Court in the said judgment in paragraphs 32.4, 32.5 and 32.6 which reads as follows:

*32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.*

*32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.*

*32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would*

*be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.*

32. This Court also would like to rely on the decision of the Apex Court in the case of **Sciemed Overseas Inc.**, referred supra wherein the Apex Court observed with regard to imposition of exemplary costs filing of false or misleading affidavit, imposition of cost fully justified of Rs.10 lakh on petitioner for filing a false or misleading affidavit in Court and also observed that there is no reason to interfere with the impugned judgment and time granted to the petitioner to make deposit of costs.

33. Having taken note of all these materials available on record and also the principles laid down in the judgments referred supra, it discloses that respondent No.2 had obtained the bail order by suppressing the material



facts before the Trial Court. If the said material facts brought to notice of the Trial Court while exercising the discretion, then the result would be otherwise. In **MOTI LAL SONGARA's** case referred supra, the Apex Court clearly made that order obtained by suppression of facts and it is an obligation of the Court to set aside the order. If any order is obtained by suppressing the fact, respondent cannot be allowed to take advantage of the order setting aside cognizance and get order framing charge quashed. It is also held that victim of offence has as much right to get justice as accused, Court to do complete justice restored order framing charges and directed trial to go on. In the aforesaid case, by suppressing material facts, order was obtained and in the case on hand also material aspects have been suppressed by respondent No.2. Hence, the conduct of respondent No.2 has to be taken note of by this Court. Having considered the principles laid down in the judgments referred supra, this Court has to take note of the

events which are relevant to make mention herein. The relevant dates and events are mentioned in a tabular column as follows:

<b>Date</b>	<b>Particulars of events</b>
01.07.2022	This Court in Crl.P.No.4320/2022, set aside the order dated 04.04.2022 passed in Crl.Misc.No.3084/2022 and cancelled the anticipatory bail.
07.07.2022	Respondent No.2 has filed W.P.No.13787/2022 i.e., within a span of 7 days invoking Section 482 of Cr.P.C by suppressing the order passed by this Court in Crl.P.No.4320/2022.
25.07.2022	Respondent No.2 obtained an order of stay in respect of the investigation under Cr.No.80/2022 in W.P.No.13787/2022 by suppressing the order passed by this Court in Crl.P.No.4320/2022.
15.03.2022	This Court having noticed the suppression of material facts i.e., the order passed by this Court in Crl.P.No.4320/2022, vacated the stay granted observing that the said order of stay

	was obtained by misrepresentation of facts.
16.06.2023	This Court in the W.P.No.13787/2022 taking note of revival of the earlier order of cancellation of bail and non-implementation of direction given by this Court to take respondent No.2 into custody, an explanation is sought from the Deputy Commissioner of Police within one week since they have provided a protection to respondent No.2 as he belongs to the police department and also directed the Deputy commissioner of Police to present before the Court if he fails to give explanation as sought by this Court.
17.06.2023	Respondent No.2 clandestinely surrendered before the Trial Court in order to prevent the implementation of direction given by this Court in W.P.No.13787/2022 on the part of the Deputy Commissioner of Police where there was a clear direction to the Deputy Commissioner of Police to present before the Court if he fails to take into custody of respondent No.2
30.06.2023	Respondent No.2 obtained regular bail by the Trial Court in CrI.Misc.No.5631/2023 by

	playing fraud and suppressing the orders passed by this Court on 15.03.2022 and 16.06.2023.
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34. Having considered these events it is clear that it is nothing but fraud on the Court and respondent No.2 also gone to the extent of by hook or crook, he has to get a relief to avoid the order passed by this Court in CrI.P.No.4320/2022 and order passed in W.P.No.13787/2022 dated 16.06.2023, he had indulged in committing fraud on the Court suppressing the order passed by this Court in CrI.P.No.4320/2022, again approached this Court by filing writ petition under Section 482 of Cr.P.C in W.P.No.13787/2022 wherein also at the first instance he had obtained an order of stay suppressing the truth and after noticing the same, this Court in writ petition vacated the stay order and directed the Deputy Commissioner of Police to take respondent No.2 to custody and thereafter, respondent No.2 clandestinely surrendered

before the Trial Court and obtained an order of regular bail by once again suppressing the orders of this Court passed on 15.03.2023 as well as on 16.06.2023. Hence, it is clear that it is nothing but a fraud on the Court and he had gone to the extent of indulging in these acts that too being a police constable which is the department of maintaining of law and order. When this Court comes to the conclusion that respondent No.2 obtained the orders by playing fraud and he had indulged in such acts, it is necessary to curb the conduct of this type of litigant committing fraud on the Court and interfering with the administration of justice and the same has to be curbed with iron hand and also to be dealt with by imposing heavy cost when respondent No.2 gone to the extent of polluting the stream of justice which come in the way of administration of justice. It is also appropriate to direct the Registrar General to file a complaint before the jurisdictional police narrating all these facts by himself or authorizing a person to file a complaint

before the Vidhana Soudha police and the matter has to be probed since on this Court as well as on the Trial Court, respondent No.2 has committed fraud which comes within the limits of Vidhana Soudha police station.

35. Now, coming to the merits of the case wherein it is alleged that respondent No.2 has committed the offences punishable under Sections 376, 417, 323 and 506 of IPC and also had sexual intercourse continuously with the petitioner on the promise of marriage but he failed to marry the petitioner and threatened her under the roof of police powers and police department also protected him without complying with the directions given by this Court in Crl.P.No.4320/2022 and the Deputy Commissioner of Police also did not comply with the order passed by this Court in W.P.No.13787/2022 which clearly shows an abuse of process and playing of fraud on the Court in obtaining favourable order in his favour and getting an order by different forums by suppressing the material facts which

leads to the extent of polluting the stream of justice which came in the way of administration of justice as held in the judgment referred supra. The conduct of respondent No.2 also not brought to notice of the Trial Court even by the department of Prosecution though this Court in **Nanjappa's** case referred supra has given direction to the concerned Director of Prosecution of the State to instruct the Public Prosecutor of the State that they are duty bound to supply necessary information to the concerned Court regarding pendency or decision of an earlier bail application of the accused in the same offence after taking information from the concerned IO/Police official. In the case on hand, the IO also suppressed the same before the Trial Court and indirectly helped respondent No.2 in getting the impugned order only for the reason that respondent No.2 belongs to the police department. Thus, the impugned order dated 30.06.2023 passed in CrI.Misc.No.5631/2023 is liable to be set aside. Hence, it is a fit case to exercise the powers

under Section 439(2) of Cr.P.C to cancel the bail. Thus, point No.1 is answered accordingly.

**Point No.2:**

36. In view of the discussions made above, I pass the following:

**ORDER**

- i. The petition filed under Section 439(2) of Cr.P.C. is allowed.
- ii. The impugned order dated 30.06.2023 passed in CrI.Mis.No.5631/2023 is set aside and the Deputy Commissioner of Police of the concerned jurisdiction is directed to take respondent No.2 to custody and subject him for trial.
- iii. Respondent No.2 is directed to pay cost of Rs.1,00,000/- to the Karnataka State Legal Services Authority within a period of two weeks. If the cost is not paid within a period of two weeks, registry is directed to recover the same in accordance with law.



- iv. The Director of Prosecution of the State shall instruct the Public Prosecutor of the State that they are duty bound to supply necessary information to the concerned Court regarding pendency or decision of an earlier bail application as well as the order passed under Section 482 of Cr.P.C to the concerned Court before exercising the discretion to avoid polluting the stream of justice by unscrupulous litigants in view of the direction given by this Court in the judgment reported in **ILR 2022 KAR 3625** by issuing circular/memo.
- v. The Registrar General is directed to file a complaint by himself or authorizing a person to file complaint with the Vidhana Soudha police station against respondent No.2 to investigate the matter with regard to the fraud played by respondent No.2 on this Court as well as on the Trial Court in getting the bail order as well as order in W.P.No.13787/2022 as observed in the order.

- vi. The Registrar General is directed to send a copy of this order to the concerned Presiding Officer and keep the order in his service record since inspite of a reference was made in the bail application about cancellation of bail order, he did not look into the order passed by this Court with regard to cancellation of bail of respondent No.2 and proceeded to grant the bail without referring the same.

**Sd/-  
JUDGE**

SN