

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No.1309 OF 2018
(Arising out of SLP (Crl.) No. 4887 of 2018)**

SANGITABEN SHAILESHBHAI DATANTA Appellant(s)

VERSUS

THE STATE OF GUJARAT & ANR. Respondent(s)

ORDER

Leave Granted.

2. This appeal by special leave is directed against the order passed by the High Court of Gujarat at Ahmadabad in Criminal Misc. Application No. 5391 of 2018 for the offences punishable under Sections 376(2)(f) and 376(2)(i) of the Indian Penal Code, 1860 and also for the offences under Sections 4, 5(c)(f)(m), 6, 8, 9(c)(f)(m) and 10 of the Protection of Children from Sexual Offences Act, 2012 by which the High Court granted bail to the accused (hereinafter referred to as “**Respondent No. 2**”).

3. It is not required to go into the details of the instant case. However, we find it pertinent to mention brief facts, which are as follows. On 16.09.2017, an FIR, C.R. No. 113/17 was lodged at Shahpur Police Station, Ahmadabad City against respondent no. 2, under Sections 376(2)(f) and 376(2)(i) of the IPC and Sections 4, 5(c)(f)(m), 6, 8, 9(c)(f)(m) and 10 of the POCSO Act, by the Appellant, who is

grandmother of the “*victim*”. The victim herein is a minor, aged around 7 years.

4. Respondent No. 2 was apprehended thereafter and Charge-Sheet was filed on 05.12.2017 for the offence mentioned in the FIR. Therein, respondent no. 2 approached the High Court for bail and the same was granted.

5. The Ld. counsel for the appellant as well as the State have brought to our notice that the present order of the High Court is in clear violation of the settled principles of criminal law jurisprudence and statutory prescriptions. It was also contended that, while considering the bail application, the High Court traversed the settled principles of law. The Ld. Counsel for appellant has brought to our notice that the High Court directed accused-respondent no. 2 as well as the appellant, who is grandmother of the victim along with parents of the victim to undergo scientific tests *viz.*, *lie detector*, *brain mapping* and *Narco-Analysis*. After receiving the reports of the same, it examined the same before enlarging respondent no. 2 on bail *vide* impugned order dated 27.04.2018. Further, it is also brought to our notice that the Ld. Judge has throughout the course of his order disclosed the identity of the “*victim*”.

6. Counsel for respondent no. 2 has contended that the respondent has already been enlarged on bail by the High Court, and

thus, seeks non-interference by this Court.

7. Having heard the counsels for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein Court takes into consideration, *inter alia*, 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. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, 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, or rather order specific tests as done in the present case.

8. In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini-trial indeed. This assumption of function of a trial court by the

High Court is deprecated.

9. Apart from the above, the High Court stands in clear violation of the precedents of this Hon'ble Court and statutory prescriptions, by disclosing the name of the “*victim*” throughout the impugned order. At this juncture, we would like to highlight Section 228A IPC, which states as follows-

“228A. Disclosure of identity of the victim of certain offences etc:

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

...

Explanation- The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

10. Extrapolating the intention of the legislature in Section 228A IPC, this Court in, ***State of Punjab v. Ramdev Singh***, (2004) 1 SCC 421 has made the following observations,

“3. We do not propose to mention the name of the victim. Section 228-A IPC makes disclosure of identity of the victim of certain offences punishable. Printing or publishing name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or is found to have been committed can be punished. **True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But**

keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower courts, the name of the victim should not be indicated. We have chosen to describe her as “victim” in the judgment.”

(Emphasis supplied)

11. The concern of the legislature in protecting the identity of the victim is further evident from the provisions of POCSO Act. Section 33(7) of the same casts a duty on the Special Court to ensure that identity of the victim is not disclosed at any time during the course of investigation or trial. Further, Section 23 of POCSO Act provides restriction on any form of media to disclose the identity of the victim which tends to lower her reputation or infringers upon her privacy. No disclosure of any particular(s) is allowed which can eventually lead to disclosure of the identity of the victim.

12. Thus, taking note of the violation of settled principles of criminal law jurisprudence and statutory prescriptions *vis-à-vis* conversion of adjudication of bail application to a mini-trial and disclosure of identity of the “*victim*” by the High Court, we disapprove the manner in which the High Court has adjudicated the bail application and accordingly, quash the order passed by the High Court.

13. While disposing the matter, we are constrained to observe the lethargic attitude of the State by not taking necessary steps to bring the matter to the notice of this Court by filing an appeal despite the

clear violations of settled principles of criminal law jurisprudence and statutory prescriptions. The present Special Leave Petition was filed by the grandmother of the victim and it is only on her behest that we took notice of the matter.

14. Having considered the facts and circumstances of the case in the light of foregoing discussion, we allow the appeal and set aside the impugned order passed by the High Court. Before parting with the matter, we make it clear that we have not expressed any opinion on the merits of the case. However, considering the seriousness of the allegations levelled against Respondent No. 2 herein, we direct the trial Court to expedite the trial and conclude the proceedings as expeditiously as possible.

15. The appeal stands allowed accordingly.

.....**J.**
(N.V. RAMANA)

.....**J.**
(MOHAN M.SHANTANAGOUDAR)

NEW DELHI,
OCTOBER 29, 2018.

ITEM NO.34

COURT NO.6

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).4887/2018

(Arising out of impugned final judgment and order dated 27-04-2018 in CRLMA No.5391/2018 passed by the High Court of Gujarat at Ahmedabad)

SANGITABEN SHAILESHBHAJ DATANIA

Petitioner(s)

VERSUS

THE STATE OF GUJARAT & ANR.

Respondent(s)

IA No.75690/2018 - Exemption from filing O.T.

IA No.89190/2018 - Exemption from filing O.T.

Date : 29-10-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s)

Ms.Sharukh Alam, Adv.

Ms.Liz Mathew, AOR

Mr.M.F.Philip, Adv.

For Respondent(s)

Ms.Hemantika Wahi, AOR

Ms.Vishakha, Adv.

Ms.Puja Singh, Adv.

Mr.Amol Suryawanshi, Adv.

Mr.Nishant, Adv.

Mr.Anil Kumar Tandale, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands allowed in terms of the signed order.

As a sequel to the above, pending interlocutory applications also stand disposed of.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)