

NON-REPORTABLE

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

**CRIMINAL APPEAL(S) NO(S). OF 2025
(ARISING OUT OF SLP (CRL.) NO. 10816 OF 2025)**

JAGDISH GODARA

APPELLANT(S)

VERSUS

STATE OF RAJASTHAN & ANR.

RESPONDENT(S)

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. Being aggrieved by the order dated 11.07.2025, passed in S.B. Criminal Misc. Application No.235 of 2025 by the High Court of Judicature for Rajasthan at Jodhpur, the appellant, who is the complainant in FIR No.03/2022, filed under Sections 365, 342, 376(2)(n), 376-D and 384 of the Indian Penal Code, 1860 (for short, "IPC") is challenging the grant of interim protection to the second respondent herein. The second respondent herein had preferred a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "CrPC") seeking quashing of the said

FIR and subsequent proceedings, which was initially dismissed by order of the High Court dated 04.02.2025. Thereafter, the second respondent herein preferred S.B. Criminal Misc. Application No.235 of 2025 under Section 482 CrPC, seeking review/recall of the High Court order dated 04.02.2025. The impugned order was passed in this application, and is before this Court.

3. We have heard learned counsel for the appellant; learned Additional Advocate General appearing for the first respondent-State; and learned counsel appearing for the second respondent, at length.

4. We have perused the material on record.

5. Briefly stated, the facts of the case are that the appellant herein is the complainant and brother of the victim. The second respondent herein is the accused.

6. On 06.01.2022 at around 10.00 A.M., the victim had gone to work in one Achlaram Prajapat's field; however, when she did not return home till the evening, the appellant made frantic searches for her but the victim remained untraceable. The following day,

the appellant was informed by one Mukesh Lahesi that sounds of a girl screaming were heard from the bathroom of co-accused Satyaprakash's house, who lived in the vicinity. When the appellant herein, along with others, reached the said spot, he found his sister/victim lying in an unconscious condition in the bathroom of co-accused Satyaprakash's house.

7. Thereafter, the victim was taken to the hospital and on regaining consciousness, she narrated the entire incident to the appellant. She stated that on the date of the incident, when she had gone to work in the field, co-accused Maghraj had forcibly taken her in his vehicle to Aanwala Nada, where he committed rape on her. Later in the evening, the victim was taken to co-accused Satyaprakash's house, where the said accused also raped the victim, due to which she lost consciousness. The victim further stated that a few days before the date of the alleged incident, the second respondent herein had also raped her in a school and threatened to defame her if she disclosed the said wrongdoings to anyone. Furthermore, the victim stated that all the three accused persons had, for the past three years, repeatedly committed rape on her.

8. Consequently, based on a written complaint filed by the appellant, FIR No.03/2022 dated 07.01.2022 came to be registered at P.S. Matoda, District Jodhpur Rural against the second respondent herein, co-accused Satyaprakash and Maghraj under Sections 365, 342, 376(2)(n), 376D and 384 IPC.

9. Upon completion of the investigation, a chargesheet came to be filed on 06.04.2022 only against co-accused Satyaprakash under Sections 365, 342, 376(2)(n), 376D, 384 IPC and under Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012. However, the investigation was kept pending as against the second respondent herein and the other co-accused Maghraj.

10. Pursuant to this, the second respondent herein filed Bail Application No. 366 of 2022, seeking anticipatory bail before the Sessions Judge, District Jodhpur (henceforth, "Sessions Court").

11. The Sessions Court, however, by order dated 13.05.2022, dismissed the said anticipatory bail application, in view of the gravity of the offence and the necessity of the second respondent herein in investigation and for the purpose of making recoveries.

12. Thereafter, the appellant herein preferred a petition being S.B. Crl. Misc. (Pet.) No. 413/2022 under Section 482 CrPC before the High Court of Judicature for Rajasthan at Jodhpur, seeking directions to be issued to the State authorities to conduct a fair, proper, impartial and expeditious investigation in FIR No.03/2022.

13. Subsequently, the second respondent also approached the High Court by way of a petition being S.B. Criminal Misc. (Pet.) No. 330/2023 under Section 482 CrPC for quashing of FIR No.03/2022.

14. The High Court, by way of a common order dated 04.02.2025, dismissed S.B. Criminal Misc. (Pet.) No. 330/2023 filed by the second respondent herein on the ground that the contents of the FIR registered in the present case disclosed a cognizable offence warranting further judicial inquiry.

15. The High Court also disposed of S.B. Crl. Misc. (Pet.) No.413/2022 filed by the appellant by directing him to submit a representation to the concerned Superintendent of Police along with all documents on which he placed reliance, and the concerned Superintendent of Police was directed to consider the

averments so made in the said representation.

16. Being aggrieved by the common order dated 04.02.2025, the second respondent herein filed an application being S.B. Criminal Misc. Application No. 235 of 2025 before the High Court seeking recall of the order dated 04.02.2025 passed in S.B. Criminal Misc. (Pet.) No. 330/2023.

17. In the said application for recall, the High Court by way of an interim order dated 21.04.2025, protected the second respondent herein from arrest in connection with FIR No.03/2022, till the next date of hearing.

18. Aggrieved by the aforesaid interim protection granted by the High Court to the second respondent herein, the appellant herein preferred SLP (Crl.) No. 7128 of 2025 before this Court.

19. This Court, by order dated 09.05.2025, issued notice in the said SLP.

20. In the meantime, the High Court, by way of the impugned final order dated 11.07.2025, disposed of the recall application by granting liberty to the second respondent herein to seek pre-arrest bail through a separate application. In doing so, the High

Court took note of the report of the Investigating Officer, which opined that the second respondent herein did not indulge in the criminal activities alleged by the victim, owing to the fact that there were discrepancies in the relevant dates of commission of the crime, and that there were doubts with respect to the presence of the second respondent herein at the concerned spot on those days. The High Court directed that in the event the second respondent herein preferred such an anticipatory bail application before the Sessions Court, the two investigation reports (initial and subsequent) shall also be taken into account by the Sessions Court while adjudicating the bail plea. The High Court further protected the second respondent herein from arrest for a period of 30 days in connection with FIR No.03/2022 in order to enable him to take the legal recourse available to him.

21. Thereafter, in view of the impugned final order, this Court, by order dated 09.09.2025, dismissed the SLP (Crl.) No. 7128 of 2025 preferred by the appellant herein against the interim order dated 21.04.2025 passed by the High Court, as having become infructuous.

22. Being aggrieved by the impugned final order dated

11.07.2025 passed by the High Court granting interim protection to the second respondent, the appellant herein has preferred the instant appeal.

23. On a perusal of the impugned order it is noted that the said order dated 11.07.2025 was passed in S.B. Criminal Misc. Application No.235 of 2025. Actually, the said application was filed by way of a review petition/recall application in an earlier petition filed by the second respondent herein under Section 482 CrPC, which was numbered as S.B. Criminal Misc. Application No.330 of 2023 and dismissed by order dated 04.02.2025. The second respondent has not assailed the said order before this Court. Instead, the second respondent preferred an application seeking recall/review of the aforesaid order which was titled as S.B. Criminal Misc. Application No.235 of 2025. The High Court has disposed of the said review petition/recall application by observing in paragraphs 3 to 4 as under:

“3. Accordingly, the instant application is disposed of with the above observations.

3.1. A liberty is given to the applicant that he may raise the grounds mentioned above if he would seek pre-arrest bail through a separate application and in that event, it is expected that both the reports referred above shall be taken into account while adjudicating

the bail plea raised on his behalf by invoking provision under Section 438 of CrPC at present 482 BNSS.

4. For next 30 days, applicant shall not be arrested in connected with the above-mentioned FIR so as to enable him to take legal recourse available to him.”

24. Learned counsel for the appellant has rightly contended as under:

Firstly, when the High Court dismissed the original petition filed under Section 482 CrPC, it had become *functus officio* and the High Court did not possess the jurisdiction to review such an order by way of a review/recall.

Secondly, even though such a recall/review application was filed, it was not shown as an application in the original petition filed under Section 482 CrPC before the High Court. Instead, a separate S.B. Criminal Misc. Application No.235 of 2025 was accorded to it, as if it was a fresh case, as has been shown in the cause title of the impugned order.

Thirdly, knowing fully well that the High Court cannot review the order passed under Section 482 CrPC, it ought to have simply dismissed the said application. Instead, the said application was disposed of with the aforesaid order being passed by suggesting that the second respondent herein seek pre-arrest bail

(anticipatory bail) by a separate application before the Sessions court, and by granting protection from arrest in connection with the aforementioned FIR for the next thirty days from the date of the impugned order (11.07.2025) so as to enable him to take the legal recourse available to him.

25. We find that the High Court erred in all the aforesaid three counts, inasmuch as having become *functus officio* when it dismissed the original petition under Section 482 CrPC, it did not have any power or jurisdiction to entertain an application seeking review/recall of the said order; *secondly*, the said application could not have been considered to be a fresh case by the High Court; and *thirdly*, if the High Court was not inclined to review/recall the said order, it ought to have simply dismissed the said application. Even by not interfering with the said application, the High Court has nevertheless granted relief to the second respondent herein which is wholly erroneous. The High Court has also lost sight of the fact that earlier, an application for anticipatory bail sought for by the second respondent had been dismissed by the Sessions Court, which was not assailed by the second respondent either before the High Court or before this

Court.

26. More importantly, once the High Court was not inclined to grant any relief in the application seeking recall/review of its original order dated 11.07.2025, it ought not to have suggested or advised the second respondent herein to seek pre-arrest bail and secondly, protected him for a period of thirty days from the date of the said order.

27. We therefore find force in the submissions of the learned counsel of the appellant, who has stated that the appellant-complainant herein is aggrieved by the aforesaid directions.

28. Consequently, what has been stated in paragraphs 3.1 and 4 of the impugned order of the High Court dated 11.07.2025 stand set aside.

29. We are also conscious of the fact that pursuant to the said direction, the Sessions Court has in fact rejected the application seeking pre-arrest bail by order dated 05.08.2025. Learned counsel for the respondent submitted that as against the said order, an appeal has been filed before the High Court,

30. If that is so, it is needless to observe that the said appeal

shall be considered by the High Court on its own merits and in accordance with law.

31. However, for the aforesaid reasons we set aside the order dated 11.07.2025 and particularly the portion which has been extracted above.

32. This appeal is allowed in the aforesaid terms.

33. On the request made by learned counsel for the second respondent herein, liberty is reserved to the second respondent herein to seek regular bail if so advised.

34. It is needless to observe that if an application for regular bail is made by the second respondent herein before the Sessions Court, the same shall be considered on its own merits as expeditiously as possible, and in accordance with law.

Pending application(s), if any, shall stand disposed of.

....., J.
(B. V. NAGARATHNA)

....., J.
(R. MAHADEVAN)

NEW DELHI;

SEPTEMBER 16, 2025.

ITEM NO.1

COURT NO.5

SECTION II-D

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

RECORD OF PROCEEDINGS

**PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.)
NO(S).10816/2025**

**[ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED
11-07-2025 IN SBCRMA NO. 235/2025 PASSED BY THE HIGH COURT
OF JUDICATURE FOR RAJASTHAN AT JODHPUR]**

JAGDISH GODARA

PETITIONER(S)

VERSUS

STATE OF RAJASTHAN & ANR.

RESPONDENT(S)

(IA NO. 172765/2025 - EXEMPTION FROM FILING O.T.)

**Date : 16-09-2025 This matter was called on for hearing
today.**

**CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE R. MAHADEVAN**

**For Petitioner(s) : Mr. H. D. Thanvi, Adv.
Mr. Nikhil Kumar Singh, Adv.
Mr. Shikhar Bhardwaj, Adv.
Mr. Kshitish Bikarmia, Adv.
Mr. Rishi Matoliya, AOR**

**For Respondent(s) : Mr. Padmesh Mishra, A.A.G.
Mr. S. Udaya Kumar Sagar, AOR**

**Ms. Kiran Bhardwaj, AOR
Ms. Anu Mohla, Adv.
Ms. Anuradha Rustagi, Adv.
Ms. Prerna, Adv.
Ms. Rishika, Adv.
Mr. Bajrang, Adv.**

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

Leave granted.

Appeal is allowed in terms of the signed non-

reportable judgment, which is placed on file.

Pending application(s), if any, shall stand disposed of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)