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Minor's Gang Rape| Bail Order Bereft Of Material, High Court Got Swayed On Ground Of Delay- SC Directs 3 Men Including MLA's Son To Surrender

By Swasti Chaturvedi | 24 Aug 2023 8:30 PM



The Supreme Court in a minor's gang rape case has directed the three accused persons including an MLA's son to surrender saying that the order granting bail was bereft of material and the High Court got swayed on the ground of delay in lodging the FIR.

The Court was dealing with a batch of two criminal appeals filed by the uncle of the minor victim against the order passed by the Rajasthan High Court whereby



allowed the applications of the accused under Section 439 of the Cr.PC.



Two-Judge Bench comprising **Justice S. Ravindra Bhat** and **Justice Aravind**



Ar held, *"... we notice that the impugned order granting bail is not only bereft of material particulars which would justify grant of bail, but it seems that*



Rajasthan High Court has got swayed on the ground of delay and the video having not



been recovered during the course of investigation and has given a complete go

by the High Court. The Bench also noted that the High Court has not taken into consideration the allegation made in the FIR and statement recorded under Section 161 and 164 of the Cr.P.C. as also the testimony of the prosecutrix before the jurisdictional court."

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The Bench said that the High Court erred in not considering the basic facts while considering the prayer for grant of bail by taking into consideration the well-established judicial pronouncements.

Advocate Anuj Bhandari appeared for the appellant/complainant while **Senior Advocate Meenakshi Arora** appeared for the respondents/accused.

Facts of the Case -

The appellant/complainant i.e., the uncle of the minor victim registered an FIR in 2022 with the jurisdictional police alleging gang rape, threat of making video of rape recorded viral and extortion for the offences punishable under Sections 376D, 384, and 506 of the IPC read with Section 326 of POCSO Act and Section 66D of IT Act. As per the prosecution's case, in 2021, the minor girl aged 15 years, studying in Class-X, got acquainted with a boy (MLA's son) who seduced

her and took her to a hotel whereby he along with his two friends gang raped her after drugging and then took videos of the incident.

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All the three accused i.e., the respondents threatened the victim not to disclose the foresaid incident. They proclaimed that they were powerful and hence, the victim got scared and under the threat of video being circulated, gave gold ornaments of her mother to the accused. The accused raped her 4-5 times which left her weak and sick. Finally, in 2023, the girl disclosed about the incident after much persuasion. The applications for grant of bail filed by the respondents were dismissed by the Special Court but the High Court granted bail to them taking into consideration the statement of the victim and the possibility of time being consumed for trial. The complainant being aggrieved by this, approached the Apex Court.

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The Supreme Court after hearing the contentions of the counsel observed, *“The fact that accused Deepak is the son of sitting MLA would disclose the domineering influence he would wield not only in delaying the proceedings but also in pressurizing the witnesses to either resile from their statement given during the course of investigation or pose threat to them from deposing against accused on their failure to act according to his dictates or induce them to testify as per his dictates or to help the defence of the accused.”*

The Court said that the complainant's grievance has been that the accused was threatening the victim and other witnesses and that there is every possibility of threat to their life in the event they depose to the truth, and such apprehension is justifiable, especially because he is in a domineering position.

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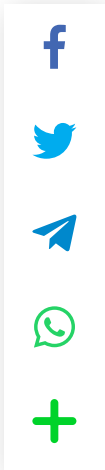
“The complainant underlines the influence and possibility of the clout being wielded on the witnesses which cannot be discounted. The fact that even after recording of the deposition of the prosecutrix other prosecution witnesses have not come forward to tender evidence though more than nine dates of hearing has passed, would lend credence to the apprehension of the complainant”,

 l the Court.

 dingly, the Apex Court allowed the appeals, set aside the order of the High
 , and directed the respondents to surrender before the jurisdictional court
in two weeks.

 e Title- **Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak and Another**
 tral Citation: 2023 INSC 761)

[Click here to read/download the Judgment](#)



Justice S. Ravindra Bhat Justice Aravind Kumar POCSO Gang Rape

Swasti Chaturvedi

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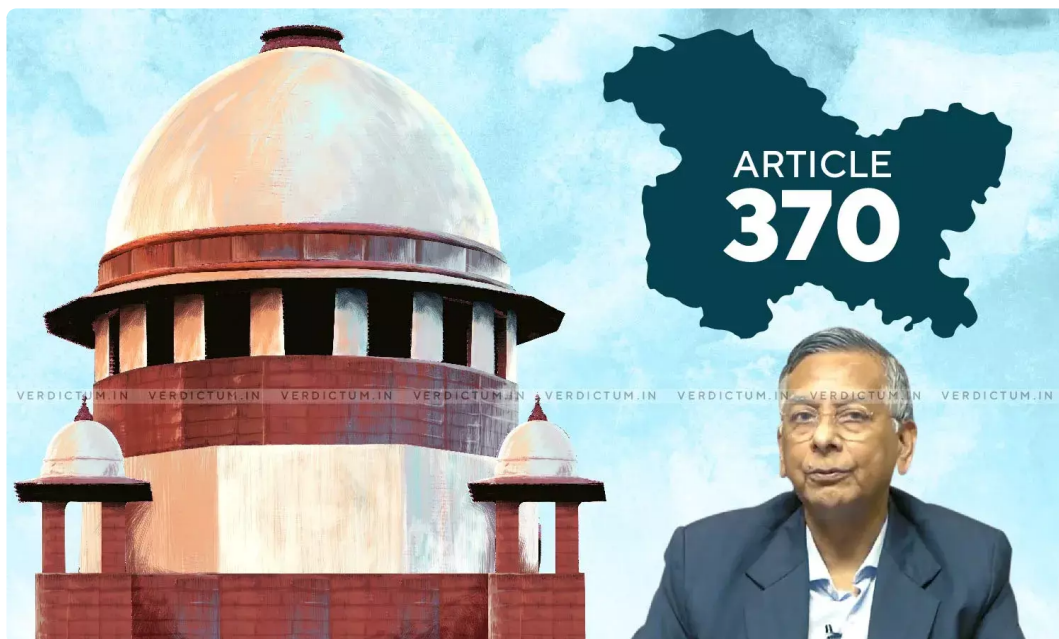
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No One Can Have Vested Right In Favour Of Perennial State Of Unrest: Attorney General's Opening Statements In Article 370 Case

By Ramey Krishan Rana | 24 Aug 2023 6:00 PM



The Constitution Bench of the Supreme Court, today, after the heavy 9 days of

submissions made by the Petitioners in the batch of cases challenging the abrogation of Article 370, started the hearing with submissions made by the **Attorney General R. Venkatramani** appearing for the Union of India.

The bench of the **Chief Justice of India D.Y. Chandrachud, Justice Sanjay Kishan Kaul, Justice Sanjiv Khanna, Justice BR Gavai, and Justice Surya Kant**, commenced the hearing of the Respondents' side, with the Attorney

General delivering the opening statement on behalf of the Union of India. The AG expressed his gratitude to all the colleagues on the petitioners' side for their thoughtful understanding of this emotionally charged and complex issue. He further said that, as we proceed, we aim to present our perspective while maintaining objectivity and considering the new realities associated with this matter.

Quoting a statement from Abraham Lincoln in 1864, the Attorney General remarked that in a context similar to the present, Lincoln discussed the intricate balance between upholding the nation, preventing its loss, and preserving the Constitution. Lincoln's words were, *"By general law life and limb must be protected; yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb"*.

The AG submitted that striking a balance between averting national loss and upholding the constitution entails emphasizing that the preservation of the Constitution hinges on adhering to due processes and parallel procedures. Remarking on the same the CJI said, *"But AG we can't postulate a situation where the ends justify the means also, right? Means have also to be consistent with ends"*.

Further, the AG submitted, *"The factual or legal foundation for any sovereignty argument, in a combined reading of instrument of accession and proclamation, followed by the adoption of Article 370, all trace of sovereignty, if any, were surrendered and disappeared. The Constitutional integration process of the State of Jammu and Kashmir with the Union of India however sought to be were only for the object of Article 370. All principles and procedures for the*

above purpose will always be considered subservient to this purpose. The power and deliberation of the President under Article 370 to deal with it in any manner is neither lost nor removed by the reason of its excessive over a period of time nor it can be said that the provision erases itself with any intervention of positive law-making power."

Continuing, the AG stated, "Article 370 was conceded and designed to aid the constitutional integration process on the same line as it happened with other states. Its continued exercise over a period cannot be seen as a cloud over or a distortion of its original purpose. Any description exercise beyond its original purpose seen as introducing rooms or otherwise can always be deliberated to bring about any changes in its contents or its abrogation. All judicial pronouncements in regard to Article 370 will be seen in the context of challenges and claims raised before the Court."

Commenting upon the special feature of the Union Territory of Jammu and Kashmir, the AG said "Border states are a special clan of territories of India and the organization under Article 3 will reserve distinct consideration. The Court will defer to the wisdom of parliament and the choice and action relating to border states and the justiciability of decisions taken to deal with matters relating to border states may not be as in a case of general run or reorganization of States or imposition of President's rules."

"The scheme and architecture of Article 356 which provides in regards to the sustenance of the fabric of the nation will not be narrowed or compressed. All instruments in aid of discharge of duty under Article 355 including the preamble of the Constitution will be comprehended in the plenary power of parliament to engage in the reorganization scheme under Article 3. The plenary power to act under Article 3 is available even during rule under Article 356 longstanding or similar measures in regard to reorganization. The availability of power is distinct from any due process. Neither asymmetrical federalism nor any other federal features have been infringed, no rights in the election of representative democracy have been taken, and the reorganization of states included temporary but another rearrangement of rights that serve integration

and federalism. No person can have a vested right in favour of the perennial state of unrest and all instruments of law which have not subserved peace and justice have no inherent justice right to continue or to exist", stated the AG.

As the AG wrapped up his opening submissions, he mentioned that he extensively examined numerous presidential proclamations, amounting to hundreds, focusing particularly on Jammu and Kashmir. The suspension of the



provisos and the absence of deletions remain applicable in this context. To
t that there has been a complete subversion of the Constitution is entirely
aided. He stressed that due process has been diligently followed, and all
ns are well within legitimate means, including the Reorganization Act.

[Watch the full hearing here](#)

Chief Justice DY Chandrachud

Justice Sanjay Kishan Kaul

Justice Sanjiv Khanna

Justice BR Gavai

Justice Surya Kant

Attorney General

ARTICLE 370

Ramey Krishan Rana

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