

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

CRIMINAL PETITION NO.7110 OF 2025

BETWEEN:

1. CENTRAL BUREAU OF INVESTIGATION
ANTI-CORRUPTION BRANCH,
NO.36, BELLARY BRANCH,
GANGANAGAR,
BENGALURU-560 032,
REPRESENTED BY ITS HEAD OF BRANCH.
... PETITIONER

(BY SRI. PRASANNA KUMAR P., SPL. PP.)

AND:

1. SH. ASHWATH S.
S/O. SHIVANNAGOWDA,
AGED ABOUT 34 YEARS,
RESIDING AT NO.66,
1ST MAIN, 'D' GROUP LAYOUT,
NAGARABHAVI,
BENGALURU-560 078.
... RESPONDENT

(BY SRI. SANDESH J. CHOUTA, SENIOR COUNSEL FOR
SRI. LAKSHMIKANTH G., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
439(2) READ WITH SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE (CORRESPONDING PROVISION TO

SECTION 528 READ WITH SECTION 483(3) OF BNSS, 2023) PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 25.04.2025 ARISING OUT OF SPL.CC.NO.565/2021 PENDING ON THE FILE OF THE LEARNED LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR MP AND MLA CASES AT BENGALURU (CCH-82); PRODUCED HERewith AT ANNEXURE 'H', ETC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED ON 14.08.2025 FOR ORDERS AND COMING ON FOR PRONOUNCEMENT OF ORDERS THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.I.ARUN

CAV ORDER

Aggrieved by the order dated 25.04.2025 passed in Special C.C.No.565/2021 on an application filed under Section 439(2) of the Code of Criminal Procedure read with Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) by the Court of LXXXI Additional City Civil and Sessions Judge, Bengaluru, the prosecution (Central Bureau of Investigation) has filed this criminal petition.

2. On 15.06.2016, one Yogesh Gowda was found murdered and upon a complaint lodged by his wife Mallavva, Dharwad Sub-Urban Police registered a case in Crime No.135/2016 for an offence punishable under Section 302 of IPC against unknown accused and took up the matter for investigation. Subsequently, the charge sheet came to be filed as against six accused persons and trial commenced. However, in the course of the trial, the investigation came to be transferred to the Central Bureau of Investigation ('CBI' for short) on 06.09.2019, the petitioner/prosecution herein. CBI investigated the matter and came to the conclusion that accused Nos.1 to 6 were not the assailants but accused Nos.7 to 14 were the assailants and accused No.15 was the main conspirator and accused Nos.1 to 6 and 16 to 18 were otherwise involved in the commission of the offence and accused No.19 is the Police Inspector who investigated the case and accused No.20, who is the Assistant Commissioner of Police,

was also part of the investigation and they tried to help accused Nos.7 to 18 and also accused No.21. It is further submitted that accused No.21 happened to be the personal assistant of accused No.15, who was then a Minister in Karnataka State Cabinet. On the said allegations, supplementary charge sheets have been filed by CBI. Thereafter, accused No.1 has been pardoned and has turned approver. Thereafter, he has been examined as PW.10. Cross examination is yet to take place.

3. In the course of the proceedings, all the accused have been granted bail. However, on the ground that accused No.15 is trying to influence the witnesses, bail has been cancelled by the Apex Court on 06.06.2025. Similarly, the bail of accused No.16 has been cancelled by the trial court on 25.04.2025. However, the application filed by the prosecution for cancellation of bail in respect of accused No.9 was rejected on 08.11.2024 and thereafter, again the prosecution filed

an application for cancellation of bail in respect of accused No.9, which also has been rejected by way of the impugned order. Aggrieved by the same, the present criminal petition has been filed.

4. The case of the prosecution is that the respondent/accused No.9 has tried to influence PW.10, PW.30 and PW.40. In this regard, PW.10 has complained to the prosecution about the alleged threat received by him from the respondent/accused No.9. PW.30 has complained to the CBI as well as the Special Court where the trial is being conducted and PW.40 has complained to the Special Court. It is further submitted that taking into consideration the threat received by the witnesses, all the three witnesses have been accorded protection.

5. It is further submitted that threat was made to PW.10 and an application was made before the trial court for cancellation of bail of the respondent/accused

No.9. Subsequently, a threat has been made to PW.30 and PW.40 also. After filing of the application for cancellation of the bail, all the three witnesses have been accorded protection by the trial court.

6. To prove the allegations made against accused No.9 regarding the threat held out to PW.10, reliance is placed on a screenshot and call logs recorded on a mobile phone belonging to PW.10, which shows that he has been spoken to by a person from mobile No.9591029837.

7. The case of the petitioner is that accused No.9 used to communicate by using the said mobile number and it clearly establishes that during pendency of the trial, accused No.9 has tried to influence PW.10 and it is submitted by using the said mobile, he has threatened PW.10 of dire consequences, if he supports the case of the prosecution.

8. The prosecution also has produced records of Airtel mobile service provider which shows that mobile No.9591029837 belongs to one Dhananjaya. They have produced a FIR registered in Crime No.3/2025 pending on the file of IV Additional Chief Metropolitan Magistrate Court, Bengaluru, which reveals that the said Dhananjaya in whose name the mobile number stands and accused No.9 are employed as Drivers by one Aishwarya Gowda. The said fact of Dhananjaya and accused No.9 being employed by one Aishwarya Gowda and they were known to each other is not disputed by the respondent/accused No.9.

9. The prosecution has also produced relevant call detail analysis of mobile No.9591029837 for the period from 05.07.2024 to 28.11.2024 to show that accused No.9 was using the said number to contact various persons. Reliance is also placed on the statements of one Y.Sudhir Kumar and one Bhimashankar Patil to whom calls have been made from mobile

No.9591029837 as per the call detail analysis and they have stated that accused No.9 has spoken to them from the said mobile number.

10. The same call detail analysis referred to above is relied upon by the prosecution to show that accused No.9 has spoken to accused No.15 and accused No.18 from mobile No.9591029837. The fact that the call detail analysis shows that calls have been made and received from the mobile No.9591029837 to the mobile of accused No.18 is not disputed by learned counsel for the respondent/accused No.9. However, in respect of calls made and received to accused No.15, it is submitted that the records reveal that the mobile to which the calls were made belongs to some third party.

11. With regard to the alleged threat held out against PW.30, it is seen that she has made a complaint stating that she was threatened by accused No.9 in the court premises when she had gone to the Court to give her

evidence. In the E-mail sent by her to the Police, she has stated as under:

"Sir, I had attended this respected court on 04.06.2025 and since one Prajjwal Rewanna case was taking place in camera, I was seated at the corner of cabin corridor of the court. when I saw Ashwath sitting on the metal chairs opposite to mine on the other side of the corridor. He made a very dangerous gesture at me by 12.30 p.m. He then told me that do not mess with us, the police and government is ours....what we want only will happen. Nothing will happen to us. You will face the consequences if you dare to speak anything before the court against me. I was in a state of shock. When I appeared before your goodself, I felt like reporting the entire matter to you but in front of such crowd and the said Ashwath who was also in the court room at that time alongwith other accused persons, I could not dare to report it. I shared this matter with my brother Venkatesh Benakatti at night when we reached Dharwad. Sir, I am in a state of shock and fear. I feel threatened to my life by such murderers who are so ruthless. Hence unless I am provided with the security I would not able to attend the court on the next date."

12. Based on the complaint made by PW.30/CW-5, the trial court on 13.06.2025 has passed the following order:

"Case called out.

Accused No.2 to 15, 18, 20 and 21 are present.

Accused No.19 is absent. EP is filed and allowed for the day.

Accused No.16 Chandrashekar Indi @Chandumama is produced from central Jail premises.

Learned SPP is present.

The learned SPP has filed a memo intimating to the court regarding a threat given by accused No.9 Ashwath to the witness CW-5 Miss. Lakshmi Benakatti. Along with the intimation e-mail corresponding and copy of the complaint lodged by the witness to the CBI on 12.06.2025 is enclosed.

The SPP has also furnished copy of the e-mail addressed to SP, CBI/ACB, Bengaluru on 10.06.2025 wherein she has narrated that only if she is provided with security, she would be able to tender her evidence before the court.

The aforesaid aspect requires to be taken note for conducting the fair trial before the court. It is relevant to note that the CBI had filed application under Sec.439(2) of Cr.P.C., seeking for cancellation of bail of A-9 Ashwath, A-15 Vinay R Kulkarni and A-16 Chandrashekar Indi.

This court by order dated 25.04.2025 had rejected the application filed by prosecution to cancel bail of accused No.9 on technical grounds and whereas the cancellation of bail sought for accused No.15 was also turned down on the premises that the

bail was granted by the kind orders of the Hon'ble Apex Court and had canceled the bail of accused No.16.

Of late the Hon'ble Apex Court by order dated 06.06.2025 has cancelled the bail of accused No.15 Vinay R Kulkarni and today the learned counsel has filed surrender memo in this regard.

By looking into the facts and circumstance of the case it seems that a serious allegations are being leveled with respect to tampering of the witnesses. On the same ground the bail of accused No.15 and 16 are being canceled. When such being the case the court cannot be a mute spectator and that to when a witness who is a women as filed a requisition to the court the same cannot be brushed aside.

Ultimately, the discovery of the truth is the sole object in the entire course of trial. And as such it would be appropriate to direct the CBI to provide necessary protection to the witness. With respect to the memo filed by the witness through the learned SPP the same is kept open and will be considered when the witness appears before the court.

Needless to mention the CBI may seek the assistance of any other central agency to provide necessary security to the witness.

Summons to CW-19 is returned with an endorsement as he has left the address.

The surrender memo of accused. No.15 is accepted and accused No.15 Vinay R Kulkarni is hereby remanded to J.C.

*Issue intimation to Jail authorities to produce accused NO.15 and 16 physically before the court for the purpose of trial on the next date of hearing.
For further trial, call on 16.06.2025."*

13. In respect of PW.40, he has stated that when he had attended the court for a case (an off shoot of the present proceedings before the trial court regarding threatening of the witnesses wherein PW.40 himself is an accused), accused No.9 along with few other persons have threatened him and based on the accusations made by PW.40, the trial court on 08.07.2025 has passed the following order:

*"PW-40 Logendra has given a requisition to court to provide necessary protection to him.
The investigating agency are hereby directed to provide necessary protection to the witness till further orders."*

14. It is further submitted that accused No.9 is a rowdy sheeter and three criminal cases are pending against him and that a rowdy sheet has been opened against him.

15. Based on the aforementioned submissions, it is contended that accused No.9 has tried to threaten/influence the witnesses and the same is in violation of the conditions imposed in Criminal Petition No.6906/2021 passed by this Court while granting bail to accused No.9.

16. Per contra, the learned Senior Counsel for the respondent/accused No.9 has submitted as follows:

- (i) The present challenge to the rejection of cancellation of bail is on a second application filed by the CBI. The first application to cancel the bail of Accused No.9 was rejected vide order dated 8th November 2024. The reason assigned for seeking cancellation of the bail is the same as that sought in the second application. The earlier rejection dated 8th November 2024 was not challenged and had attained finality. Therefore, the filing of the second cancellation of bail without there

being a change in circumstance would itself not arise.

- (ii) The entire reasons assigned for seeking cancellation of bail is based on a complaint given by A1 Basavaraj Muttagi, who has been granted pardon and has now been examined in Chief as PW-10. The complaint is dated 28.11.2024 and addressed to the CBI and also given to the Suburban Police Station, Dharwad. The allegation in the complaint was that he received a WhatsApp call on 27.11.2024 @ 10:31 PM and that A9-Ashwath had threatened him. On the basis of this complaint, the prosecution ought to have followed the procedure as contemplated under the 'Witness Protection Scheme, 2018', which has been declared as a law of the land by the Apex Court in the case of **Mahender Chawla v. Union of India (2019) 14 SCC**

615. Under the said scheme, a complaint ought to have been forwarded to the competent authority (comprising of the Principal Judge as its Chairman, the Commissioner of Police and the other member will be the Head of Prosecution in the District -as per the order of Division Bench of Karnataka High Court in the case of High Court of Karnataka v. State of Karnataka, WP. 10240/2020 order dated 01.12.2020). The Competent Authority will then call for a **"Threat Analysis Report"** to ascertain the seriousness and credibility of the threat perspective. It is only after satisfying itself of the seriousness and credibility of the allegation that the protective measures could be accorded to the witness.

(iii) In the present case, the Trial Court, on a mere averment of threat, has directed the

protection of the witnesses concerned i.e., PW-10, PW-30 & PW-40. This Respondent is not aggrieved by the same. However, the request of the CBI seeking cancellation of bail on the mere allegation made by the witnesses without there being any enquiry into the said allegation in the form of 'Threat Analysis Report' is what the Respondent is aggrieved with since an order of cancellation of bail without ascertaining the credibility of the alleged threat made would affect the Respondent fundamental right guaranteed under Article 21 of the Constitution. The cancellation of a bail has far more serious consequences than an order of granting protection to a witness. Therefore, when granting protection to witnesses, the scheme contemplates an enquiry into the allegation made by the witnesses. In a case of

cancellation of bail, it is that much more necessary to obtain the report to check the veracity of an allegation made prior to relying on it for the purpose of cancellation of bail.

- (iv) The nature of the witness making the allegation would also assume relevance. In the present case, a witness making the allegation was none other than Accused No.1, who, on being granted pardon, has turned approver and has been examined as PW-10. The position of such an accused turned prosecution witness would be worse than that of a partisan or interested witness. It is therefore that much more necessary to ascertain the veracity of an allegation made by such a witness. Reliance on the allegation made by such a witness without ascertaining the credibility thereof for the purpose of cancellation of bail of a co-accused would be

extremely harsh. As held by the Apex Court in *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 (Para-4), there has to be very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail.

(v) The prosecuting agency, CBI, being a premier investigating agency, would be expected to know about the existence of a "Witness Protection Scheme, 2018" and ought to have brought to the notice of the concerned witness. Rather, the Petitioner-CBI has sought cancellation of bail only after a lapse of 48 days from the date of complaint, i.e., 28.11.2024, that too when the examination of the chief has already been recorded.

(vi) Another aspect for consideration would be the object behind seeking the present cancellation of bail. All three witnesses, i.e., PW-10, PW-30 & PW-40, have all supported

the case of the prosecution. In their evidence in chief, none of these witnesses state anything about any alleged threat meted out by Accused No.09. When the said witnesses have supported the prosecution case and have received protection by virtue of an order of the Trial Court, then the question of seeking the cancellation of bail to Accused No.9 would not serve any purpose.

(vii) On none of the alleged threats meted out, has there been registration of an FIR or an investigation conducted, which could have lent credence to the allegation made.

(viii) Accused No.9 has been granted bail on 11.01.2022, and any order of cancellation of bail after three and a half years from the grant of bail on the basis of an unverified allegation would not only be harsh but would also violate his fundamental right.

17. Apart from the above, the learned Senior Counsel for the respondent/accused No.9 submits that the statement of accused No.10 cannot be believed for the following reasons:

- (i) Complainant was none other than the Accused No.1 who has now turned Approver. (1st Application u/s 306 Cr.P.C seeking pardon by A-1 rejected on 29/04/2023 - No allegations of threat at that point of time).
- (ii) As on the date of alleged threat i.e., 27/11/2024, the Approver had already given his statement under Sec. 164 of Cr.P.C on 21/10/2024. Hence, such alleged threats on 27/11/2024 would be irrelevant.
- (iii) Though the complaint was made on 28/11/2024 to the CBI, bail cancellation sought by the prosecution before the Special Court is only after a lapse of 48 days that too

after the examination-in-chief of the approver was recorded on 30/12/2024.

- (iv) In view of the order of the Special Court dated 22/10/2024, the Approver was given protection by Central Agency and he was provided with STF security personnel. If at all there was any threat as alleged on 27/11/2024, he could have immediately intimated the same to them immediately for appropriate action.
- (v) No FIR registered or investigation conducted based on the allegations made in the complaint dated 28/11/2024.
- (vi) The screenshots produced along with the complaint does not show the details of the phone number of the Basavaraj Muttagi. (Chances of being concocted cannot be ruled out).

(vii) Perusal of the screenshot shows the message 'Anna Sorry'. No person would threaten someone and send a message "Anna Sorry" - Further the later screenshot shows that the message is deleted - This clinches the aspect that the said screenshots are nothing but a calculated act to make false allegations of threatening.

(viii) 9591029837 - This number does not stand in the name of Ashwath. 9632124011 is the actual number of Ashwath.

(ix) Perusal of the complaint shows that there was an attempt to threat and caution given but no where there is a mention of actual threat.

(x) Ashwath/Accused No.9 lodges a complaint before the jurisdictional Annapoorneshwari Nagar P.S. in NCR No.610/2024 on 02/12/2024 stating that on 27.11.2024, the Approver Basavaraj Muttagi through his friend

Nagendra had telephonically called Ashwath 2-3 times and threatened him to toe the lines of Basavaraj Muttagi and become an Approver or else he would make allegations against him to CBI and get his bail cancelled and further depose against him and make sure he and his family are in trouble.

(xi) It is an admitted fact that Basavaraj Muttagi (Approver) and Ashwath/Accused No.9 were in contact with each other from long time. Accused No.9/respondent never used the mobile number from whom PW.10 is said to have received the threat.

(xii) The CBI has conducted a detailed investigation by collecting CCTV footages, CDR's, CAF's, photographs, Ledger registers of Lodges based on the complaints made by other witnesses against A - 15 & A - 16 and

the same were produced before the court. In the instant case, no such proof is produced.

(xiii) It is also submitted that no reliance can be placed on the statements made by Y.Sudhir Kumar and Bhimashankar Patil as they are brother and cousin of PW.10. It is also contended that the prosecution has failed to record the statement of Dhananjaya in whose name the alleged mobile number stands.

18. With regard to the allegations made by PW.30, it is submitted that it is not backed by any material and her version cannot be believed.

19. With regard to the allegations made by PW.40, it is submitted that he himself is a shady character and an accused in the off shoot case wherein he himself is accused of threatening the witnesses and his version also is not backed by any material and the same cannot be believed.

20. In respect of the orders of the trial court wherein the witnesses have been accorded protection, it is submitted that the same have been passed solely based on the statements made by PW.10, PW.30 and PW.40 and no enquiry has been conducted to assess the credibility and veracity of the threat made to them as envisaged by the Hon'ble Apex Court in the case of ***Mahender Chawla vs. Union of India ([2019]14 SCC 615)*** and mere order of the trial court according protection to the witnesses cannot be a ground for cancellation of the bail.

21. It is also contended that liberty of an individual is of highest importance and this Court while canceling the bail should exercise caution and unless it has been clearly established by the prosecution that the conditions imposed while granting the bail have been violated, bail should not be cancelled. Based on the said submissions, it is prayed that the criminal petition be dismissed.

22. The question that arises for consideration in the instant case is do the facts on hand warrant cancellation of the bail of the respondent/accused No.9?

23. This Court in Criminal Petition No.6906/2021 has granted bail to the respondent/accused No.9 and while doing so has imposed the following conditions:

"75. In light of the above discussion, case is made out for enlarging the petitioner on bail, subject to conditions.

In the result, the bail petition filed by the petitioner/accused No.9 under Section 439 of Cr.P.C. is allowed and the petitioner is enlarged on bail in Spl.C.C.No.565/2021 in Crime No.17(S)/2019-CBI-BLR (arising out of Crime No.135/2016 of Sub-urban Police Station, Dharwad) pending on the file of LXXXI Addl. City Civil and Sessions Judge, Bengaluru (CCH-82) (Special Court exclusively to deal with criminal cases related to elected MPs/MLAs in the State of Karnataka) for the offences punishable under Sections 143, 147, 148, 120(B), 201, 302 r/w Section 149 of IPC, subject to the following conditions:-

- i. The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh*

- only) with two sureties for the likesum before the concerned court.*
- ii. The petitioner shall not in any way impede the conduct and proceedings of the investigation and the trial.*
 - iii. The petitioner shall not directly or indirectly get in touch with any of the witnesses nor shall he try to influence any such witnesses.*
 - iv. The petitioner shall not visit the City of Dharwad till trial is completed.*
 - v. The petitioner shall mark his presence in the office of ACP CBI, Unit, Bengaluru twice a week.*
 - vi. Any infraction or violation of the above conditions shall entail in cancellation of bail."*

24. The case of the prosecution is that the respondent/accused No.9 is trying to contact PW.10 on mobile and has tried to influence/threaten him; has threatened PW.30 and PW.40 in the corridors of the Court. A statement to that effect has been made by PW.10, PW.30 and PW.40. The same has been denied by the respondent/accused No.9.

25. Rejection of bail when bail is applied for is one thing. Cancellation of bail already granted is quite another. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

26. In the instant case, it is essential to analyze the facts and circumstances of the case to conclude whether the prosecution has been able to establish the fact that accused No.9 has threatened or has tried to influence PW.10, PW.30 and PW.40 in any manner. The burden of establishing the same is on the prosecution. The Hon'ble Apex Court while considering the nature of burden that is required to be discharged by the prosecution in such cases, in ***STATE (DELHI ADMINISTRATION) V. SANJAY GANDHI*** reported in

(1978) 2 SCC 411 in paragraph Nos.14, 24 and 26

has held as under:

"14. Before we go to the facts of the case, it is necessary to consider what precisely is the nature of the burden which rests on the prosecution in an application for cancellation of bail. Is it necessary for the prosecution to prove by a mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they are won over by the accused? We think not. The issue of cancellation of bail can only arise in criminal cases, but that does not mean that every incidental matter in a criminal case must be proved beyond a reasonable doubt like the guilt of the accused. Whether an accused is absconding and therefore his property can be attached under Section 83 of the Criminal Procedure Code, whether a search of person or premises was taken as required by the provisions of Section 100 of the Code, whether a confession is recorded in strict accordance with the requirements of Section 164 of the Code and whether a fact was discovered in consequence of information received from an accused as required by Section 27 of the Evidence Act are all matters which fall peculiarly within the ordinary sweep of criminal trials. But though the guilt of the accused in cases which involve the assessment of these facts has to be established beyond a reasonable doubt, these

various facts are not required to be proved by the same rigorous standard. Indeed, proof of facts by preponderance of probabilities as in a civil case is not foreign to criminal jurisprudence because, in cases where the statute raises a presumption of guilt as, for example, the Prevention of Corruption Act, the accused is entitled to rebut that presumption by proving his defence by a balance of probabilities. He does not have to establish his case beyond a reasonable doubt. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused. The prosecution, therefore, can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail.

15.xxx

16.xxx

17.xxx

18. xxx

19. xxx

20. xxx

21. xxx

22. xxx

23. xxx

24. *Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done.*

25. xxx

26. *But avoidance of undue hardship or harassment is the quintessence of judicial process. Justice, at all times and in all situations, has to be*

tempered by mercy, even as against persons who attempt to tamper with its processes. The apprehension of the prosecution is that 'Maruti witnesses' are likely to be won over. The instances discussed by us are also confined to the attempted tampering of Maruti witnesses like Yadav and Charan Singh, though we have excluded Charan Singh's complaint from our consideration. Since the appellant's counsel has assured us that the prosecution will examine the Maruti witnesses immediately and that their evidence will occupy no more than a month, it will be enough to limit the cancellation of respondent's bail to that period. We hope and trust that no unfair advantage will be taken of our order by stalling the proceedings or by asking for a stay on some pretext or the other. If that is done, the arms of law shall be long enough. Out of abundant caution, we reserve liberty to the State to apply to the High Court, if necessary, but only if strictly necessary. We are hopeful that the State too will take our order in its true spirit."

27. Thus, the prosecution needs to establish the fact that the accused has tried to influence or threaten a witness, on preponderance of probabilities and not beyond reasonable doubt.

28. In the instant case, when the matter was investigated by the local police, charge sheet was filed against accused Nos.1 to 6. However, subsequently, the investigation has been transferred to CBI and supplementary charge sheets have been filed and accused Nos.7 to 21 have been included and it is alleged that the local police have tried to shield real assailants/conspirators and a Police Inspector and Assistant Commissioner of Police who were involved in the investigation have also been made an accused. This, *prima facie*, give rises to a reasonable apprehension that the investigation has been influenced by the main assailants/conspirators in the instant case. The present respondent/accused No.9 was also not an accused originally but has been subsequently made as an accused.

29. After grant of bail, on the ground that accused No.15 is trying to influence the witnesses, his bail has been cancelled by the Apex Court. Similarly, the bail of

accused No.16 has also been cancelled. The further allegation is that all the accused including accused No.9/the respondent herein are together responsible for the murder of the Yogesh Gowda. These facts establish that in the instant case, some of the accused have tried to influence/threaten the witnesses and have tried to influence the investigation.

30. Admittedly, the respondent herein/accused No.9 is a rowdy sheeter.

31. The trial court, though has not followed the guidelines laid down by the Apex Court or this Court while ordering for protection to the witnesses, however, based on the facts and circumstances of the case has come to the conclusion that there is a threat to the witnesses and has ordered protection to be given to PW.10, PW.30 and PW.40.

32. Mere allegations made by the witnesses and when the same is denied by the accused, is not sufficient

under normal circumstances to conclude that the prosecution has established the fact that the accused has tried to influence or threaten the witnesses. However, in the instant case, the statement of the witnesses and the denial by the respondent/accused No.9, regarding the threat held out to the witnesses has to be examined with reference to the aforementioned facts to conclude whether the prosecution has been able to establish the fact that the accused has tried to influence or threaten the witnesses on preponderance of probabilities.

33. Further, the call records produced by the prosecution establishes the fact that PW.10 has been contacted from the mobile No.9591029837. The records of Airtel service provider establishes the fact that the said mobile belongs to one Dhananjaya, who works along with accused No.9/respondent herein as drivers of one Aishwarya Gowda and that the FIR filed in Crime No.3/2025 pending on the file of IV Additional

Chief Metropolitan Magistrate Court, Bengaluru, establishes the fact that both accused No.9/respondent herein and the said Dhananjaya are together accused in commission of an offence as mentioned therein.

34. In the light of the reasons mentioned in paras 28 to 33 supra, in my opinion, the statements of PW.10, PW.30 and PW.40 and Y.Sudhir Kumar and Bhimashankar Patil, will have to be believed as opposed to the denial of the respondent/accused No.9, in respect of PW.10, PW.30 and PW.40 being contacted/threatened by accused No.9/respondent herein. It give rises to a reasonable apprehension that accused No.9/respondent herein is using his liberty to interfere in the course of justice. Under the circumstances, it is essential to afford protection and remove the threat to PW.10, PW.30 and PW.40, so that they will be in a position to give their evidence/offer themselves for cross examination without any fear, so that justice will prevail.

35. Hence, the following:

ORDER

- (i) The petition is allowed in part;
- (ii) The impugned order dated 25.04.2025 passed by the Court of LXXXI Additional City Civil and Sessions Judge, Bengaluru in Special C.C.No.565/2021 on an application filed under Section 439(2) of the Code of Criminal Procedure read with Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 is hereby set aside;
- (iii) The bail granted in favour of the respondent/accused No.9 in Criminal Petition No.6906/2021 is cancelled for a period till the evidence of PW.10, PW.30 and PW.40 is completed before the trial court;
- (iv) The trial court shall proceed with the trial as expeditiously as possible and the prosecution will endeavor to have the evidence of PW.10, PW.30 and PW.40 completed as expeditiously as possible without seeking any adjournment;

(v) The respondent/accused No.9, will in the normal course, be entitled to be released on fresh bail once the evidence of PW.10, PW.30 and PW.40 are concluded and the learned Sessions Judge will be at liberty to fix the amount and the conditions of bail;

(vi) A week's time is granted from today to the respondent/accused No.9 to surrender himself;

(vii) Pending interlocutory applications, if any, stand disposed of.

**Sd/-
(M.I.ARUN)
JUDGE**

hkh./VMB