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**(2010) 07 SHI CK 0055**  
**In the High Court Of Himachal Pradesh**

Court on its own motion

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

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**Date of Decision :** 28-07-2010

**Acts Referred:**

Constitution of India, 1950 — Article 136

Criminal Procedure Code, 1973 (CrPC) — Section 164, 377, 386, 389, 390

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

**Citation :** (2011) 1 ShimLC 232

**Hon'ble Judges :** Dev Darshan Sud, J

**Bench :** Single Bench

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## Judgement

Dev Darshan Sud, J.—This case has been taken by the Court exercising its suo motu powers under Sections 397 and 401 of the Code of Criminal Procedure. The case pertains to the death of Aman Kachroo who is reported to have been ragged to death by respondents No. 2 to 5 who are accused in this case in FIR No. 68/09, registered with the Police Station, Kangra on 8.3.2009 and are facing trial for offences under Sections 302, 342, 506, 323 read with Section 34 of the Indian Penal Code.

2. The respondents were granted bail by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala on 17.7.2010. The records of the case have been called for by this Court suo motu to ascertain the correctness, legality and propriety of the order.

3. Before advertng to the facts which prompted the learned Court below to grant bail, the general genesis of this case may be considered. The Supreme Court had taken notice of the prevailing conditions in Dr. Rajinder Parshad Medical College at Tanda in University of Kerala Vs. Council, Principals' Colleges, Kerala and Others, The Court had given directions in that case from time to time considering the growing menace of ragging and its traumatic physical and psychological consequences, and constituted a Committee known as "Raghvan Committee". The report of this Committee was submitted to the Supreme Court and

accordingly the Court directed a number of recommendations made by it to be followed/implemented. Those were at the All India level, however, referring specially to the College where Aman Kachroo was studying, the Court directed:

7. In the case of freshers admitted to a hostel it shall be the responsibility of the teacher in charge of the group to coordinate with the warden of the hostel and to make surprise visits to the rooms in the hostel where the members of the group are lodged. Freshers shall be lodged in a separate hostel block, wherever possible, and where such facilities are not available, the college/institution shall ensure that seniors' access to freshers' accommodation is strictly monitored by wardens, security guards and college staff. Ragging takes place mostly in the hostels after the classes are over in the college. A round the clock vigil against ragging in the hostel premises shall be provided. It is necessary that parents/guardians of freshers assume responsibility for promptly bringing to the notice of the Head of the Institution any instance of ragging.

8. The Chancellor of the Himachal Pradesh University in consultation with the Raghavan Committee shall as a part time measure appoint a Committee to oversee the implementation of directions given in this order. Keeping in mind the seemingly violent history of RPGMC, a detachment of police be posted on the RPGMC campus till such time the Committee is satisfied of the maintenance of discipline on campus.

9. Departmental proceedings shall be initiated against the erstwhile principal of RPGMC, Dr. Suresh Sankhyan to ascertain his role in exacerbating ragging on campus, as well as his suitability as a faculty member and administrator. State of Himachal Pradesh, in its affidavit, has stated that such proceedings have been commenced against Dr. Sankhyan, and that a charge-sheet is expected to be issued to him presently.

(PP.732-733) (emphasis supplied)

4. The very fact that the Supreme Court had issued two directions, namely, posting of the Police personnel on the Campus to control the unruly behaviour of students and a direction issued to initiate Departmental proceedings against Dr. Suresh Sankhyan, is itself a very important fact to be considered and should have been kept in mind by the learned trial Court while considering the gravity and nature of the offence. Unfortunately, no attention has been paid to this fact which seems to have been glossed over by the learned Court below. The general principles for granting or not granting bail, consider the enormity and seriousness of the offence(s) and these two paragraphs in the judgment are indicative of the fact as to the prevailing conditions in the Medical College. I need not refer to the other aspect of the demoralizing affect of ragging which has engaged the attention of the Supreme Court not only in this case but also in Vishwa Jagriti Mission through, President v. Central Government through Cabinet Secretary and Ors. AIR 2001 SC 2793.

5. Archaic colonial practices have been adopted as symbols of civilization with,

scant respect to the life and liberty of young students who join the University to be groomed as future professionals and responsible citizens of this country. The method of introduction of freshers, who join College/University, through physical violence or subjecting them to mental trauma cannot but be deprecated. Some bit of fun is understandable but carrying it to the extreme which ends up in death, injuries to the body or indelible trauma to the mind is not understood.

6. Prior to the institution of the present application(s) for bail before the learned Fast Track Court, it is undisputed before me that respondents No. 2 to 5 had filed application(s) for release on bail before the learned Sessions Judge on 31.8.2009 u/s 439 of the Code of Criminal Procedure on 8.3.2009. Charge against these respondents had been framed on 11.8.2009. Those four applications were filed before the evidence of the prosecution was recorded and which was fixed for 20th October, 2009. The applications state that the allegations against the respondents are that in the intervening night of 6th/7th of March, 2009, all the accused persons who were Senior Students of Dr. Rajinder Parshad Medical College, Tanda, went to the hostel of Ist Year Students and around 2 A.M. at the night. They were in drunken state. They assembled the Ist Year Students in the common room and beat them up in the name of ragging. Aman Satya Kachroo, succumbed to the injuries on the 8th at around 7.00 P.M. It was urged before the Court that at that time there were material contradictions in the medical evidence as also evidence of the eye witnesses. It was pleaded that the respondents had no intention to commit the offence of murder though their only intention being that of ragging the students and to have some fun. An important point urged was that Aman had died because of an enlarged heart which was the cause of cardiac arrest and not as a result of ragging. This fact had been ascertained by a magisterial inquiry. The learned Court rejected these applications.

7. In this Court Cr.M.P. (M) No. 801 of 2009 was preferred by Mukul Sharma, one of the respondents, on 9th September, 2009 in which amongst other grounds urged for releasing him on bail, it was mentioned that though an application for bail had been filed before the learned Fast Track Court, but the findings arrived at by the learned Court were not correct. To similar effect was the application Cr.M.P. (M) No. 802 of 2009 filed by Abhinav Verma. Both these applications were disposed of separately on 17th September, 2009, but the order was the same which is reproduced hereunder:

Heard for some time. At this stage, learned Counsel for the petitioner seeks permission to withdraw the petition. Therefore, the same is dismissed as withdrawn.

8. Thereafter, prosecution witnesses were examined between 22.10.2009 to 25.5.2010 when the next date for examination of the remaining witnesses was fixed for 2.8.2010, 4.8.2010 and 6.8.2010. In the meanwhile, on 28.6.2010, the respondents herein again moved the learned trial Court u/s 439 of the Code of Criminal procedure by four separate applications praying for being admitted to

bail. These applications were allowed on 17.7.2010 and are the subject matter of the present proceedings. The State has moved the learned Fast Track Court on 20.7.2010 for cancellation, but before any action could be taken, this Court took suo motu cognizance of the case on 22.7.2010 and that is how this has been placed before this Court for further consideration. All four applications were disposed of by a common order.

9. In case of Mukul Sharma, the application states that after the examination of PW-22, Dr. D.P. Swamy, Professor and Head of the Department of Forensic Medicine of Dr. Rajinder Parshad Medical College, Tanda, who has been examined on 14.5.2010, the case of the prosecution was that ragging had taken place on the intervening night of the 6th/7th March, 2009 at around 2.00 A.M. and continued till 4.30 A.M. in the morning. But from his evidence, according to the learned Counsel appearing for the respondents, there was another ragging incident which took place on 8.3.2009 at about 3.45 P.M. The allegation was that the assailants of this incident had not been identified or apprehended and that the prosecution was now toeing a totally different line. The second allegation was that out of the 72 witnesses cited, 26 material witnesses had been examined and only 20 witnesses, who are to be examined, are either doctors or police officials who could not be influenced by the applicants in any manner. Even if the allegations of the prosecution were taken on the face value, it is the first ragging which has been established and at best offences under Sections 323 and 347 of the IPC were made out, which, according to the applicants, were only pranks and no case u/s 302 was made out.

10. To similar effect are the allegations made by respondent Abhinav Verma in his application. These applications were resisted by the State. One of the important allegations made was that against three of the respondents, namely; Avinabh Verma, Mukul Sharma, Naveen Verma, FIR No. 286/2008, dated 26.7.2008 under Sections 147, 148, 149, 452, 506, 323 of the Indian Penal Code has been registered in Police Station Kangra and the case is pending in the Court. The prosecution submitted that the offences of murder were serious and heinous in nature and that the allegation that the evidence of Dr. D.P. Swamy PW-22 exonerates them is not correct.

11. Learned trial Court, after noticing the facts, detailing the dates of the previous applications moved by the respondents both before the trial Court as also this Court, has allowed the applications. But before advertng to the order, I must note that Cr.M.P.(M) No. 213 of 2010 titled Abinav Verma v. State, Cr.M.P. (M) No. 214 of 2010 titled Mukul Sharma v. State, Cr.M.P. (M) No. 215 of 2010 titled Naveen Verma v. State and Cr.M.P. (M) No. 278 of 2010 titled Ajay Verma v. State, were disposed of by this Court on 5th April, 2010 with the direction to the learned trial Court to proceed with the case on day to day basis. One observation was made by this Court that is, liberty was granted to the petitioner to move the trial Court for bail afresh in accordance with law. Advertng to the order passed by the learned Sessions Judge, subject matter of the present

proceedings, the Court holds the principles on which bail is to be granted u/s 439 of the Code have been set out by this Court in Col. Romesh Chandra Vs. State of H.P., The learned Judge then continues that no doubt the respondents have been charged for an offence inter alia u/s 302 of the Indian Penal Code, but this alone cannot be a ground for rejecting their applications as held by this Court in Jeet Ram and Ors. v. State of H.P. and Ors. Latest 2003 HLJ 23 HP. The Court observed that in this case this Court held that other factors, namely, whether the accused would abscond or tamper with the evidence etc. are important factors. The operative part of the order reads:

10. After due consideration, to my mind definitely there are certain factors which are going in favour of the accused at this stage. As discussed hereinabove, all the principal witnesses including eye witnesses have been examined and there is no likelihood of the accused to influence the remaining prosecution witnesses. Further all the accused are students of MBBS and they are in custody since March, 2009. None of them has criminal history or there is anything objectionable past record of any of them. Therefore, only in view of gravity of offence there personal liberty cannot be curtailed. At this stage, the factors to be considered while granting bail as summed up by the Hon'ble High Court as discussed hereinabove, in the matter of Col. Romesh Chandra Vs. State of H.P., are going in favour of the accused persons.

12. Then he concludes that the cumulative effect of this discussion is that no fruitful purpose would be served in detaining the respondents in custody and therefore, they are released on bail. The other part of the discussion are the arguments of the learned defence counsel that in view of the medical evidence on record no prima facie case u/s 302 IPC is made out, but the Court refused to express any opinion on this aspect. Again the Court considered another aspect that the respondents had no intention to commit murder and it is only with the intention of ragging that they had only administered a few slaps to the Ist Year students which manifested no intention of murder or assault. The Court then relies upon the judgment of this Court in Yogesh Soni v. State of H.P. 1984 SEP (HJ) 9 H.P., to hold that if there is no intention to murder, no offence is made out. The Court then concludes, "Similarly, in our case also the accused persons have been charged u/s 302 IPC and for the reasons discussed hereinabove they can be released on bail." In purport and effect what the Court below does is to support its findings holding that there are certain weighty reasons on the basis of which the respondents can be released and further coming to the conclusion that the respondents have no intention of killing/murdering Aman Kachroo. This exercise is judicially impermissible at this stage. It was no business of the trial Court to have pronounced on the veracity of the defence as elicited in cross-examination of the witnesses of the prosecution and then holding that no prima facie case has been made out against the respondents, or that their defence has been probabalized. What are those factors which prompted the learned Court to release the respondents on bail is not clear from a reading of the ratiocination of the judgment of the Court below, but discernible only by implication that the

prosecution has been unable to prove its case and observations to that effect.

13. Learned Counsel appearing for the respondents have urged a number of points in support of their contention. Learned Senior Counsel Shri M.S. Chandel submits that from a prima facie examination of some of the evidence of the witnesses of the prosecution itself it is clear that no offence of 302 of the Indian Penal Code is made out and in case the respondents are detained in jail it would be miscarriage of justice. In particular he refers to the evidence of PW-1 Dr. Suresh Sankhyan (who is now under suspension), PW-2 Deepak Verma, Hostel Manager, Dr. Rajinder Parshad Medical College, PW-3 Dr. Pardeep Bansal, Assistant Professor, RPMGC, PW-4 Ashish Saklani, one of the boys who was ragged, PW-8 Sushant Kumar, another student who was ragged, PW-10 Vinay Bhardwaj, another eye witness, PW-19 Dr. P.S. Rana and PW-22 Dr. D.P. Swami to urge; (a) that the identity of the assailants of the deceased Aman Kachroo had not been established; (b) that it is in the evidence of these witnesses that Aman Kachroo had some heart ailment and may have died of that disease; (c) that there was another incident of ragging totally unrelated to the respondents who could not be held responsible for the death of Aman Kachroo; (d) that Ex.PW-4/A is a signed statement of Aman Kachroo made in his own handwriting before his death which only proves that he has been slapped by respondents and not brutalized in the manner which would cause death.

14. I cannot accept this contention of the learned Counsel at this stage. The statements of the witnesses cannot be read in isolation but have to be considered as a whole and that too of each witness and only thereafter the end result has to be arrived at. This would require a meticulous examination and cannot be ascertained from a prima-facie reading of the evidence. But at this stage findings cannot be recorded while granting bail, more especially at the time when part of the prosecution evidence remains to be examined. A trial within a trial is not contemplated u/s 439 of the Code of Criminal Procedure. Prima facie, when the statements of the other witnesses including doctors who treated the deceased and other students who were ragged, forensic expert and witnesses who have recorded the statements u/s 164 of Code of the Criminal Procedure are to be recorded, it would be isolating the evidence and compartmentalizing it which would ultimately have bearing on the trial. I have not referred to the postmortem report which is a very important piece of evidence to which extensive reference has been made by the learned Advocate General which specifies the cause of death and does not support the case of the respondents. To say anything more would be to prejudice the case of the parties, at this stage. On Ex.PW-4/B all that I need to say is that it describes in graphic detail the brutality to which the deceased was subjected to by the respondents, who according to him were in a drunken state. The deceased also writes that such incidents have been happening in the hostels and writes about the injuries of perforation etc. inflicted on him but I leave it at that.

15. Learned Counsel, Shri Shrawan Dogra, submits that the order passed by the

learned Sessions Judge reflects application of mind since the Court had been approached after framing of charge and the application was rejected after giving clear cogent reason and it was only after supervening events; namely; in the nature of evidence etc. have come on record that prompted the Court to grant bail. He submits that every time when application for bail was filed there were changed circumstances and the case has been blown out of proportion by the Media I need not say anything on this submission since this Court is not acting on media reports, but the record has been summoned by the Chief Justice suo motu and placed before this Court for further proceedings. On the question of application of mind, I find that the order itself is bereft of any reasoning except that which can be ferreted out from the judgment that the witnesses so far produced, do not implicate the respondents. I will be adverting to the powers of this Court after considering the other aspect urged which was that this petition is nothing but an exercise of powers u/s 439(2) of the Code of Criminal Procedure which requires some supervening events of a grave nature to justify the Court in canceling bail, whether under those provisions or suo motu u/s 401 or 397 of the Code of Criminal Procedure.

16. Mr. Jagdish Vats, learned Counsel appearing for respondent No. 4, submits that even the watchman has not identified the accused-respondents and that the medical evidence overwhelmingly pointed out the cause of death not by used to resort to physical violence by any of the respondents but because of other factors. He submits that the doctor, who is an ENT Expert and who examined Aman Kachroo did not say that the perforation injury was fresh but was an old wound. Learned Counsel submits that the most likely cause of death of Aman was the heart ailment which stood established on the record.

17. Learned Advocate General has urged that the order of the learned trial Court stops short of pronouncing a final judgment, otherwise all that had to be said has been indicated by implication in the order. He submits that of the evidence examined, it is not correct to urge that only formal witnesses are required to be examined, the witnesses to be examined are material. They are inter alia the Registrar, RPGMC who treated the deceased alongwith other students who were ragged, doctors to prove MLC, the histopathology report, handwriting expert, evidence of the witness who had the statements of the witnesses recorded u/s 164 of the Code. They cannot be said to be formal as they were to be examined on material aspects of the case which would have a bearing not only to establish the cause of death of the deceased but also corroboration etc. of the other evidence which has been brought on the record of the case. He submits that the learned Court below has decided the application in haste in total disregard to the law and facts. The bail application having been rejected by the trial Court on 31.8.2009 by assigning cogent reasons, the Court has shown undue haste in granting bail to the respondents without considering the fact that the recording of the evidence of the prosecution according to the dates fixed by the trial Court, would come to an end on 6.8.2010. He submits that there was no need to have entertained these applications and disposed them of in the middle of July, 2010.

Learned Advocate General then submits that there has been total non-application of mind because in the reply filed to the bail applications before the learned trial Court, specific averment has been made about involvement of three of the respondents in FIR No. 286/08, dated 26.7.2008 for various offences as noted above which was pending adjudication but the learned trial Court does not consider them at all. He then refers to the evidence of PW-4 Ashish Saklani, PW-6 Seemant Malhotra, PW-13 Bhuvan Verma, PW-15 Abhinav Awasthi and the postmortem report on record as also to the evidence of PW-22 Dr. D.P. Swamy who admits that the injuries found on the deceased can be possible by slaps and fist blows. He submits that this evidence prima facie establishes the case of the prosecution. In these circumstances, he submits that the learned trial Court has been selective if at all it is to be considered that the order is a reasoned judgment, selecting a few lines from the evidence of a select few witnesses to reach a conclusion which cannot under any circumstances be described as legal and proper exercise of jurisdiction.

18. Learned Advocate General places reliance on the judgment of the Supreme Court in *Satish Jaggi Vs. State of Chhattisgarh and Others*, to urge that the evidence cannot be considered in detail at the stage of consideration of grant of bail. This exercise according to him is impermissible. The Supreme Court in *Satish Jaggi's* case *supra*, after considering the judgment of the Chhattisgarh High Court, held:

6. It appears that learned Chief Justice did not consider the nature and the gravity of the offence while considering the bail application of the accused. On the contrary, while considering for bail, the learned Chief Justice appears to have decided the case pending trial on merit after scrutinising the evidence. To say the least, it is against all canons of law and judicial propriety.

12. Normally in the offence of non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the Court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

13. In the present case, the findings recorded by the learned Chief Justice, as

referred to above, virtually amounts to the regular trial pointing out the deficiency and reliability/credibility of prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain.

14. For the reasons afore stated, the order of the learned Chief Justice granting the bail is not sustainable in law. It is accordingly, set aside. The bail bonds and sureties of the respondent No. 3 stand cancelled. He is directed to be taken back to the custody forthwith.

(pp 2767-2768)

19. I have not extracted the other portion of the judgment as they relate to the facts relating to the assessment of the evidence of various witnesses which weighed with the learned Chief Justice to grant bail. After holding that some kind of prima facie case is made out, the learned trial Court holds that since a number of witnesses have been examined there are certain factors which weigh with the Court for granting bail. But I cannot find those factors, if any, except by implication which conclusively point to the innocence of the respondents according to the learned Court. The exercise having been undertaken three times i.e. once by the trial Court and twice by this Court, what changed abruptly is not clear. I have no doubt in my mind that important evidence of the other doctors and witnesses requires to be recorded and considered and evaluated which can be done only at the conclusion of the trial and not before that. It is not merely a question of the respondents tampering with the evidence. As I have noticed above, it is the gravity of the offence which is also to be considered. At this stage no opinion can be expressed with respect to the particular provisions of law under which the respondents can be held guilty or not guilty. I hold that this exercise at this stage is impermissible; the reasoning of the trial Court is contorted.

20. In Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, , the Supreme Court holds:

11. ...

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge. See Ram Govind Upadhyay Vs. Sudarshan Singh and Others, and Puran v. Rambilas and Anr. 2001 (6) SCC 338.

14. ...In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on

bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail

18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget as observed by this Court in the case *Puran v. Rambilas and Anr.* (supra) "Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated." We respectfully agree with above dictum....

20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court ... Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

21. For the reasons stated above, we are of the considered opinion that the High Court was not justified in granting bail to the first respondent on the ground that he has been in custody for a period of 3-1/2 years or that there is no likelihood of the trial being concluded in the near future, without taking into consideration the other factors referred to hereinabove in this judgment of ours.

21. So far as the gravity is concerned, all I need say is that the Supreme Court in *University of Kerala's* case supra has expressed on the seriousness of the situation. That is not to say that the guilt of the respondents has been pronounced upon but posting of the police in the College Campus and suspension/inquiry of the principal itself speaks volumes about the situation.

22. Learned Advocate General urges that the enormity of the offence is writ large

and that there is nothing pleaded in the application for bail made subsequently to indicate that there have been changed circumstances rather, if the submissions made by the respondents are accepted, it would amount to giving findings in detail on that part of the evidence so far recorded excluding the other evidence. He submits that unless the entire evidence has been recorded, it cannot be said that the respondents are either guilty or innocent. This submission of the learned Advocate General requires to be accepted as it is in concord to the law laid down in Satish Joggi's and Kalyan Chandra's case supra.

23. Learned Counsel appearing for the respondents then urged that recalling of the order at this stage tantamounts to exercise of powers u/s 439(2) of the Code of Criminal Procedure and that no intervening/supervening events after the grant of bail has been brought on record of the case to show that the bail order deserves to be recalled. (See: State (Delhi Administration) Vs. Sanjay Gandhi, , Bachan Singh and Others Vs. State of Punjab, State of Himachal Pradesh v. Nand Lal 1989 (2) Sim.L.C.197 , Aslam Babalal Desai Vs. State of Maharashtra, , Dolat Ram and Others Vs. State of Haryana, , State Vs. Amarmani Tripathi, , Nityanand Rai Vs. State of Bihar and Another, in support of this proposition).

24. There is no denying the fact that bail once granted by a reasoned judgment cannot be recalled unless the necessary ingredients of Section 439(2) of the Code are satisfied, but at the same time, this Court has jurisdiction to look into the legality, propriety and regularity of an order passed by the learned trial Court to satisfy itself that the order conforms to and is in concord with the established principles of law.

25. What is being determined in the present case is whether the order is within the confines of the jurisdiction of the learned trial Court. What cancellation of bail envisages is that the order granting bail and setting a person at liberty has been passed in consonance with law.

26. The powers of High Court under Sections 397 and 401 of the Code of Criminal Procedure have been subject matter by the decision of the Supreme Court in a number of cases. Only a few illustrative cases may be noticed. In Nadir Khan Vs. The State (Delhi Administration), , the Court holds:

4. It is well known and has been ever recognised that the High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil, and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance e.g. in now too familiar cases of food adulteration, reacts to public concern over the problem and

may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders. This position was true and extant in the old Code of 1898 and this salutary power has not been denied by Parliament under the new Code by rearrangement of the sections. It is true, the new Code has expressly given a right to the State u/s 377, Cr.P.C. to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the high Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court. This Court will be slow to interfere with exercise of such discretion under Article 136 of the Constitution.

27. To similar effect is the judgment of Supreme Court in *Municipal Corporation of Delhi Vs. Girdharilal Sapuru and Others*, that such powers cannot be fettered by limitation and *Sahab Singh and others Vs. State of Haryana*, holding that Section 397 confers the revisional powers of the High Court as also the Court of Sessions and provide that High Court as well as the Court of Sessions may call for and examine the record in any proceeding before any inferior criminal Court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding etc. as provided. Section 401 further confers the powers of the High Court to exercise any of the powers under Sections 386, 389, 390 and 391 of the Code. This judgment was considering the question for enhancement of sentence by the Court in its revisional jurisdiction.

28. Under the revisional powers of this Court under Sections 397 and 401, this Court can call for and examine the record of any proceeding before any Criminal Court inferior to it for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order or the regularity of any proceeding etc. Similarly, u/s 401, this Court in any proceeding, the record of which has been called for by itself or which otherwise constitutes knowledge, the High Court may in its discretion exercise any of the powers which has been conferred upon a Court of appeal. I need not reiterate that cognizance of the order in this case had been taken by this Court on its own motion and record called for and it is in this jurisdiction that the order of the learned trial Court is being examined.

29. In *Purshottam Vijay and etc. Vs. The State and Others*, the High Court of Madhya Pradesh, relying upon the judgment of the Supreme Court in *Pratap Vs. State of U.P. and Others*, at page 575 holds:

10. ... From the nature of these powers, it follows that the High Court can act either of its own motion or on the motion of even a stranger, who may be instrumental in bringing to the knowledge of the High Court a matter which otherwise the High Court may not have known. Of course, the normal course for the High Court to be seized of a matter is either at the instance of the prosecutor or the accused or the High Court itself but in some rare cases information may be received by the High Court even from a stranger. Thus, the High Court can interfere on information contained even in the newspaper or a placard on a wall

or on an anonymous postcard, provided it considers that sufficient ground has been established to justify its so doing. At the same time the High Court has to be loath to take action on an application for revision presented by a third party on its own responsibility and without authority from either of the parties. It becomes the duty of the High Court to see that a stranger to the proceedings does not employ his information as an instrument of vengeance on the accused or attempt to serve his own private end. An application by a third party, therefore, merely serves the function of bringing the matter to the knowledge of the Court and in such a proceeding his counsel should not expect to be heard. See *Shailabala Devi Vs. Emperor*

30. The difference between an application for cancellation of bail and a revision reviewing that order has been brought out by the High Court of Bombay in *R. Shakuntala v. Roshanlal Agarwal* 1985 Cri.L.J. 68 at page 76 holding:

13. ...When an order is passed by the trial Court and the High Court is later on approached for the purpose of the cancellation of the bail, the basic postulate is that the order was valid when it was passed, but that on account of supervening circumstances it needed to be varied or modified or cancelled. When you file a revision application against the order granting bail, your grievance is that the order was bad from its inception. ...

(P 76 - emphasis supplied)

31. Sections 397 and 401 are complete in themselves providing for the grounds on the basis of which jurisdiction may be exercised.

32. Precedent need not be multiplied the revisional and inherent powers of the High Court which are considered by the Supreme Court in *Janata Dal Vs. H.S. Chowdhary and Others*, the Court held:

128. Sections 397, 401 and 482 of the new Code are analogous to Sections 435, 439 and 561-A of the old Code of 1898 except for certain substitutions, omissions and modifications. u/s 397, the High Court possesses the general power of superintendence over the actions of courts subordinate to its which discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any state, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate court.

129. ...

130. ...

131. ...

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

33. To put the entire controversy at rest this Court can even exercise powers u/s 482 as held by the Supreme Court in *Puran Vs. Rambilas and Another etc. etc.*, the Supreme Court has reiterated the powers of the High Court u/s 482 and for cancellation of bail bonds. The Court holds:

10. Further, it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh and Others Vs. State (Delhi Administration)*, In that case the Court observed as under (Para 16):

If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arise which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court u/s 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-?-vis the High Court.

11. It must be mentioned that in support of the above submission Mr. Lalit had also relied upon the authorities in the cases of *Subhendu Mishra Vs. Subrat Kumar Mishra and Another, State (Delhi Administration) Vs. Sanjay Gandhi*, and *Bhagirathsinh Judeja Vs. State of Gujarat*, These need not be dealt with separately as they are of no assistance in a case of this nature where bail has been cancelled for very cogent and correct reasons.

12. Our view is supported by the principles laid down in the case of *Gurcharan Singh and Others Vs. State (Delhi Administration)*, In this case it has been held, by this Court, that u/s 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere.

The Court then holds:

16. Further, even if it is an interlocutory order, the High Court's inherent jurisdiction u/s 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction u/s 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified. (Re. Madhu Limaye Vs. The State of Maharashtra, and Krishnan and another Vs. Krishnaveni and another,

(P-2026-2028 - emphasis supplied)

34. Turning to the facts of the present case, the parameters as laid down in Kalyan Chandra's case was the basic law. The learned trial Court completely ignored those factors as also Satish Jaggi's case. Change of circumstance merely because a few witnesses have been examined without the entire medical record being considered cannot be a ground to arrive at any new finding.

35. Few lines from the statement of the witness(s) that there may be another possibility also cannot be used as a ground for grant of bail. What these witnesses have stated is to be determined from the entire evidence on the record which would require a meticulous consideration. What I find further in this case is that despite the fact that the entire prosecution evidence will be over in the first week of August, 2010, the learned Judge has proceeded in hot haste in pre-determining the matter. I have also held that the Court did not consider the gravity of the situation which was writ large, more especially, when the Supreme Court had to intervene by ordering a protective measure in the Medical College Campus and on the inquiry against the principal, the trial Court should have been alive to this fact. In this Court extensive reference has been made to the evidence to probabalize the cause of death of Aman Kachroo which exercise is not permissible at this stage and prima facie I cannot accept the contention urged on behalf of the respondents that the death was attributable to the so called other probabilities. That would require a detailed consideration of the entire evidence on record and not merely the statement of one or the other witness. The fact that the accused has been in custody for a long time is itself no ground for grant of bail as held in Kalyan Chandra's case. I do not wish to say anything further in the case except that the learned trial Court has acted in haste and has not even given prima facie reasons for arriving at its conclusion by only recording that it cannot be said that there is no favourable evidence in favour of the respondents. If that be so, the other aspect of the matter that there was evidence supporting the case of the prosecution also should have been considered, I need only notice one more aspect urged by Shri Shrawan Dogra, i.e. an order passed by me in Cr.M.P.(M) No. 438 of 2010 to hold that bald assertions, that the prosecution witnesses will be tampered, cannot be accepted. This is the correct position in law. On the other aspect, what that order holds is that the evidence of material witnesses who were accusators, has already been recorded and in this situation

there was no chance of this evidence being tampered with, these observations were confined specifically to that case and not a general proposition of law. In the present case, the contentions of the respondents that the prosecution evidence cannot be tampered with as all the witnesses who have to appear are doctors, police officials or other officers who are not under the influence of the respondents and as such should be granted bail cannot be accepted as there are other factors to be considered.

36. The learned trial Court ignores:

(a) That in reply to the application for bail, there is a specific assertion that three of the respondents are also involved in other criminal case;

(b) The charge already having been framed and the evidence was at its conclusion. He could not preempt the findings by not taking into consideration the testimony of the other witnesses as to the cause of death of Aman Kachroo as a result of heart attack or otherwise which has to be determined by a detailed examination of the medical record etc. regarding which evidence is being recorded.

(c) The enormity of the offence could have been judged from the fact that the case of death by ragging was taken notice of by the Supreme Court which appointed the Raghvan Committee which made its recommendations and prompted the Supreme Court for directing the State Government to take corrective measures in the College.

(d) That the learned trial Court may have some factors in mind which it does not disclose and are insufficient for grant of bail. But as I have held the question as to whether Aman Kachroo died of the so called probalized causes as urged by the learned Counsel for the respondents as elicited from the evidence on record or it was the direct result of the ragging requires to be established by a detailed examination of all the witnesses including the medical evidence.

37. In these circumstances, I hold:

(a) The orders passed by the learned trial Court granting bail to the respondents on 17.7.2010 is against law. The orders are accordingly quashed and set aside. Respondents No. 2 to 5 be taken in custody forthwith;

(b) The learned trial Court shall proceed with recording of the evidence on the dates already fixed and shall ensure that the trial is conducted from day to day;

(c) Needless to add that the respondents shall get full opportunity to lead evidence in their defence, if any, if they so chose;

(d) That an outright endeavour shall be made by the learned trial Court that if evidence of both sides is complete, the case is not unduly delayed at the arguments stage and shall be disposed of at the earliest on day to day basis.

(e) The trial Court shall endeavour that no undue and unnecessary adjournments

shall be granted to either side.

38. The Registry is directed to send the record of the trial Court forthwith by special messenger so as to reach the learned Fast Track Court, Kangra at Dharamshala on or before 31st July, 2010.