

**(2020) 02 DEL CK 0565**

**In the Delhi High Court**

**Case No :** Criminal Miscellaneous Case No. 2538 Of 2019

'J'

APPELLANT

Vs

State Of Nct Of Delhi & Ors

RESPONDENT

**Date of Decision :** 14-02-2020

**Acts Referred:**

Indian Penal Code, 1860 — Section 195A, 313, 324, 376, 506  
Code Of Criminal Procedure, 1973 — Section 57, 167, 167(2), 437, 437(1), 437(2),  
437(5), 439, 439(1), 439(2)

**Citation :** (2020) 02 DEL CK 0565

**Hon'ble Judges :** Mukta Gupta, J

**Bench :** Single Bench

**Advocate :** Rishi Manchanda, Amit Gupta, K.K.Jha

**Final Decision :** Disposed Of

## Judgement

Mukta Gupta, J

CRL.M.C. 2538/2019

1. Registry at the outset will show the name of the petitioner as 'J' simplicitor.
2. Respondent No. 2 was granted bail in case FIR No. 288/2018 under Section 376/313 IPC registered at P.S. Nihal Vihar.
3. By this petition, the petitioner seeks cancellation of bail of respondent No. 2 on the ground that after the grant of bail, respondent No. 2 has been abusing the concession of the grant of bail to him.
4. The petitioner lodged FIR No. 288/2018 at P.S. Nihal Vihar against respondent No. 2 for the offence punishable under Section 376/313 IPC. Respondent No. 2 applied for regular bail before this Court which was granted vide order dated 31st July, 2018, on the nature of allegations and also because of the fact that it had been two months while the respondent No. 2 was in custody. The respondent No. 2 was released from custody pursuant to the order of this Court dated 31st July,

2018 and it is alleged that thereafter he started threatening the petitioner by putting up messages on the Whatsapp status, which are threatening in nature so as to intimidate the petitioner herein. Besides, the respondent No. 2 also assaulted the petitioner on 21st February, 2019 when she was medically examined by SGM Hospital and MLC bearing No. 2424/19 was prepared whereby Doctor opined that injury was by sharp weapon and on that basis, FIR No. 82/2019 under Sections 324/195A/506 IPC was registered. The respondent No. 2 was arrested on the said FIR and admitted to bail on 28th March, 2019. Immediately on release, the petitioner again gave a complaint against respondent No. 2 wherein, she alleged stalking and threatening by respondent No. 2 along with his friend while asking the petitioner to withdraw the cases.

5. Some of the threatening posts put up by the respondent No. 2 on his Whatsapp are as under:-

(i) main ab tension free hu. ab tension kisi aur ko honewali hai wo bhi bahut jabardust.

(ii) ha main pagal hu. pagal hu. tumhe maar dalunga

(iii) kal nipta dunga ab hisab barabar ho jayega

(iv) kya karu ab to ak hi rasta bachha hai ya khud mar jaun ya kisi ko maar ke mar jaun

(v) he bhagwan usko kabhi pyar mat dena hamesha roye wo pyar ke liye aur na uska kabhi ghar base na uske bacche ho wo aise he road par ghume puri jindgai raad banker

(vi) he kali mata itna karna ki uska kabhi ghar na base wo puri jindagi raad rahe

(vii) tumhare sarir me kide padenge

(viii) tumne mujhe jail bhiway jao tumhara na kabhi ghar basega or na pariwar ka such milega aur no tum kabhi maa banogi

(ix) mohan is back

(x) jindagi me hamesa raad banker he ghumoge

(xi) kisi ne mere sath galat kiya tha case karke kya ukhad liya mere aur age bhi kuchh nahi kar payega thu thu thu thu tumhari anath ghatya jindage ke liya

(xii) jana hai to jao. main aunga jarur besak mana kr dena us time ya mat milana

(xiii) tumhare upar aj bahut gussa araha h

(xiv) ghabrao mat. agar tum mere na huye to main kisi aur ka bhi nahi hone dunga. us din kya hoga ye to sudhar jao. kisi aur ka nahi hone dunga"

6. Further, Supreme Court in the decision reported as (2004) 2 SCC 362 Mehboob Dawood Shaikh Vs. State of Maharashtra laid down the criterias on

which bail granted to an accused can be cancelled as under:-

"7. It is trite law that the considerations for grant of bail and cancellation of bail stand on different footings. By a majority judgment in *Aslam Babalal Desai v. State of Maharashtra* the circumstances when bail granted can be cancelled were highlighted in the following words: (SCC pp.289-90, para11)

"11. On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under sub-section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex case and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instill a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory timeframe. The deeming fiction of correlating the release on bail under sub-section (2) of Section 167 with Chapter XXXIII, i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under Section 437(1) or (2) or Section 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in *Raghubir Singh v. State of Bihar*, the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it

interferes with the liberty of the individual and hence it must not be lightly resorted to."

7. Considering the subsequent conduct of the respondent No. 2 and that the trial in the two cases registered on the complaint of the petitioner is at the initial stage, wherein the petitioner is yet to be examined as a witness and that the respondent No. 2 is threatening the petitioner to withdraw the two cases and while on bail in FIR No. 288/2018, the respondent No. 2 injured the petitioner, this Court cancels the bail granted to the respondent No. 2 in case FIR No. 288/2018 under Section 376 IPC, P.S. Nihal Vihar. The bail application of the respondent No. 2 will be considered in this case only after the statement of the petitioner is recorded before the learned Trial Court.

8. Petition is disposed of.

9. Respondent No. 2 who was present in Court while order was being passed has left the Court premises. The Investigating Officer will ensure that the order of the cancellation of bail of respondent No. 2 is duly complied with.

10. Order dasti.

Crl.M.A. 2381/2020 (for cancellation ofailable warrants)

Application is dismissed as infructuous.