
(2015) 01 CHH CK 0016
In the Chhattisgarh High Court
Case No : Criminal M.P. No. 29 of 2015

Kokila Prasad Dewangan

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(1), 437(5), 439(1), 439(2), 482
Penal Code, 1860 (IPC) — Section 302, 304-B, 323, 498-A, 504

Citation : (2015) 2 CGLJ 257

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Amit Kumar, for the Appellant; Anant Bajpai, Panel Lawyer,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The accused/non-applicant No. 2 to 4 were arrested by the jurisdictional police for commission of offence punishable under Section 498-A of IPC and thereafter they were granted privilege of regular bail by order dated 30.06.2014 and ultimately enlarged on bail. Thereafter, while charge-sheeting them, offence under Section 304-B was also inserted against the accused persons which leads to filing of application for cancellation of their bail under Section 439(2) of Cr.P.C. by the applicant/complainant. By the impugned order, the said application for cancellation of bail of accused persons has been rejected by the court of Session holding that there is no good ground for cancelling their bail and allowed to continue the bail granted to them, and thus, the applicant-complainant has filed this application under Section 482 of Cr.P.C. alleging that Sessions Judge has committed grave illegality in rejecting his application filed under Section 439(2) of Cr.P.C. for cancelling bail of non-applicant No. 2 to 4.

2. Shri Amit Kumar, learned counsel appearing for the applicant would submit that once the offence under Section 304-B was inserted against the accused persons while charge-sheeting them, regular bail earlier granted ought to have

been cancelled by the Sessions Judge and by not cancelling their bail, he has committed grave illegality, and therefore, order impugned granting them bail deserves to be set-aside.

3. Shri Anant Bajpai, learned counsel for the State would submit that once the bail is granted to the accused persons and unless there is reasonable grounds for canceling the bail, bail ought not to be cancelled, and therefore, the Sessions Judge was absolutely justified in rejecting the application filed under Section 439(2) of Cr.P.C. for cancelling bail of accused persons.

4. I have heard the counsel appearing for the parties and perused the order impugned carefully.

5. The short question that falls for consideration is whether learned Sessions Judge is justified in rejecting the application for cancellation of bail, filed by petitioner/complainant?

6. It is now quite well settled 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 and the grounds for cancellation of bail under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or 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 indulges in similar activities which would hamper smooth 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 survey, etc.

7. In a decision reported in *Dolat Ram and Others Vs. State of Haryana*, (1994) 3 Crimes 1013 : (1995) 1 JT 127 : (1994) 4 SCALE 1119 : (1995) 1 SCC 349 : (1994) 6 SCR 69 Supp , their Lordships of Supreme Court while highlighting the factors for consideration of bail, has held as under:--

"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during

the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

8. Further, their Lordships of Supreme Court in case of *Puran Vs. Rambilas and Another etc. etc.*, AIR 2001 SC 2023 : (2001) CriLJ 2566 : (2001) 2 Crimes 283 : (2001) 2 DMC 1 : (2001) 5 JT 226 : (2001) 3 SCALE 695 : (2001) 6 SCC 338 : (2001) 3 SCR 432 : (2001) 2 UJ 875 : (2001) AIRSCW 1935 : (2001) 3 Supreme 685 , has held as under:--

"9.....One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected."

9. Likewise, in a decision reported in *Ram Govind Upadhyay Vs. Sudarshan Singh and Others*, AIR 2002 SC 1475 : (2002) CriLJ 1849 : (2002) 2 Crimes 15 : (2002) 3 JT 185 : (2002) 3 SCALE 12 : (2002) 3 SCC 598 : (2002) 2 SCR 526 : (2002) AIRSCW 1342 : (2002) 2 Supreme 457 , their Lordships of the Supreme Court has held as under:--

"8. While it is true that availability of over whelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. The contextual facts depict and as noticed hereinbefore that the incident occurred at the time when the election was going on and the murder was said to have been committed in the broad day light by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave having regard to the same, the High Court on 29th August, 2000 refused the application for bail.

9. Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504, IPC in which the charge-sheet have already been issued - the Court ought to take note of the facts on/record rather than ignoring it. In any event, the discretion to be used

shall always have to be strictly in accordance with law and not de hors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302, IPC having the punishment of death or life imprisonment - it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature."

10. Bearing in mind the principles of law laid down by their Lordships of Supreme Court in the aforesaid cases, turning back to the factual score, it would appear that none of the grounds required for cancellation of bail is either pleaded or made out by the applicant and sole ground highlighted for cancellation of bail is the addition of offence under Section 304-B at the time of filing charge-sheet, which cannot be the ground for invoking the jurisdiction under Section 439(2) of Cr.P.C. and as such learned Sessions Judge is absolutely justified in rejecting that application for cancellation of bail. Accordingly, the petition has no force, the same deserves to be and is hereby dismissed. No order as to cost(s).