
(2011) 04 MP CK 0003
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 2871 of 2011

Sanjay Awasthi

APPELLANT

Vs

Vijay Jain

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439, 439(2)

Citation : (2011) ILR (MP) 1618

Hon'ble Judges : I.S. Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.S. Shrivastava, J.—Preliminary arguments on the application filed by the applicant u/s 439(2) of the Cr.P.C. for cancellation of anticipatory bail order dated 22.03.2011 passed in favour of the respondent No. I heard.

2. The applicant has prayed for the cancellation of anticipatory bail order dated 22.03.2011 passed in favour of the respondent No. 1 Vijay by the Court of Shri R.K.S. Gautam, A.S.J., Indore.

3. According to Section 439(2) of the Cr.P.C. the power of cancellation of bail is vested in the Court which granted the bail. Though the High Court and Court of Session has concurrent powers for the cancellation of bail u/s 439(2) of the Cr.P.C. but for the cancellation of the bail the principle is that the High Court shall not ordinarily, and except under exceptional circumstances, exercise its powers under Sections 438 and 439 of the Cr.P.C. without and before the Sessions Court having concurrent jurisdiction is moved for identical relief.

4. In the case of Smt Manisha Neema Vs. State of M.P. 2003 Cr.L. J. NOC 273 (M.P.), it has been held that application for grant of anticipatory bail should be filed before the Court of Sessions at first instance. On rejection thereof applicant can approach High Court. The same principle is applicable for cancellation of bail.

5. In the case of Mohanlal Choudhari Vs. State of Maharashtra, it has been held that Sessions Court and High Court though have concurrent jurisdiction to entertain application for anticipatory bail. It is pertinent for High Court not to entertain application directly by passing the Sessions Court unless applicant points out exceptional circumstances.

6. In the case of Bholai Mistry and Another Vs. The State, . it has been held that anticipatory bail granted by the High Court can only be cancelled by it and not by the Magistrate or the Sessions Judge. The same analogy applies here that the Court which has granted the bail should be first approached for its cancellation u/s 439(2) of the Cr.P.C.

7. In the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, . it has been held that it is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant on finding new material or circumstances at any point of time. Under these circumstances the applicant should move to the same Court which granted anticipatory bail to the respondent No. 1.

8. In this case the applicant has not stated any reason that why he is approaching this Court directly. The learned Additional Sessions Judge, Indore has granted the anticipatory bail to the applicant, therefore, he has exercised his discretion in this respect, therefore, he has to consider for the cancellation of bail granted to the respondent. The arguments that if he considers the cancellation of bail then it will amount to reviewing of its order is baseless because this power is vested in that Court u/s 439(2) of the Cr.P.C.

9. The applicant has argued on the basis of law laid down in the case of Puran Vs. Rambilas and Another etc. etc., . but in this case the anticipatory bail was granted by the Sessions Court which was cancelled by the High Court and it was challenged before the Supreme Court and Supreme Court held that such powers can be exercised by the High Court. This case was considered on different aspect.

10. Despite this where two for a have concurrent powers the forum lower in the hierarchy must be approached before the doors of the superior one are knocked.

11. The applicant has not explained any reason or exceptional circumstances that why he is approaching directly in the High Court? While he has an opportunity to apply for the cancellation of bail before the same court granting the bail. The time of the Court is precious and it should be saved for more sublime pursuit. If the applicant approaches the Court of Additional Sessions Judge definitely his expenses are reduced and he will have one more opportunity for the same relief in the High Court in the same State.

12. Therefore, under these circumstances, this application for cancellation of bail should be filed before the same Court which granted the anticipatory bail. The applicant cannot be permitted to frog leap in the matter of cancellation of bail

granted by the Additional Sessions Judge. First of all he should approach before the Court of Additional Sessions Judge which granted the anticipatory bail and obtain the appropriate orders from that Court and thereafter he should approach the High Court.

13. Under these circumstances, this application is not maintainable at this stage, hence it is dismissed accordingly.