
(2020) 02 RAJ CK 0656

In the Rajasthan High Court

Case No : Criminal Bail Cancellation Application No. 123 Of 2018

Sharwan Lal Jat

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 436, 437, 437(5), 439(1), 439(2)
Indian Penal Code, 1860 — Section 143, 308, 148, 323, 324, 325, 341, 379, 427, 452, 504

Citation : (2020) 02 RAJ CK 0656

Hon'ble Judges : Mahendar Kumar Goyal, J

Bench : Single Bench

Advocate : Rajeev Surana, Hemant Taylor, Laxman Meena

Final Decision : Allowed

Judgement

This criminal misc. bail cancellation application has been filed by the complainant seeking quashment of the order dated 24.10.2016 passed by the

learned Additional Sessions Judge No.19, Sanganer, Jaipur Metropolitan, whereby, the application filed by the State of Rajasthan under Section 439(2)

Cr.P.C. seeking cancellation of the bail extended to the non-petitioners no.2 to 4 by the investigating agency under Section 436 Cr.P.C., on addition of

graver and non-bailable offence under Section 308 IPC, has been rejected.

The brief facts as emerge are that the complainant has lodged an FIR no.286 dated 26.6.2015 with the Police Station Sanganer Sadar, Jaipur (East)

under Sections 143, 452, 323, 341, 379, 427, 148, 504 and 506 IPC. After investigation, the investigation agency found the allegations to be prima facie

proved under Sections 147, 148, 149, 323, 341, 324, 325, 504, 506 and 427 IPC and since all the offences were bailable, the non- petitioners were

extended benefit of bail by the investigating agency under Section 436 Cr.P.C. However, later on Section 308 IPC was added and the same being non-bailable offence, the State Government moved an application under Section 439(2) Cr.P.C., which came to be rejected, as aforesaid, which has been assailed herein.

The learned counsel for the petitioner submitted that once the graver and non-bailable offence was added, the benefit of bail already extended to the accused-non-petitioners no.2 to 4, was liable to be cancelled and no discretion was left with the learned Additional Sessions Judge in rejecting the application. He relies upon judgement of the Hon'ble Apex Court of India in Pradeep Ram vs. State of Jharkhand & Ors.-2019 (9) SCALE 12 0 and the judgement of a coordinate bench of this Court in Abdul Gafoor vs. State of Rajasthan, S.B. Criminal Misc. Petition No.1290/2012 dated 14.6.2012 to fortify his submissions.

Learned Public Prosecutor supported the submissions made by the learned counsel for the petitioner and prayed that the application seeking cancellation of bail, be allowed.

Per contra, the learned counsel appearing for the accused- non-petitioners no.2 to 4 submitted that the law does not mandate cancellation of bail in each and every situation where after the benefit of bail, a graver and non-bailable offence is added. He submits that the learned Additional Sessions Judge has, after perusal of the entire material on record, rightly rejected the application seeking cancellation of bail, which does not warrant any interference by this Court under its concurrent jurisdiction. He further submits that the petitioner did not move any application seeking cancellation of bail before the learned Sessions Court as it was moved by the State Government, which has not assailed the order impugned dated 24.10.2016 and hence the application, on behest of the complainant, is not maintainable. He, therefore, prayed for rejection of the application seeking cancellation of bail.

Heard the learned counsels for the parties and perused the record.

The Hon'ble Apex Court has, in Prahlad Singh Bhati vs. NCT, Delhi & Anr.-(2001) 4 SCC 280, held in para 9 as under:

9. In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have

completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed an irregularity by holding that "I do not agree with the submission made by the Ld. Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not in the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent- accused the grant of bail, the Magistrate adopted a wrong approach to confer on him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

A coordinate bench of this court has, relying upon the dictum in the case of Prahlaad Singh Bhati (supra), held in Abdul Gafoor vs. State of Rajasthan, S.B. Cr. Misc. Petition No.1290/2012 dated 14th June, 2012 as under:

In view of the decision of the Supreme Court in Prahlaad Singh Bhati's case and the Single Bench decision of this Court in the case of Mool Chand's case referred supra, the argument advanced by the learned counsel for the petitioner that once the petitioner had been granted bail for lesser offences by the Investigating Officer himself, the learned Sessions Judge was not competent to cancel the bail granted to the accused does not hold water. The view expressed by the Single Bench of this Court earlier in the cases of Gheesya (supra) and Chandra Pal Singh (supra) cannot be said to be laying down the correct law. The learned Sessions Judge while accepting the application for cancellation of bail filed under section 439(2) Cr.P.C. on the ground that graver and non bailable offences were added to the case on a further investigation has thus committed no error, illegality or abuse of the

process of Court in cancelling the bail granted to the petitioner by the police u/s. 436 Cr.P.C. at the stage when only a bailable offence was being disclosed during the course of investigation.

Recently, the Hon'ble Apex court has, in the case of Pradeep Ram vs. the State of Jharkhand & Ors.-2019 (9) SCALE 120, held in para 29 as under:

29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused,

further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non- bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been

granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who

has already been granted bail to be arrested and commit him to custody on addition of graver and non- cognizable offences which may not be

necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to

arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the

Court which had granted the bail.

In view of aforesaid, the settled position of law which emerges is that the benefit of bail granted to an accused under bailable offences, cannot

continue and shall stand cancelled on addition of graver and non-bailable offence. In these circumstances, the order dated 24.10.2016 passed by the

learned Additional Sessions Judge No.19, Sanganer, Jaipur Metropolitan, rejecting the Criminal Misc. Application no.437/2016 seeking cancellation of

bail to the accused-non-petitioners no.2 to 4 cannot be countenanced and deserves to be quashed. The argument of the learned counsel for the non-

petitioners no.2 to 4 that the State Government, which has moved the application before the learned Additional Sessions Judge, has not filed the

present application seeking cancellation of bail and not assailed the impugned order before this Court, is of no avail in view of the settled position of

law as aforesaid and even otherwise also, the learned Public Prosecutor has supported the submissions made by the learned counsel for the

complainant and has prayed for cancellation of benefit of bail extended to the non-petitioners no.2 to 4.

Therefore, this application seeking cancellation of bail is allowed, the order dated 24.10.2016 is set aside and the benefit of bail extended to the non-

petitioners no.2 to 4 under Section 436 Cr.P.C. stands cancelled.