

**(2021) 05 SHI CK 0172**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition (M) No.227, 721 Of 2021

Sonia And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

**Date of Decision :** 31-05-2021

**Acts Referred:**

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21  
Code Of Criminal Procedure, 1973 — Section 439

**Citation :** (2021) 05 SHI CK 0172

**Hon'ble Judges :** Jyotsna Rewal Dua, J

**Bench :** Single Bench

**Advocate :** Pratik Sharma, Sheetal Vyas, Anil Jaswal, Amit Dhumal, Manoj Bagga

**Final Decision :** Disposed Of

## Judgement

Jyotsna Rewal Dua, J

Cr.MP(M) No. 721/2021

1. State has moved this petition seeking cancellation of bail granted to the respondent on 10.02.2021 in Cr.M.P(M) No. 291/2021.

FIR No. 135/2020, was registered against the respondent on 13.09.2020, under Section 21 of the Narcotics Drugs and Psychotropic Substances Act,

1985, at Police Station Damtal, District Kangra, H.P. Respondent was arrested in the aforesaid FIR on 13.09.2020. She was accused of possessing

7.79 grams of heroin.

2. Cr.MP(M) No. 227/2021 was moved by the respondent (Petitioner therein) for grant of regular bail in the aforesaid FIR on 04.01.2021. Petition

was listed on 01.02.2021 before the Hon'ble Coordinate Bench/Vacation Bench, when notice was issued and waived by the State. Status report

was directed to be filed and the matter was ordered to be listed in first week of March, 2021.

3. During the pendency of Cr.MP(M) No. 227/2021 and subsequent to notice having been issued in it, the respondent filed another Cr.MP(M)

No.291/2021, under Section 439 of the Code of Criminal Procedure for grant of regular bail in the same FIR through a different counsel. The second

bail petition was listed on 09.02.2021, when notice was issued and the status report was called for. The status report was filed by the State without

disclosing the fact of filing and pendency of previous bail petition (Cr.MP(M) No. 227/2021) by the respondent in the same FIR. Respondent also did

not disclose in her second bail petition (Cr.MP(M) No. 291/2021) about her filing Cr.MP(M) No. 227/2021, seeking regular bail in the same FIR and

its pendency in the Court. On 10.02.2021, respondent was enlarged on bail in Cr.MP(M) No. 291/2021.

4. The first bail petition (Cr.MP(M) No. 227/2021), which on 01.02.2021 was ordered to be listed in the first week of March, 2021, was listed before

the Honâ??ble Coordinate Bench on 05.03.2021, when following order was came to be passed:Â?

â??The petitioner had filed this bail petition on 4.1.2021. However, the bail petitioner had filed a mention memo about the same during

winter vacation, pursuant to which the matter was posted before this Court on 1.2.2021, on which date, this matter was ordered to be listed

in the first week of March, 2021 to file status report. The said bail petition is supported by an affidavit of one Sarishta Devi, who claimed to

be mother of the bail petitioner Sonia.

Ms. Abhilasha Kaundal, Advocate appearing vice Mr. Pratik Sharma, learned counsel for the petitioner seeks liberty to withdraw the

present petition. The Registry has placed before me another matter filed by the same petitioner, which is registered as Cr.MP(M)

No.291/2021 and a perusal of same reveals that it was filed through eÂmail on 8.2.2021, i.e., after passing of the order on 1.2.2021 in the

instant bail petition.

In paragraph 17 of new bail petition, which was registered as Cr.MP(M) No.291 of 2021, there is a declaration that no other bail

application is pending before any other Court. This petition is supported by an

affidavit of one Uttam Kumar, who in affidavit did not disclose any relationship with the petitioner. The said petition (Cr.MP(M) No.291 of 2021) was posted before the learned Vacation Judge (Honâ??ble Ms. Justice Jyotsna Rewal Dua) on 9.2.2021, on which date, status report was sought for the next date, i.e., 10.2.2021. When the matter was taken up on 10.2.2021, the Honâ??ble Coâ??ordinate Bench allowed the petition and granted bail.

Thus apparently, when Cr.MP(M) No.291 of 2021 was filed, the bail petitioner concealed the fact of pendency of instant petition and in

paragraph 17 of the bail petition, it is mentioned that no other bail application was pending before any other court of law and this

contention is supported by an affidavit of one Uttam Kumar. The contents of both the bail petitions mentioned same FIR, i.e., FIR No.135 of

2020 dated 13.9.2020 under Section 21 of NDPS Act registered in Police Station Damtal, District Kangra, H.P and the particulars of the

petitioner in both the petitions are also same. The contents of the affidavit filed in Cr.MP(M) No.291 of 2021 reveal that while imparting

instructions to the counsel, the deponent did not bring in the notice of the counsel about the pendency of present bail petition. Therefore,

the error apparent lies on the petitioner because without her knowledge, second petition could not have been filed.

Given the fact that the Coâ??ordinate Bench has already closed Cr.MP(M) No.291 of 2021 vide order dated 10.2.2021, as such the instant

bail petition should also be listed before the same Bench.

Mr. Nand Lal Thakur, learned Additional Advocate General states that this fact was not in the knowledge of the office of Advocate General

and they have come to know about it just now, when this matter has been taken up. He states that the State shall file an application for

cancellation of bail granted in Cr.MP(M) No.291 of 2021.

Given above, the State to file such application for cancellation of bail granted in Cr.MP(M) No. 291 of 2021 within one week from today.

The State to also apprise in the cancellation application that for what reasons, the concerned police official failed to bring to the notice of

the Honâ??ble Court about the fact of pendency of the previous bail petition.

The Registry is directed to post the cancellation application alongwith instant bail

petition, i.e., Cr.MP(M) No.227 of 2021 before the same

Court, which had granted such bail in Cr.MP(M) No.291 of 2021.â??

It is in this background, State has moved the instant petition, seeking cancellation of bail granted to the respondent on 10.02.2021 in Cr.MP(M)

No.291/2021.

5. Heard learned counsel for the parties and gone the record.

6. Learned counsel for the respondent (original bail petitioner) submits that Cr.MP(M) No.227/2021 was filed on the affidavit of the mother of the

respondent. She was an illiterate lady and not aware about filing of the first bail petition of the respondent or the fact that some order has been passed

in the bail petition (Cr.MP(M) No.227/2021). Ignorant of filing of the first petition, second bail petition was filed subsequently on the affidavit of one

Uttam Kumar by engaging a different counsel. Learned counsel further submitted that there was no deliberate attempt on part of the respondent to

mislead and to abuse the power of the Court. The second bail petition came to be filed only on account of communication gap between the respondent,

her mother and learned counsel representing her. These facts were not brought to the notice of learned counsel, who represented the respondent in

the subsequent bail petition. Filing of second petition was also not to the knowledge of her counsel representing her in the first petition. Whereas,

learned Deputy Advocate General contended that the respondent, during pendency of her previously filed bail petition had not only chosen to file a

subsequent bail petition in relation to the same FIR, but that too without disclosing the fact about pendency of the previous bail petition as well as the

fact that notice in the said petition had already been issued by the Court. Therefore, he prayed for cancellation of the bail granted to the respondent in

Cr.MP(M) No.291/2021. Learned counsel representing the original bail petitioner in Cr.MP(M) No. 227/2021 submitted that he had intimated about

filing of the bail petition (Cr.MP(M) No.227/2021) and the order passed in it, to his clients at the relevant time itself.

7. The law relating to canceling of bail has been summarized by Honâ??ble Apex Court in 2020 (2) SCC 743, titled Myakala Dharmarajam and Ors.

Vs. State of Telanganan and Anrs., wherein it was held that bail can also be cancelled where the order granting bail suffers from serious infirmities

resulting in miscarriage of justice. If the court granting bail ignores relevant

material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused. It was also observed that grounds mentioned in the judgment for cancellation of bail are only illustrative and not exhaustive. Relevant paragraphs are as under:Â?

â??7. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the

evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice

and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each

criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken

into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail,

the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

8. In *Raghubir Singh V. State of Bihar* this Court held that bail 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 surety, etc. The above 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.

9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in

miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into

account irrelevant material, which has no relevance to the question of grant of

bail to the accused, the High Court or the Sessions Court

would be justified in cancelling the bail?|..â??

Desperate attempt made by learned counsel for the respondent cannot change the glaring fact about filing of Cr.MP(M) No.227/2021 by the petitioner

seeking regular bail in FIR No. 135/2020 registered on 13.09.2020. The respondent had filed Cr.MP(M) No.227/2021 on 04.01.2021, in which notice

was issued on 01.02.2021. State had waived the issuance of notice and the matter was ordered to be listed in the first week of March,2021. During

pendency of this petition, the respondent through eÂmail on 08.02.2021 i.e. after passing of the order on 01.02.2021 in Cr.MP(M) No.227/2021 filed

second bail petition Cr.MP(M) No.291/2021, through a different counsel with specific averment that no other bail petition of her was pending

adjudication before any other Court. The second bail petition was listed on 9.02.2021, when notice was issued and status report was called for

10.02.2021. Status report was filed by the State without disclosing calling of status report in the same FIR in Cr.MP(M) No.227/2021 previously filed

by the respondent. Considering the status report and after hearing the case, bail was granted to the respondent on 10.02.2021.

It is obvious that the respondent had hoodwinked the Court and obtained bail by abusing the judicial process. During pendency of Cr.MP(M)

No.227/2021, respondent could not institute Cr.MP(M) No.291/2021. Two petitions, one after another, were filed in succession by the respondent for

grant of bail in the same FIR and that too when her first bail petition was already pending adjudication. It cannot be assumed that the respondent was

not aware about the order passed in her first bail petition. Being aware that Cr.MP(M) No.227/2021 stood filed and on 01.02.2021 was ordered to be

listed in first week of March 2021, respondent dared to file second bail petition (Cr.MP(M) No.291/2021) by changing her counsel and without

disclosing the fact of pendency of earlier bail petition and the order passed in it either to her learned counsel or to the Court. Such conduct of the

respondent is reprehensible and cannot be condoned. Conduct of respondent reflects that she has no respect for law and that she has misled the

Court. Hence, the bail granted to the respondent on 10.02.2021 in Cr.MP(M) No. 291/2021 deserves to be cancelled. Accordingly, the petition

Cr.MP(M) No. 721/2021 is allowed and bail granted in favour of the respondent

on 10.02.2021 in Cr.MP(M) No.291/2021 is cancelled. However, liberty is reserved to the respondent to file a fresh petition, in accordance with law.

Before parting with the case, it needs to be noticed that while filing status report, in Cr.MP(M) No.291/2021, it was incumbent upon the State to

mention therein previous bail petitions filed by the bail petitioner and the outcome thereof. In the instant case, the status report filed in Cr.MP(M)

No.291/2021 did not mention Cr.MP(M) No.227/2021 previously filed by the petitioner & pending adjudication as on the date of consideration of

second bail petition ( Cr.MP(M) No.291/2021). During hearing of the case, learned Additional Advocate General apprised that the error was on

account of assumption of concerned police official that the aforesaid two bail petitions relate to two different FIRs. However, thereafter show cause

notice in this regard was served upon the concerned police official, now a warning has been issued to him in the matter. Considering that detailed

observations in respect to filing of status report have already been made in Cr.MP(M) Nos.1303/2020, titled Sunil Kumar Vs. State of Himachal

Pradesh, therefore, let this matter be placed before the Director General of Police for taking suitable action as per law and also for issuing necessary

instructions to all concerned authorities regarding proper filing of status reports with upÂ?toÂ?date required particulars.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

Cr.MP(M) No. 227/2021

In view of the order passed in Cr.MP(M) No. 721/2021, learned counsel for the petitioner seeks permission to withdraw the present petition with

liberty to file afresh, in accordance with law. Prayer has not been opposed by learned Additional Advocate General. Accordingly, the petition stands

dismissed as withdrawn with leave and liberty as prayed for. Pending miscellaneous application(s), if any, shall also stand disposed of.

It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion

on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.