

(2016) 04 MP CK 0040
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 21746/2015

The State of Madhya Pradesh (Forest Department)	APPELLANT
Vs	
Jaitmang	RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, Section 439 (2), Section 439(1), Section 439(2)
Evidence Act, 1872 — Section 25
Wild Life (Protection) Act, 1972 — Section 2(16), Section 35(8), Section 39, Section 44, Section 49, Se

Citation : (2016) 04 MP CK 0040

Hon'ble Judges : Rajendra Mahajan, J.

Bench : Single Bench

Advocate : Kartik Shukul, Learned Counsel, for the Appellant;

Final Decision : Allowed

Judgement

Rajendra Mahajan, J.—1. The applicant has preferred the application under Section 439(2) of the Cr.P.C. for cancellation of bail granted to the respondent under Section 439(1) of the Cr.P.C. in RCC No. 341/2015, arising out of Preliminary Offence Report (for short the POR) No. 14198/03 dated 13.07.2015, pending on the file of JMFC, Sohagpur, district Hoshangabad, vide order dated 07.11.2015, passed by the First Additional Sessions Judge, Pipariya, district Hoshangabad, in Transfer Bail Application No. 133/15.

2. The facts material for adjudication of the application are as under:-

(2.1) On 13.07.2015, the applicant's Mahavats were patrolling in compartment No. RF 251, beat Lagda falling within the core area of Satpura Tiger Reserve Madhya Pradesh (for short "the Reserve"). They came across three scales of wild animal pangolin and man made articles. On the basis of aforesaid evidence, POR No. 14198/03 dated 13.07.2015 was registered under the various penal Sections of the Wild life (Protection) Act, 1972 (for short "the Act"). At the preliminary

stage of investigation, it was found that the villagers of Sakai village were involved in the crime. Upon inputs, accused Shriwas and Summai of the said village were taken into custody for interrogations. They disclosed in their confessional statements amongst other things the names of persons who were involved in the crime and at their instances 1.5 kgs. pangolin-scales were recovered from the Reserve. They also admitted in their confessional statements that some time back they had poached a tiger by poisoning its kill and the remains of it were sold to accused Faruque Khan. They also disclosed that accused Chhote Veer and Rampal also poached tigers in the Reserve. Thereupon, the said accused persons were also interrogated. They confessed in their confessional statements that they had actively associated with illegal trading of wild life contrabands for many years, and they used to sell skins, bones and claws of tigers to accused Jholan Singh. Accused Ummat also revealed the name of Jholan Singh in his confessional statement. Thereupon, accused Jholan Singh was interrogated. He also admitted in his confessional statement that he has been working with an illegal syndicate since the past two years and also supplying pangolin-scales to accused Faruque Khan. He also admitted that having procured the tiger-bones from accused Chhote Veer and Rampal had sold to accused Yunus Khan. Thereafter, accused Yunus Khan was also interrogated. In his confessional statement, he admitted to have purchased tiger-bones from accused Jholan Singh. He also admitted that he used to sell wild life contrabands to the respondent. Thereupon, on 29.10.2015 the respondent was arrested at Delhi. On being interrogated, he admitted that he had been purchasing tiger-skins and bones, pangolin-scales and Ren Sanders (Rakhta Chandan) from accused Yunus Khan and selling to a man by the name of Tasi, who is a Tibetan and resides in China. He, in turn, sold them in illegal chinese market.

(2.2) Upon completion of the investigation a charge-sheet was filed in the court of JMFC, Sohagpur against 23 accused persons including the respondent under Sections 35(8), 2(16), 9, 39, 44, 49, 50(c) and 51 of the Act. The charge-sheet was registered as RCC No. 341/2015.

(2.3) The respondent filed bail application under the provisions of Section 437 of the Cr.P.C. before the JMFC, Sohagpur. He rejected his bail application. Thereafter, the respondent submitted bail application under the provisions of Section 439(1) of the Cr.P.C. The bail application was numbered as TBA No. 135/2015. It was disposed of vide the impugned order dated 07.11.2015 passed by the learned First Additional Sessions Judge, Pipariya.

(2.4) From a perusal of the impugned order, it appears that the learned ASJ has granted bail to the respondent taking into consideration the following facts. First-the case is triable by the court of JMFC, second-the main accused Jholan Singh was granted regular bail by the High Court and third - the remaining accused were also enlarged on bail. Hence, the respondent is also entitled to get bail on the principle of parity.

3. The learned counsel for the applicant argued that the prosecution of 23

accused persons in the case demonstrates the fact that a biggest crime syndicate is engaged in illegal killing of wild animals and trading of wild life contrabands. The role of the respondent in the commission of crime is of a trader. As such, he is a high ranking member of the said illegal syndicate. Since he is in dominant position amongst the accused persons, there is a strong possibility that he would tamper with the evidence in the course of trial. Thus, his case is entirely different from the cases of other accused persons. Consequently, the principle of parity in the case of the respondent is not applicable.

4. He further argued that a confessional statement of an accused recorded by a forest officer is admissible in evidence in forest or wild life offences and the same is not hit by Section 25 of the Evidence Act as a forest officer is not a police officer within the meaning of Section 25 of the Evidence Act. He further argued that the respondent's confessional statement was recorded in detail, demonstrating that having been kingpin of the syndicate and a main trader, he is mainly responsible for selling the wild life contrabands in illegal international market especially chinese market. Moreover, accused Yunus Khan in his confessional statement also gave details of sale of wild life contrabands to the respondent. However, the learned ASJ has not kept their confessional statements in right perspective in the impugned order. He further argued that the learned ASJ while considering the respondent's bail application had not called for either the case diary or the investigating officer of the case who could have explained to him the enormities and seriousness of the crime, on the other hand, he decided the bail application on the basis of the record of RCC No. 341/2015. The learned AGP, who argued the case on behalf of the applicant, was neither aware of the facts of the case nor was instructed by any authorised officer of the applicant. He simply argued the case by saying that the crime is of serious nature, therefore, the respondent's bail application be disallowed. Thus, the impugned order is erroneous and bad in law as it is not passed having taken into consideration the gravity, seriousness, ramifications and confessional statements of the respondent and accused Yunus Khan.

5. The learned counsel for the applicant further argued that in *State of Maharashtra vs. Suraj Pal* (, 2015 (1) (BCR) (Cri.) 576) and *Mumtaz vs. State of U.P. and another* (, 2000 Cr.L.J. 4497), the offences were registered under the Act. The court below granted bail to the accused persons under Section 439(1) of the Cr.P.C. Their bails were cancelled by the High Courts concerned taking into consideration seriousness, gravity and enormity of the offences. He also argued that this court had issued show cause notice to the respondent for cancellation of his bail and made endeavours to get it served upon him on the address given by him at the time of furnishing bail through the SHO, Police Station Timarpur, Delhi. According to the report of the said SHO, the respondent never resided at the address mentioned in the show-cause notice. This means that the respondent secured bail by giving false address of his abode and he does not want to face prosecution as he apprehends of being convicted on the basis of the evidence collected against him during the investigation of the case. Upon the aforesaid

arguments, the learned counsel for the applicant fervently prayed for the cancellation of bail granted to the respondent.

6. I have anxiously considered the submissions advanced by the learned counsel for the applicant and perused the entire material on record.

7. Before entering into the merits of the case, it will be useful to refer to the settled propositions of law when the bail granted under Chapter 33 of the Cr.P.C. may be cancelled under the provisions of Section 439(2) of the Cr.P.C., the following citations are worthy of noticing;

(7.1) In *State through the Delhi Administration Vs. Sanjay Gandhi* (, AIR 1978 SC 961) the Supreme Court has observed thus in para 13 and 24:

Para 13 - "Rejection of bail when bail is applied for is one thing and cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by large be permitted only if by reason of supervening circumstances."

Para 24 - "The power to take back in custody an accused (under the provisions of Section 439(2) of the Cr.P.C.) who has been enlarged on bail has to be exercised with care and circumspection."

(7.2) In *Daulatram and others vs. State of Haryana* (, 1994 (3) Crimes 1013 : 1995 (1) SCC 349), the Supreme court has held as under:

"Very cogent and overwhelming circumstances are necessary for cancellation of bail. Bail once granted should not be cancelled in a mechanical manner".

(7.3) In *Prakash Kadam and others vs. Ram Prasad Vishwanath Gupta and another* (, 2011 (6) SCC 189), the Supreme Court has observed thus:

"In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima-facie case against the accused, the position and standing of the accused, if there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him."

(7.4) In *Pooran vs. Ram Vilas and another* (, 2001 (6) SCC 338), the Supreme Court has observed thus:

"The concept of setting aside as unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself or because of some supervening circumstances warranting such cancellation."

(7.5) In *Ash Mohammed vs. Shiv Raj Singh @ Lalla Babu and another* [, 2012 (4) Crimes 144 (SC)], the Supreme Court has stated as under:

"There is no absolute rule that once bail is granted to the accused then it can

only be cancelled if there is likelihood of misuse of the bail"

(7.6) In *Subodh Kumar Yadav vs. State of Bihar* (, 2009 (14) SCC 638), the Supreme Court has observed in Para-16 thus:

"If a superior court finds that court granting bail had acted on irrelevant material, or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as an example failure to hear Public Prosecutor/complainant where required, an order for cancellation of bail can in fact be made.

(7.7) In *Bhagirathsinh vs. State of Gujarat* (, 1984 (1) SCC 284), the Supreme Court has held as under:

"Cancellation should not be by way of punishment even if prima facie case against the accused is established."

(7.8) In *Nityanand Rai vs. State of Bihar* (, 2005 (4) SCC 178), the Supreme Court has stated in following words as to the grounds when the bail may be cancelled.

"Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail."

(7.9) In *Ramcharan vs. State of M.P.* (, 2004 (13) SCC 617), the Supreme Court has held on the point of re-appreciation of facts while considering an application for cancellation of bail thus:

"Bail can be cancelled on existence of cogent and overwhelming circumstances but not on re-appreciation of the facts of the case."

(7.10) In the recent case of *Kanwar Singh Meena vs. State of Rajasthan and another* (, 2012 (12) SCC 180), the Supreme Court in Para 10 has observed thus:

"While cancelling the bail under Section 439 (2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even 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. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous

crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

(7.11) Similar law is laid down by the apex Court in *Ranjit Singh vs. State of M.P. and others* (, 2013 (16) SCC 797) wherein, after considering the essential parameters guiding the exercise of discretion of the Sessions Court or the High Court in the matters of bail, the apex Court observed that these parameters must be considered appropriately before granting bail and if they have not been considered, the order of bail would be liable to be set aside and cancelled.

(7.12) In *Abdul Basit Alias Raju and others vs. Mohd. Abdul Kadir Choudhary and another* (, 2014 (10) SCC 754), the Supreme Court has given following general grounds for cancellation of bail making it clear that these grounds are illustrative and not exhaustive:

"(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."

8. Now, it is to be seen in the light of the principle laid down in all the above referred cases as to whether the learned ASJ has considered all the parameters applicable in the impugned order while granting bail to the respondent?

9. Admittedly, the Forest Department of the Government of Madhya Pradesh has instituted the prosecution in the instant case and the investigating officer of the case is a Forest Officer. Hence, the confessions made to him by the respondent are admissible as the embargo contained in Section 25 of the Evidence Act is not applicable. This view of mine is fortified by the decision rendered in *Sardarkhan vs. Range Forest Officer, Yavatmal and others* (, 2006 (1) Mh. L.J. 606 DB) and *Forest Range Officer, Chungathora II Range vs. Aboobacker and another* (, 1989 (Cri. L.J. 2038 Kerala). Consequently, the confessional statement made by the respondent may be pressed into service to decide the matter.

10. The respondent has confessed in his confessional statement that he purchases the wild life contrabands from the local people and sells them to international traders, thereby he earns huge profits. Thus, the involvement of the respondent in the crime is as a trader not as an ordinary criminal. The impugned order reveals that the learned ASJ has not considered this aspect while deciding his bail application. On the other hand, he has equated the role of the respondent with other accused persons of the case. As per record, there are 23 accused persons in the case except the respondent and accused persons namely, Faruque Khan, Yunus Khan and Jholan Singh, who are the middlemen, the

remaining accused persons are illiterate poor people of village Sakai which falls in the perimeter of the Reserve. At the behest of the aforesaid accused persons they kill wild animals for getting some lucre without knowing the adverse impact of their killings on the environment, ecosystem, preservation of forest, quality of human life and society, etc. Moreover, in my considered opinion the principle of parity is not applicable simply on the ground that the offences are registered against the respondent and the remaining accused persons under the same penal Sections of the Act. But, the magnitude and degree of the role of the respondent ought to have been assessed by the learned ASJ. Looking to the role of the respondent as a trader in the case, the learned ASJ fell in error in law by applying the principle of parity while granting him the bail.

11. The impugned order reveals that the learned ASJ has impressed by the fact that the offences under which the case is registered are triable by the Court of JMFC losing sight of the fact that the charge levelled against the respondent is extremely serious in nature. In my considered opinion, the seriousness of offences under the Act should not be judged by referring to the quantum of punishment prescribed and the status of the trial Court. It must also be gauged by its enormities, ramifications, extent and reach, repercussions and impact on the society in larger public interest. The crime alleged against the respondent is very serious in nature because his involvement in the case is as a big trader. Thus, the learned ASJ has committed an error in granting bail to the respondent holding that the offences are triable by the Court of Judicial Magistrate.

12. As stated earlier that the show cause notice of cancellation of bail upon the respondent could not be served upon him because he had never resided at the address given by him in the bail papers. This means that he has already fled away from justice or evaded the due course of justice and also gone beyond the reach of his surety. Hence, these grounds are also available to this Court for cancellation of his bail in view of the grounds given in Abdul Basit's case (supra).

13. In view of the aforestated reasons, it is held that the learned ASJ has granted bail to the respondent having ignored or not considered the relevant material available on record against the respondent and well settled principles of law. Therefore, I am obliged in law to cancel the bail granted to the respondent in exercise of power under Section 439(2) of the Cr.P.C.

14. In the result, the application is allowed. The impugned order granting bail to the respondent is hereby set aside and the bail granted to him is hereby cancelled.

15. Accordingly, this application is finally disposed of.