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CASE LAW DIGEST – CANCELLATION OF BAIL



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INTRODUCTION

Cancellation of bail are covered by the provisions in Section 437(5) and Section 439(2) of the Criminal Procedure Code (Cr.P.C.). These are re-casted as hereunder:

Section 437(5): “(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.”

Section 439(2): “(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

Power to grant bail under sub-sections (1) and (2) of CRPC § 437, vests with the officer-in-charge of a police station (SHO) or with a Court other than the High Court or Court of Session, i.e., with the Magistrates. Accordingly, the power to cancel bail under Section 437(5) can be exercised by the Magistrate court. **Thus a Magistrate can cancel the bail only if such bail has been granted by such police officer or by that Magistrate’s court.** A Magistrate cannot cancel bail which has been granted by the Sessions Court or by the High Court.

Under Section 439(2) of Cr.P.C., power to cancel bail has been given to the High Court and the Sessions Court. **This power is quite wide and it extends to any bail granted under Chapter XXXIII of CrPC., which invariably includes Section 437, 438 and 439.** Therefore, High Court and Sessions Court can also cancel the bail granted by a police officer or by a Magistrate court under Section 437, in addition to the power to cancel bail granted by such court itself (i.e., by High Court or the Sessions Court) under Section 439.

LIST OF ABBREVIATIONS

AIR	All India Report
Anr	Another
Art	Article
CJ	Chief Justice
CJI	Chief Justice of India
CPC	Code of Civil Procedure, 1908

CrPC	Criminal Procedure Code
Govt	Government
HC	High Court
IPC	Indian Penal Code
Ors	Others
PIL	Public Interest Litigation
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Sec	Section
Supp SCC	Supplementary Supreme Court Cases
UOI	Union of India
v	Versus
§	SECTION
Cri LJ	Criminal Law Journal

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STATEMENT OF FACTS

1. THAT, the accused obtained a BAIL from REMAND through fraud.
2. THAT, the said Bail was granted mechanically, without considering
 - (a) The nature accusations;
 - (b) The nature of evidence in support;
 - (c) The severity of the punishment which conviction will entail;
 - (d) The character, behavior, means and standing of the accused;
 - (e) Circumstances which are peculiar to the accused;
 - (f) Reasonable possibility of securing the presence of the accused at the trial;
 - (g) Reasonable apprehension of the witnesses being tampered with;
 - (h) The larger interest of the public or State and similar other considerations.
3. THAT, since having obtained the Bail, the Accused has indulged in
 - (a) Misusing his liberty by indulging in similar activity,
 - (b) Interference with the course of investigation,
 - (c) Tampering with the evidence,
 - (d) Threatening witnesses which hampered smooth investigation,
 - (e) Commission of graver offences with further vengeance

ISSUES PRESENTED

DENOVO ISSUES (ISSUES OF LAW)

1. ISSUE No. 1 – Whether granting Bail without completion of investigation, has circumvented the possibility of the commission of graver offence by the Accused.
2. ISSUE No. 2 – Whether Bail granted by inferior Court in a case involving serious offence that shocks the conscience of the Superior Court , and subsequent conduct of Accused attracts Cancellation Of Bail.

DEFACTO ISSUES (ISSUES OF FACTS)

3. ISSUE No. 3 – Given the desperate character of the accused, whether there existed and exists the likelihood of his (Accused) to involve in the commission of similar offences and additionally tamper with the evidence by terrorizing the witnesses, and prevent a fair investigation and / or trial.
4. ISSUE No. 4 – Given the conduct of the Accused to have committed numerous offences subsequent to release from Remand (aka Bail), does *prima facie* evidence exist vis-à-vis, supervening specific circumstances -
 - (a) Misusing his (Accused) liberty by indulging in similar activity,
 - (b) Interference with the course of investigation,
 - (c) Tampering with the evidence,
 - (d) Threatening witnesses which hampered smooth investigation,
 - (e) Commission of graver offences with further vengeance

WRITTEN ARGUMENTS - BODY OF PLEADINGS

ISSUE/FACT # :

RULE

ARGUMENT

CONCLUSION

CASE LAW DIGEST – CANCELLATION OF BAIL

BAIL – LEXICON

Bail as per *Wharton's Law Lexicon*, means to 'set at liberty a person arrested on security being taken for his appearance'. See *Wharton's Law Lexicon*, 1976 Reprint Ed. p. 106.

COGNIZABLE OFFENCES - REGISTERING FIR IS MANDATORY BY POLICE

The Constitution of India enjoins an obligation upon the State to protect and provide safety to its people. It is therefore incumbent upon the Police (State Investigation Agencies) to immediately register an FIR (First Information Report) and to investigate any offence in accordance with the facts and law. The victim of an offence has two options, namely lodge a complaint, by invoking

- (1) CrPC Section §156 (3) - Complaint / FIR
- (2) CrPC Section § 200 – Complaint To Magistrate

In this context, seeking directions from the Magistrate to direct Police to investigate is an option to be exercised only when Police refuse or fail to register an FIR. The Hon'ble Supreme Court while adjudicating the matter of ***Lalitha Kumari v. State of U.P. and Ors***, (2008) 7 SCC 164, gave unambiguous directions regarding registration of FIR which read as follows –

43) Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

44) Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

It has been further held, in *Lalitha Kumari* (supra), that -

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) **If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.**

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. **In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week.** It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) **The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.**

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) **As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.** The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter **without** satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While **ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days.** The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

BAIL MEANS RELEASE OF ACCUSED

The Hon'ble Supreme Court in *Natturasu v. State*, 1998 CRLJ 1762 (1765) : 1998 (3) Rec Cri R 161 : 1998 (17) Mad LW (Cri) 103, has held -

CrPC Section 441 says that the bail bond executed by the accused shall bind the person released on bail to appear before the Court to answer the charge. Thus, meaning of Bail or Anticipatory bail is the release of accused from custody to ensure his presence in the trial.

GROUND TO BE CONSIDERED BEFORE GRANTING BAIL

In ***Prahlad Singh Bhati v. N.C.T Delhi***, AIR 2001 SC 1444 : 2001 Cri LJ 1730, it was held -

While granting bail, the Court has to keep in mind -

- (a) The nature of accusations;
- (b) The nature of evidence in support;
- (c) The severity of the punishment which conviction will entail;
- (d) The character, behavior, means and standing of the accused;
- (e) Circumstances which are peculiar to the accused;
- (f) Reasonable possibility of securing the presence of the accused at the trial;
- (g) Reasonable apprehension of the witnesses being tampered with;
- (h) The larger interest of the public or State and similar other considerations.

Furthermore, in ***Shailesh Naranbhai Bhatane v. State of Gujarat***, 2010 Cri LJ 1554 (Guj), it was held -

It has also to be kept in mind that for the purposes of granting bail, the Legislature has used the words reasonable grounds for believing instead of the evidence which means the Court while dealing with the application for the grant of bail should only satisfy itself as to whether there is a genuine and prima facie case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

Also, in ***State of Tamil Nadu v. S.A. Raja***, 2005 (4) Crimes 186 (SC), the Hon'ble Apex Court has held -

It is a trite position in law that where the offence is not bailable, the Court has to decide the question of grant of bail in the light of the considerations such as:

- (a) The nature of seriousness of the offences;
- (b) Character of the offence;
- (c) Circumstances which are peculiar to the accused;
- (d) Possibility of not securing the presence of the accused at the trial;
- (e) Reasonable apprehension of the witnesses being tampered with;
- (f) The larger interest of the public or of the State.

WHEN BAIL NOT TO BE GRANTED

In ***Ved Prakash v. State*, 2007 Cri LJ (NOC) 531 (Del)**, it was held –

Where strong prima facie case made out against accused, the Court declined to grant bail.

Justifying the object of Rejection of Bail, in ***Panchanan Mishra v. Digambar Mishra*, 2005 (3) SCC 143**, the Apex Court observed –

“The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.”

The Hon’ble Apex Court in ***Mehboob Dawood Shaikh v. State of Maharastra*, 2004 SCC (Cri) 551 : 2004 Cri LJ 1359**, has held that –

“Rejection of bail stands on one footing but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.”

The Hon’ble Apex Court in ***Dolat Ram v. State of Haryana*, 1995 (1) SCC 349**, while considering the power of the Court under Section 439 (2) CrPC has held that –

“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 bail, already granted. Generally speaking, the ground 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 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.”

CANCELLATION OF BAIL

In ***State v. Anandan*, 2006 Cri LJ 3234 (Mad)**, it was held –

“There is no necessity to direct the State to approach the Sessions Court which passed the order of bail for cancellation for non-compliance of the order passed by it. The Court has ample co-ordinate jurisdiction under Section 439(2) of the Code of Criminal Procedure. Such a person cannot be permitted to enjoy the order of bail. As the liberty granted to the respondents in both the matters has allegedly tempted them to commit offence after offence, the Court will have to interfere and set aside the orders of bail passed by the Principal Sessions Judge, Chengalpattu, to secure the ends of justice”

A similar position of law has been upheld in ***State of Manipur v. Dipak Kumar Das*, 2006 Cri LJ 2305 (Gau)**, wherein –

“In the peculiar facts and circumstances of this case, the Court has no alternative but to cancel the earlier order passed in bail. Accordingly, bail order was cancelled.”

Moreover, in ***Rizwan Akbar Hussain Syeed v. Mehmood Hussain*, 2007 Cri LJ 3255 : 2007 (7) SCALE 377 : 2007 AIR SCW 3654 (SC)**, it was held -

“Where it appears to the Superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made.”

Also, in ***Ajayaraj v. State of Kerala*, 2010 Cri LJ 534 (Ker)**, it was held –

“In this case Magistrate though without noticing the order passed by the superior Court refusing to grant bail on merit has granted bail. High Court also finds from the order passed by Sessions Judge that Sessions Judge had found that a *prima facie* case is made out against the petitioner and that the facts and circumstances of the case and the stage of investigation did not enable petitioner to get bail. Magistrate without making any reference to the existence or otherwise of a *prima facie* case

against the petitioner, merely noticed that the Assistant Public Prosecutor has not opposed the grant of bail and allowed the petitioner of course, imposing conditions so as to allay the apprehension of the Assistant Public Prosecutor that petitioner might abscond. IT is seen from the order of Magistrate that possibility of petitioner absconding was taken note of by Magistrate also. It is in violation and contrary to the order passed by Sessions Judge that Magistrate has granted bail. That is illegal, not to say irregular and in violation of judicial discipline and propriety. Sessions Judge is justified in cancelling the bail invoking power under Section 439(2) of the Code."

Therefore, in the instant case, given the facts, circumstances and the evidence supporting the facts, the Hon'ble Trial Court is well justified to cancel the Bail issued to the RESPONDENT / ACCUSED.

LEGALITY OF CANCELLATION OF BAIL

In *Nityanand Rai v. State of Bihar*, 2005 Cri LJ 2187 : AIR 2005 SC 2239 : 2005 AIR SCW 2034 : JT 2005 (4) SC 368 : (2005) 4 SCC 178 : 2005 (3) SCJ 620 : 2005 (4) SCALE 16 : 2005 SCC (Cri) 1 159 : 2005 (3) Supreme 354 : 2005 (2) Crimes 102 (SC), the cancellation of bail by the impugned order of the High Court was held unsustainable.

Moreover, in *Samarendra Nath Bhattacharjee v. State of West Bengal*, 2004 Cri LJ 4215 : AIR 2004 SC 4207 : 2004 AIR SCW 4970 : 2004 (5) SLT 345 : 2004 (8) SRJ 276 : 2004 (6) Supreme 328 : 2004 (3) Crimes 329 (SC), it was once again held that –

"The only ground on which the cancellation could have been ordered being the ground of intimidation which, is not satisfactorily proved, the High Court erred in cancelling the bail granted to the appellant."

GROUND FOR CANCELLATION OF BAIL

In *Usha Devi v. State of Bihar*, 2006 Cri LJ 4435 (Pat), the grounds for cancellation of Bail was enunciated as below. –

"It is well settled that the grounds for cancellation of bail under Sections 437(5) and 439(2) of the Code are identical, namely, bail granted under Section 437(1) or 439(1) of the Code can be cancelled broadly when one or more of the following conditions are fulfilled:

(a) The accused misuses his liberty by indulging in similar activity,

- (b) Interference with the course of investigation,
- (c) Attempts to tamper with the evidence,
- (d) Threaten witnesses or indulges in similar activities which would hamper smooth investigation,
- (e) There is likelihood of the accused fleeing away to another country,
- (f) Attempts to place himself beyond the reach of the surety,
- (g) Bail has been granted by an inferior Court in a case involving serious offence shocking to the conscience of the Superior Court,
- (h) After investigation, the facts disclose commission of graver offence

The grounds referred to above are illustrative and not exhaustive.”

In ***State through C.B.I v. Amarmani Tripathi***, 2005 (4) Crimes 58 : 2005 Cri LJ 4149 : AIR 2005 SC 3490 : 2005 AIR SCW 4763 : 2005 (4) East Cri C 87 : JT 2005 (8) SC 517 : (2005) 8 SCC 21 : 2005 (7) SCJ 252 : 2005 (2) SLT 160 : 2005 (7) SCALE 489 : 2005 SCC (Cri) 1960 : 2005 (6) Supreme 492 (SC), has held –

“In an application for cancellation, conduct subsequent to release on bail and the supervising circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. However, we agree that while considering and deciding appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellations of bail.”

Likewise, in ***Sukhchain Singh v. State of Punjab***, 2008 Cri LJ (NOC) 42 (P&H), it has been held –

“Bail refused considering serious nature of charges and overt act attributed to accused who has got criminal antecedent.”

Furthermore, addressing the issue of Tampering with evidence, in ***State through C.B.I v. Amarmani Tripathi (Supra)***, the Hon’ble Apex Court has held –

“The evidence collected discloses that there were repeated attempts by the accused to interfere, and side track the investigation and threaten the witnesses to come out with a story that will deflect the suspicion from him and his wife to ‘A’ or others. It is also not in dispute that the accused was on bail in a kidnapping case. These materials were placed by the prosecution before the High Court to establish a reasonable apprehension of tampering. The Single Judge has, however, completely ignored these materials relating to tampering with evidence / witnesses. This necessitates interference with the order of the High Court.”

The same direction of thought vis-à-vis “the grounds on which the bail once granted could be cancelled” had been considered by the majority decision by the Supreme Court in the case of ***Aslam Babalal Desai v. State of Maharastra*, AIR 1993 SC 1 : 1992 Cri LJ 3712**, wherein it has been held –

“As stated in Raghubir Singh’s case, the ground for cancellation 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 activity,
- (ii) Interference with the course of investigation,
- (iii) Attempts to tamper with the evidence,
- (iv) Threaten witnesses or indulges in similar activities which would hamper smooth investigation,
- (v) There is likelihood of the accused fleeing away 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 grounds referred to above are illustrative and not exhaustive.”

The present factual matrix has to be decided on the touch stone of the aforesaid settled principles of law. In the present petition, there has been a preponderance of evidence which demonstrates that there is a distinct likelihood of the accused to commit numerous and repeat offences. Multiple and specific evidence has been adduced on record. The complaint, which has been annexed to the petition, is also absolutely specific in nature. The continuance of the Accused on Bail would impede a fair trial. The Petitioner further states that the supervening circumstances render it no longer conducive to a fair investigation or trial by allowing the Accused to retain his freedom by enjoying the concession of Bail.

Furthermore, very cogent and overwhelming circumstances necessitate the order directing the cancellation of the enlargement on bail to the accused. Also, grounds germane for the cancellation of Bail exist in the present petition.

POLICE CANNOT REFUSE TO RECEIVE COMPLAINTS

In ***Rabindranath Satpathy v. Hina Sethy*, 2010 Cri LJ 60 (Ori)**, it was held –

“The allegation disclosed in the complaint petition regarding the assault and injuries received thereby was required to be investigated. Refusal to receive the FIR and to tear it in front of the complainant can in no stretch of imagination be considered as official duty; rather it was a serious lapse on his part. No Police Officer can refuse to receive any complaint. This was deprecated by the Apex Court in the cases of ***Prakash Singh Badal and Anr v. State of Punjab and Ors*, (2007) 1 SCC 1 : AIR 2007**

SC 1274, and *Lallan Chaudhury and Ors v. State of Bihar and Anr*, (2006) 12 SCC 229 : AIR 2006 SC 3376, Heavy duty has been cast on the police authority to record information which reveals cognizable offence. Omission or neglect to discharge the said duty would jeopardize the administration and in dispensation of justice. In the State, where rule of law prevails, a public servant, in charge of law and order, cannot refuse or neglect to discharge his statutory duty and at the same time to refuse under the law is to shield himself from the legal consequence. The accused by refusing to record the information has not only omitted or neglected to perform his official duty but also thereby facilitated an offender to escape from the criminal liability. In such circumstances, the benefit of statutory provision under Section 197, CrPC cannot be pressed into service."

CANCELLATION OF BAIL UPON MISUSE OF BAIL

In *Pokar Ram v. State of Rajasthan*, AIR 1985 SC 969 : 1985 Cri LJ 1175, cited on behalf of the prosecution, the Supreme Court was dealing with an appeal by special leave against an order of the High Court refusing to cancel the anticipatory bail granted by the Sessions Judge of the Supreme Court observed –

"Unusual though it may appear to be, under a compelling necessity in the interest of justice, we would depart from the ordinary response of this Court to matters involving bail. Ordinarily, this Court is loath to interfere with the orders granting or refusing bail but it cannot be an insurmountable obstacle in the way of rectifying an order which tends to disclose miscarriage of justice."

Moreover, in a plethora of well settled decision(s), aka, *Puran v. Rambilas*, 2001 Cri LJ 2566 (2567-2569) ; See also *Niranjan Singh v. Prabhakar Rajaram Karote*, AIR 1980 SC 785 : 1980 Cri LJ 426; *India Pipe Fitting Co. v. Fakruddin M.A. Baker*, AIR 1978 SC 45 ; *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47 : 1978 SC Cri LJ 165 : (1977) 4 SCC 551 ; *Gurcharan Singh v. State (Delhi Administration)*, AIR 1978 SC 179 : 1978 Cri LJ 129 (toll) ; *State (Delhi Administration) v. Sanjay Gandhi*, AIR 1978 SC 961 : 1978 Cri LJ 952 : (1978) 2 SCC 411 ; *Amar Nath v. State of Haryana*, AIR 1977 SC 2185 : 1977 Cri LJ 1891 ; *R. Rathiram v. State*, 2000 AIR SCW 423 : AIR 2000 SC 1851 : (2000) 2 SCC 391 (toll) ; *Subhendu Mishra v. Subrat Kumar Mishra*, 1999 AIR SCW 2955 : AIR 1999 SC 3026 : 1999 Cri LJ 4063 ; *Kirshnan v. Krishnaveni*, 1997 AIR SCW 950 : AIR 1997 SC 987 : 1997 Cri LJ 1519 : (1997) 4 SCC 241 ; *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 : JT 1995 (1) SC 127 (relied. on) ; *Simranjit Singh Mann v. Union of India*, 1992 AIR SCW 3133 : AIR 1993 SC 280 : 1993 Cri LJ 37 ; *Janata Dal v. H.S. Chowdary*, (1991) 3 SCC 756 : JT 1991 (3) SC 497 ; *Usmanbhai Dawoodbhai Memon v. State of Gujarat*, AIR 1988 SC 922 : 1988 Cri LJ 938 : (1998) 2 SCC 271 ; *Bhagirathsinh v. State of Gujarat*, AIR 1984 SC 372 : 1984 Cri LJ 160 : (1984) 1 SCC 284, it has been held that generally speaking, the grounds for cancellation of bail broadly 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 or the concession granted to the accused in any manner. It is, however, to be noted that the Court has

clarified that these instances are merely illustrative and not exhaustive. 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 that society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected.

CANCELLATION OF BAIL UPON PRIOR ANTECEDENTS OF ACCUSED

In ***Amar Singh v. H.P.***, 2000 Cri LJ 189, a perusal of the evidence prima facie revealed that the accused-petitioner was prima facie involved in a commission of serious offence punishable with severe punishment. Gravity of the offences and severity of the punishment were the factors which invariably weigh amongst other factors in favor of the refusal of the bail. Furthermore, a perusal of the report submitted by the police and placed on record revealed that even earlier 10 cases of different nature under various penal provisions of the law such as causing bodily hurt, extending threats, cheating, forgery etc. Though most of such cases were disposed of and he had admittedly been acquitted in four cases and in two cases the offences were compounded resulting in his acquittal. Four cases were still pending trial against him in the Court. Against the aforesaid background, the single Judge of the Court had dismissed the anticipatory bail application of the accused-petitioner with the following observations:

"From the affidavit filed by the State, it shows that the petitioner from time to time has been involved in one or the other Criminal cases. Event, at present, he is facing trial in four cases for offences under Indian Penal Code, Indian Forest Act, Forgery and Cheating etc. Previously also the petitioner has been involved in assault on public servant. The petitioner appears to be a man of desperate character and I am satisfied that if released on bail there is every likelihood of the petitioner being involved in such similar offences. Therefore, the discretion of bail cannot be exercised in his favor."

The above observations were still relevant and could not be overlooked or ignored inasmuch as nothing was urged on behalf of the petitioner which may lead the Court to take a contrary view as already taken by the single Judge.

Keeping in view the facts and circumstances of the case and the desperate character of the accused as mentioned hereinabove there was not only the likelihood of his involving in the commission of similar offences but also a strong possibility of his tampering with the prosecution evidence by terrorizing the witnesses.

The likelihood of his tampering with the prosecution evidence was highlighted in the police record also. Against the aforesaid background, the Court did not find the accused entitled for bail at this stage."

BAIL CANCELLED UPON PRACTISING FRAUD ON COURT

In ***Vishnu Dutt Nagar v. Ashwini***, 2000 Cri LJ 2241 : 2000 All LJ 738 : 2000 (4) All Cri C 615 : 2000 (27) All Cri R 97 : 2000 (1) Crimes 398, it has found that –

“In the said bail application, FIR which was filed was forged and in the above forged first information report the opposite party was assigned role of firing. That the bail order was obtained by practicing fraud on the Court and should be recalled.”

SUPPRESSION OF MATERIAL FACTS BY ACCUSED – BAIL CANCELLED

In ***Ashoke Kumar Kabra v. Kamla Devi Shaw***, 1996 Cri LJ 38 (40-41), the revisional application to cancel Bail application was allowed –

“In the said case, the Accused obtained bail by suppressing material facts. Upon revelation of the fraud played upon the Court due to the suppression of the material facts, it was accordingly directed in the interest of justice and for ends of justice that the Sessions Judge shall take appropriate action according to law against the Accused persons and pass an order for their arrest immediately. The Sessions Judge was also directed to take appropriate steps against the Surety / Tadbirkar Mr. N and proceedings should be launched against him by the Sessions Judge and the Sessions Judge was directed to take appropriate steps for launching a proceedings against the accused persons and the said N under Sections 340 CrPC.

The Sessions Judge was further directed to cancel the suretyship of N so that in any other case he should not be allowed to stand as a surety. The Sessions Judge was also directed to take another appropriate legal step according to the Criminal Law and under the India Penal Code for taking and launching appropriate Criminal proceedings against the accused persons and the said N. With this direction Court set aside that order of granting bail to the accused persons and direct to forfeit the bond as furnished by the accused person through N.”

BAIL CANCELLED UPON REPEAT OFFENCES BY ACCUSED

In ***Chunnilal v. State of Punjab***, 1996 Cri LJ 4474 (4475-4476) : 1996 (2) Chand Cri R 371 : 1996 (2) All Cri LR 690 : 1996 (2) Rec Cri R 338, it has been held that –

"In Court's opinion, the allegations made by the applicant which were supported by affidavit, established that the appellants were misusing the liberty granted to them ever since they had been enlarged on bail. Court therefore, ordered that the bail granted to the appellant be cancelled.

An affidavit has been filed on behalf of the complainant-Applicant in which it had been stated that the appellants were misusing the concession of bail by causing constant threats to life and property of the complainant."

It is noteworthy to mention herein that a similar approach has been taken in ***Pampapathy v. State of Mysore, AIR 1967 SC 286 : 1967 Cri LJ 287***, due to repeat offences by the Accused, the Mysore High Court had cancelled the bail granted to the appellants, and the judgment of the High Court was affirmed by the Supreme Court

It is possible that the Accused may cite authorities in order to justify the wounds inflicted upon the Petitioner. Those authorities of different courts, adduced by the Accused, are not applicable to the facts of this petition and have clearly distinguishable on facts as well as applicability of law.

GRAVITY OF SERIOUS OFFENCES MERITS CANCELLATION OF BAIL

In ***State v. Captain Jagjit Singh, AIR 1962 SC 253***, the Supreme Court cancelled the bails having regard to the gravity of the offence, nature of the evidence available, the likelihood of the accused running away from justice, the likelihood of the accused misutilizing this liberty by intimidating the witnesses and tampering with evidence, the larger interests of the State and community including the consideration that parties do not lose faith in the system and take law into their own hands to wreak vengeance by private retribution. Although it may not be possible for a Court hierarchically subordinate to the High Court, which granted bail to the accused, to consider cancellation thereof without the intervention of a supervening circumstance, it is competent in law for the High Court to cancel Bail in a proper and suitable case as a superior Court. While examining the propriety and legality of the order granting bail, interference by the Hon'ble Superior court merits cancellation of Bail to the Accused.

BAIL CANCELLED UPON MISUSE OF LIBERTY

In ***Gayaram Mondal v. State, 1995 Cri LJ 1730 (1731-1732)***, the Petition to cancel interim Bail was allowed –

"In this case, the Petitioner had filed an application before the Sessions Judge praying for cancellation of Bail granted to the Accused. The Sessions Judge by his order had directed the Investigating Officer to produce the case diary on the next date, causing grave anxiety and mental strain to the Petitioner as they are living under constant threat on their lives by the Accused and his associates. It was stated in the aforesaid report of the IO that it transpired during investigation that the accused had once been a "terror" and "furious" type of man "by power of a party", lending point to the Petitioner's contention. It was dubious to note that there was nothing in the said report to indicate that any enquiry had been made by the IO in respect of the allegations made by the Petitioner and his family members, entered in the several GD Entries. The implication appeared to be immediately apparent and obvious, suggesting that the IO was bent upon shielding the said accused in the matter. In the absence of any enquiry by the IO as to the allegations made by the Petitioner, and in the absence of any affidavit in opposition by any of the opposing parties controverting the allegations of the Petitioner in his relevant application, supported by the affidavit and the annexures annexed therewith, the Petitioner's allegations made therein remain uncontroverted, and must be accepted as such. The Accused having thus threatened the Petitioner for having lodged the FIR as appearing from the face of the records evidenced in the aforesaid General Diary Entries, and having thus abused the liberty of Bail granted to him, the Petitioner's application for cancellation of his (Accused) Bail must clearly be allowed."

BOND OF ACCUSED AND SURETIES

Scope of Bond of Accused and Sureties has been explained in ***Mohammed Kunju And Anr v. State Of Karnataka, (1999) 8 SCC 660.***

ADDITIONAL CASELAWS RELATED TO CANCELLATION OF BAIL ***

1. 2014 (2) ALD (CrI) 684
2. 1997 (2) ALD (CrI) 318
3. State of Orissa v. Rajender Bhandari, 1995 (1) ALD (CrI) 109
4. 2001 (1) ALD (CrI) 390 (VR)
5. 2002 (2) ALD (CrI) 864 (SC)
6. 2003 (8) SCC 50
7. Surendranath Bhattacharjee v. State of W.B and Anr., 2004 (11) SCC 165
8. 2012 9 SCC 446

9. 2004 SC 1866
10. 2011 (2) ALD (Crl) 268 (SC)
11. 2013 (1) ALD (Crl) 907 (DB)
12. 1978 SC 47
13. 1977 (4) SCC 137
14. 2013 (7) SCC 789
15. 2008 (13) SCC 584
16. Talab Haji Hussain, 1958 SCR 1226
17. 1967 SC 1639

ARGUMENT IN SUPPORT OF PETITION TO CANCEL BAIL

INTRODUCTION

DAREDEVIL CONDUCT OF ACCUSED ATTRACTS CANCELLATION OF BAIL

Several decades ago, an opinion expressed in *Alridge v. United States*, (1930) 283 US 308, is very much relevant today, as in –

“Courts ought not to increase the difficulties by magnifying theoretical possibilities. It is their province to deal with matters actual and material to promote order, and not to hinder it by excessive theorizing of or by magnifying what in practice is not really important.”

The obstructionist activities of the Accused who while at large, did not hesitate to strike terror in a locality impeding the investigation and dissuading the witnesses from giving evidence. The daredevil conduct of the Accused demonstrates an utter lack of respect for the rule of law. In other words, defeating of public justice and of a fair criminal trial should be put an end by allowing this petition to cancel the Bail of the Accused. Even a cursory look at the Remand Report would show that there were reasonable grounds exist for a *prima facie* speaking to hold that the Accused has indeed committed offences punishable under various provisions of the Indian Penal Code. The conduct and involvement also is sufficient indication of the propensity and possible activities, upon release on bail, would show that the Accused ventured to trespass upon the life and property of the Petitioner-Applicant. There could not, therefore, possibly be

any doubt whatsoever that the Accused will not terrorize the Petitioner-Applicant and interfere with the investigation of the case, each and every moment of being *at-large*.

The Petitioner urges to the Hon'ble Court that imposition of stringent conditions along with cancellation of Bail will not only conserve the objective of an efficacious trial, but also help remove the panic psychosis wreaked by the Accused upon the Petitioner-Applicant and Witnesses.

SPECIFIC SUPERVENING CIRCUMSTANCES enjoin bail cancellation

Furthermore, having regard to the totality of the circumstances of the case and keeping in view the guidelines laid down in the aforesaid judgments of the Supreme Court, this is a fit and proper case for cancellation of Bail of the Accused.

Hence, the aforementioned Petition for Cancellation of Bail of the Accused needs to be allowed.

CONCLUSION

Given the overwhelming facts of the instant case, there is no question that the preconditions for BAIL APPLICATION and Subsequent GRANT OF BAIL stands violated due to the willful acts of the ACCUSED . Therefore it is prayed that this Hon'ble court may be pleased to allow the petition and CANCEL THE BAIL granted to the ACCUSED along with a direction to the State Authorities for immediate compliance.

STATUTES

SECTION 58 IN THE INDIAN EVIDENCE ACT, 1872

Sec 58- Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CRPC SECTION 41. WHEN POLICE MAY ARREST WITHOUT WARRANT.

- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
 - (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
 - (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house- breaking; or
 - (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
 - (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
 - (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
 - (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
 - (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
 - (h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
 - (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.
- (2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

CRPC SECTION 441. Bond of accused and sureties.

- (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.
- (2) Where any condition, is imposed for the release of any person on bail, the bond shall also contain that condition.
- (3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.
- (4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

CRPC SECTION 441A. DECLARATION BY SURETIES

Every person standing sureties to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

CRPC SECTION 446. PROCEDURE WHEN BOND HAS BEEN FORFEITED.

- (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.
Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.
- (2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. ¹ provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]
- (3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.
- (4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.
- (5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and,; if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

CRPC SECTION 446A. CANCELLATION OF BOND AND BAIL- BOND

Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and **it is forfeited for breach of a condition -**

- (a) **the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled;** and
- (b) **thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:**
Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.]

SECTION 301. APPEARANCE BY PUBLIC PROSECUTORS

- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.
- (2) If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

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