

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl A(D) No.55/2022.

Baseerat Ul Ain

.....Appellant(s)

Through: Ms. Surinder Kour, Sr. Advocate with
Ms. Manpreet Kour, Adv.

Vs

National Investigation Agency Jammu

..... Respondents

Through: Mr. Vishal Sharma, DSGI

Coram:

**HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

(Rajesh Sekhri-J)

1. Challenge in this appeal, under Section 21 of the National Investigation Agency Act, 2008 (NIA Act, for short) has been thrown to order dated 25.07.2022 propounded by learned 3rd Additional Sessions Judge, Jammu (trial Court, for short), vide which, interim bail dated 07.01.2022 granted in favour of appellant has been cancelled on the ground that appellant has been charge-sheeted in the main challan, as *prima facie* there is sufficient material against him for the commission of offences under Sections 18 and 19 of the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act, for short].

2. Brief facts of the case are that charge sheet came to be filed by the respondent-Agency in the trial Court in case titled **NIA v. Hidayitullah Malik and others** wherein appellant has been arrayed as accused No. 2 and was charged for the alleged commission of offences under Sections 18 and 19 of the UA(P) Act. It appears that case was initially registered by Police Station, Gangyal on

06.02.2021 as FIR No. 16 of 2021. Later it was taken over by the respondent-agency and was re-registered as RC 01/2021/NIA/JAMMU on 02.03.2021. The appellant came to be arrested on 09.02.2021. The appellant preferred bail application in the trial Court and she was admitted to interim bail on 07.01.2022. This order of interim bail was assailed by the respondent in this Court by way of appeal bearing No. Crl A(D) No. 03/2022 under Section 21 of the NIA Act and this Court vide order dated 09.03.2022, while issuing notice, directed the trial Court to do well to consider the charge and discharge before or simultaneously with the bail application on the scheduled date of hearing i.e. 15.03.2022. It appears that subsequently, the said appeal against the aforesaid interim bail was withdrawn by the respondent on 29.08.2022. The appellant finally came to be charged on 25.07.2022 for the commission of offences under Sections 18 and 19 of the UA(P) Act and the on the same date i.e. on 25.07.2022, learned trial Court cancelled the interim bail granted in favour of the appellant on the ground that since the accused/appellant has been charge-sheeted in the main challan after recording satisfaction that *prima facie* there is sufficient material against her for the commission of offences under Section 18 and 19 of the UA(P) Act and bail application was dismissed.

3. The appellant has questioned the impugned order on various grounds but primarily on the ground that learned trial Court has cancelled interim bail of the appellant in a mechanical fashion and without assigning any reason.

4. Heard arguments and perused the file.

5. While Mrs. Surinder Kour, learned Senior Advocate appearing for the

appellant has reiterated the grounds urged in the memo of appeal, *ex adverso*, Mr. Vishal Sharma, learned DSGI appearing on behalf of the respondent-Agency has argued that since appellant has been charge-sheeted by learned trial Court on the basis of sufficient material against her, therefore, learned trial Court has rightly cancelled the bail granted in favour of the appellant.

6. It no longer remains *res integra* now that denial of bail in a non-bailable case and cancellation of bail are governed by different principles of law. The rejection of bail and cancellation of bail are to be considered and dealt on different basis. It is by far crystallized and is a trite position of law that bail once granted cannot be cancelled, but for the supervening circumstances to be explained by the Court and Court is obliged to furnish cogent reasons for cancellation of bail, already granted.

7. We are fortified in our opinion by **Dolatram v. State of Haryana** reported as **(1995) 1 SCC 349**, whereby Hon'ble Supreme Court has delineated some of the illustrative grounds for cancellation of bail viz. 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 of the concession of bail already granted to the accused or the satisfaction of the Court, on the basis of material placed before it, of the possibility of the accused absconding. Relevant extract of the judgment is reproduced below, for the facility of reference:

“Rejection of a 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 the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the 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.”

8. Similar principle has been reiterated by the Apex Court in **Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan** reported as **AIR (2011) 5 SCW 2751** and **Dataram Singh v. State of Uttar Pradesh** reported as **AIR 2018 SC 980**.

9. Identical principle has been laid by a three Judge Bench of Hon’ble Supreme Court, relying upon the aforesaid judgments in **Ms. X v. State of Telangana and another** reported as **AIR 2018 SC 2466**.

10. It is manifest from the afore-quoted legal position that bail once granted in a non-bailable case cannot be cancelled in a mechanical fashion and Court is obliged to furnish cogent reasons and overwhelming circumstances for cancellation of bail. It must be kept in mind that cancellation of bail necessarily involves the review of an order already made and, therefore, it has to be exercised sparingly and with circumspection by a Court of law.

11. Adverting to the present case, learned trial Court has cancelled the bail already granted in favour of the appellant on the solitary premise that appellant has been charged after recording of satisfaction that *prima facie* there is material against her. Framing of charge and cancellation of bail are again governed by different parameters of law. It may be noted that appellant has also assailed the framing of charge in this Court. The bail granted in favour of an accused cannot

be cancelled by a stroke of pen in one line. Therefore, the impugned order of cancellation of bail being perfunctory in nature is liable to be set aside.

12. Having regard to what has been observed and discussed herein above, the present appeal is allowed. Consequently, the impugned order is set aside and the case is remanded to the trial Court with a direction to consider the bail application filed by the appellant afresh after affording a reasonable opportunity of being heard to both the sides and pass an order informed of reasons. The parties shall appear before the trial Court on 25.04.2023.

13. Before parting, however, it is made clear that nothing observed in this order shall be construed as an expression of opinion on the merits of the case and learned trial Court shall be at liberty to decide the bail application uninfluenced by any observation made in the present order.

(RAJESH SEKHRI)
JUDGE

(TASHI RABSTAN)
JUDGE

Jammu
03.04.2023
Paramjeet

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes