

GAHC030004282024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./16/2024

Mahindra and Mahindra Financial Services Ltd.
Gateway Building, Apollo Bunder, Mumbai - 400 001

VERSUS

State of Mizoram and Anr.
Aizawl2:Dr. Madhurjya Sarma

Advocate for the Petitioner : Mr Lalfakawma
Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

Linked Case : I.A.(Crl.)/33/2024

Dr. Madhurjya Sarmah
House No. ZC-11
Near Rajiv Gandhi Stadium
Salem Veng
Mualpui
Aizawl

VERSUS

State of Mizoram and Anr.
Aizawl

2:Mahindra and Mahindra Financial Services Ltd.
Gateway Building
Apollo Bunder
Mumbai-400 001

Advocate for the Petitioner : Mr. Jordan Rohmingthanga
Advocate for the Respondent : P.P./Addl.PP
Mizoram

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGEMENT

Date : 06-08-2024

Heard Mr. M. Singh, learned Senior Counsel assisted by Mr. R. Mishra, learned counsel for the petitioner and also heard Ms. Linda L Fambawl, learned Public Prosecutor for the state respondent No. 1, and Mr. A.K. Das, learned Senior Counsel, assisted by Mr. J. Rohmingthanga, learned counsel for the respondent No.2.

2. This application, under Sections 439(2), read with Section 482 of the Code of Criminal Procedure, is preferred by the petitioner, namely, Mahindra and Mahindra Financial Services Ltd. for quashing the order, dated 13.06.2024, passed by learned Additional Sessions Judge-I, Aizawl in Bail Application No. 676/2024, arising out of Crime and Economic Offence P.S. Case No. 03/2024, under Sections 408/419/466/467/468/470/471/477A/120B IPC. It is to be noted here that vide impugned order dated 13.06.2024, the learned Addl. Sessions Judge, Aizawl had granted bail to the respondent No.2, who was arrested in the aforesaid case.

3. The background facts, leading to filing of the present petition, is adumbrated herein below:-

“One Chanpreet Singh, Business Head, Mahindra and

Mahindra Financial Services Ltd. (MMFSL) lodged one FIR with the Officer-In-Charge, Crime and Economic Police Station, Aizwal, Mizoram alleging inter-alia amongst others that during routine verification, they have come across a large scale fraud committed by their Area Business Manager Mr. Jakir Habibur Hussain in sanctioning many vehicle loans at their Aizawl Branch. Then on broader scrutiny of the records they have found Jakir Habibur Hussain and his co-conspirators, H. Lalthankima and Edenthara, had impersonated the official identity of the informant and they had created a fake entity i.e. Mahindra Finance Limited with similar description of his company and executed fraudulent transactions, including cash in crores of rupees, through fake entity set up through his co conspirator. In order to open the said account the accused persons have forged company seal, PAN number, and represented themselves as authorized person of MMFSL, with the common object to gain undue advantage and defraud the MMFSL and public at large. Account statement of the fake account reveals that there was transaction of more than Rs. 80 Crores in the said account within a short span of nearly 3 years.

Upon the said FIR the Officer-In-Charge Crime and Economic

Offence P.S. had registered a case, being Case No. 03/2024, under Sections 408/419/466/467/468/470/471/477A /120 B IPC and carried out investigation. Then on completion of investigation, the I.O. had arrested accused Jakir Habibur Hussain and others, including the respondent No.2 and forwarded them to the court. Then after completion of investigation, the I.O. had laid charge sheet against the accused persons to stand trial in the court under the said sections of law, on 25.06.2024.

The respondent No.2, namely, Dr. Madhurjya Sarma, during the pendency of investigation, was arrested and he was granted bail by the court of learned Additional Sessions Judge I, Aizawl vide impugned order dated 13.06.2024.”

4. Being highly aggrieved, the petitioner has approached this court by filing the present petition for quashing and setting aside the impugned order, dated 13.06.2024, and contended to allow the petition on the following grounds:-

(i) That, the learned Court had erroneously and illegally granted bail to the respondent No.2 ignoring the established principles of law and without perusing the case diary;

(ii) That, the learned court had taken into account irrelevant materials;

(iii) That, the learned court had not considered the necessity of relevant factors such as custodial interrogation which was necessary in the case;

(iv) That, the learned court had adopted hyper-technical approach;

(v) That, the learned court had failed to take into account that the respondent No.2 had illegally siphoned off crores of money from the petitioner's company and without his connivance it would have not be possible and that he had received Rs. 25.2 crores, and Rs. 4.8 crores (approx) are still lying with his dealership ;

(vi) That, none of the similarly situated persons have been granted bail by the learned court, except however, one Jakir habibur Hussain, whose bail order is being challenged before High Court and as such grant of bail to respondent No.2 is contrary to the view taken by the learned court;

(vii) That, the learned court had failed to consider the nature and gravity of the offence and the nature of evidence collected and that the offence is in the nature of economic offence involving public money, which constitute a class apart and needs to be visited with a different approach in the matter of bail;

(viii) That, the observation made by the learned court in respect of the maintainability of the second FIR as the offence is same, is not a ground for granting bail and that the offences are also distinct and the said observation is

contrary to the observation made by Hon'ble Supreme Court in **Ramesh Chand Nand Lal Parikh vs. State of Gujarat** reported in **(2006) 1 SCC 732**; and the test of sameness and test of consequence;

(ix) That the allegations made in the second FIR are more serious and hence granting the privilege of bail to the respondent No.2 resulted in miscarriage of justice;

(x) That, it is well settled that bail can be cancelled on merit also and misusing of liberty is not the sole criteria;

5. It is to be mentioned here that the respondent No.2 has filed written objection and it is stated that the bail was granted on two grounds i.e. the two FIRs were submitted by two different persons, but, it relates to the same subject matter and same persons and that co-accused Mr. Jakir Habibur Hussain was granted bail in connection with the same case. It is also stated that while granting bail, the learned court has considered the relevant submission and the parameters in granting bail and also had appreciated the law as well as facts. It is also stated that the respondent No.2 is a reputed person of the locality and a reputed Doctor and also a businessman and there is no possibility of fleeing from justice and the learned court had considered all such circumstances while granting bail. It is further stated that the contention of the petitioner that the court had taken into account irrelevant factors while granting bail is contrary to the record and wrong and granting bail on the

ground of parity is also a relevant factor. It is also stated that the respondent No.2 had suffered heart attack after his arrest on 13.05.2024. It is also stated that registration of the second FIR, on the same fact, is nothing but an abuse of the process of the court and it leads to miscarriage of justice. Further, it is stated that the respondent No.2 is no way involved in the offence and he had retained no money or property of the MMFSL and the respondent No.2 and his dealer had not derived any benefit and the dispute between MMFSL and the dealer of the respondent No.2 is a dispute civil in nature and that the respondent No.2 is a Director of company in the name and style of AIDU Motors Private Ltd. and he cannot be held liable criminally. It is also stated that since charge sheet has already been filed there is no chance of hampering the investigation and tampering of the witnesses and that he will appear before the trial court and will face trial and no case is made out for cancellation of bail and therefore, it is contended to dismiss the petition.

6. Mr. M. Singh, learned Senior Counsel had reiterated the grounds mentioned in the petition and he, firstly, laid emphasis on the ground that the learned court had not discussed the merit of the case. Secondly, Mr. Singh submits that the learned court had exceeded its jurisdiction by referring to the maintainability of the second FIR and as it is exclusively in the domain of the High Court, which, by exercising the power under Section 482 Cr.P.C can quash the same. Thirdly, Mr. Singh submits that the learned court below had not

considered the gravity of the offence. Fourthly, Mr. Singh submits that medical ground cannot be the paramount consideration for granting bail. Fifthly, he submits that parity also cannot be ground for granting bail in serious cases where punishment prescribed is imprisonment for life. Mr. Singh has referred following decisions to bolster his submission:-

- (i) Deepak Yadav vs. State of U.P. & Anr. reported in (2022) 8 SCC 559;
- (ii) Kanowar Sing Meena vs. State of Rajasthan & Anr. reported in (2012) 12 SCC 180;
- (iii) Sonu vs. Sonu Yadav & Ors reported in (2021) 15 SCC 228;
- (iv) Dinesh Mn (S.P.) vs. State of Gujarat reported in (2008) 5 SCC 66;
- (v) Ajwar vs. Waseem & Others reported in 2024 SCC OnLine SC 974;
- (vi) Mahipal vs. Rajesh Kumar & Ors, reported in (2020) 2 SCC 118;
- (vii) P. Srekumar vs. State of Kerala & Ors. reported in (2018) 4 SCC 579;
- (viii) Ramesh Chandra Nandala Parikh vs. State of Gujarat & Anr. reported in (2006) 1 SCC 732;
- (ix) Y.S. Jagan Mohan Reddy vs. CBI reported in (2013) 7 SCC 439;
- (x) State of Gujarat vs. Mohanlal Jitamalji Porwal

reported in (1987) 2 SCC 364;

7. On the other hand, Ms. Linda L. Fambowl, the learned P.P. had subscribed the submissions advanced by M. Singh the learned Senior Counsel for the petitioner.

8. Per contra, Mr. A.K. Das, the learned Senior Counsel for the respondent No.2 has vehemently opposed the petition. Firstly, Mr. Das, referring to a decision of Hon'ble Supreme Court in **Mohit alias Sonu and Another vs. State of Uttar Pradesh and Another reported in (2013) 7 SCC 789**, submits that the petition under Section 482 Cr.P.C. is not maintainable as alternate and efficacious remedy is available under Section 439(2) Cr.P.C. Secondly, Mr. Das submits that the respondent No.2 had suffered from heart attract after his arrest in this case and he is admitted in a Private Hospital and that he has to undergo angioplasty, the facility of which is not available in Mizoram. Thirdly, Mr. Das submits that there is no prayer from the investigating agency for cancellation of bail and there is no allegation of misusing the liberty granted to him and also there is no allegation of hampering witnesses and tampering the witnesses. Fourthly, referring to a decision of Hon'ble Supreme Court in **Samarendra Nath Bhattacharyee vs. State of West Bengal and Another reported in (2004) 11 SCC 165**, Mr. Das submits that the learned court had discussed and taken into account all relevant facts and that

this court cannot sit in appeal while dealing with a petition for cancellation of bail. Fifthly, Mr. Das submits that the learned court had granted bail to the respondent No.2 on the ground of parity also as the principal accused Md. Jakir Hubibur Rahman has already been granted bail by the court. Sixthly, Mr. Das submits that presence of the respondent No.2 before the investigating agency is not required as charge sheet had already been filed after completion of investigation and that he will face trial and will appear before the court regularly. Seventhly, Mr. Das, referring to another decision of Hon'ble Supreme Court in **Kashi Nath Roy vs. State of Bihar** reported in **(1996) 2 SCC 539**, submits that while granting bail elaborate reasoning in support of the order is not required and therefore, it is contended to dismiss the petition. Mr. Das also referred following decisions in support of his submission:-

- (i) Samedur Rahman vs. State of Assam, reported in (2021) 3 GLR 781;**
- (ii) Bhagirathsinh vs. State of Gujarat reported in (1984) 1 SCC 284;**
- (iii) Rancharan vs. State of M.P. reported in (2004) 13 SCC 617;**
- (iv) Himanshu Sharma vs. State of Madhya Pradesh reported in (2014) 4 SCC 222**

9. Having heard the submission of learned Advocates of both sides, I have

carefully gone through the petition and the documents placed on record. Also, I have gone through the scanned copy of the record of the learned trial court.

10. Before directing a discussion into the points raised in this petition, it would be in the interest of justice to understand the proposition of law, presently occupying the field. In **Gurcharan Singh Vs. State (Delhi Administration)**, reported in **(1978) 1 SCC 118**, while dealing with the issue of cancellation of bail under section 439(2) Cr.P.C., Hon'ble Supreme Court clarified the position as under:

“Under Section 439(2) of the new Code, a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial, after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach

the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”

11. Subsequent judgments have forward this discussion and differentiated between cases where cancellation of bail is sought on the basis of supervening circumstances, which arise from facts happening after the order of granting bail was given, or facts which were not before the judge while passing order granting bail and cases where cancellation of bail is sought on the ground that order granting bail is illegal or perverse.

12. In *Raghubir Singh Vs. State of Bihar*, reported in (1986) 4 SCC 481, the Hon’ble Supreme 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.

13. In the case of **State of U.P. v. Amarmani Tripathi**, reported in **(2005) 8 SCC 21**, in para No.18, it is stated as under:-

“18. It is well settled that the matters to be considered in an application for bail are :-

- (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) Nature and gravity of the charge;
- (iii) Severity of the punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing, if released on bail;

- (v) Character, behaviour, means, position and standing of the accused;
- (vi) Likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail

14. In Myakala Dharmarajam & Ors. Vs. The State of Telangana & Anr. [(Criminal Appeal Nos. 1974-1975 of 2019) arising out of SLP (Cr1.) Nos. 8882-8883 of 2019], Hon'ble Supreme Court held as under:-

“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.”

14.1. It is also held by the Hon'ble Supreme Court that these 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.

15. In the case of **Neeru Yadav vs. State of Uttar Pradesh and another**, reported in (2014) 16 SCC 508 Hon'ble Supreme Court, while setting aside an order granting bail observed:-

“The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilization rests. It cannot be allowed to be paralyzed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law,

anxiously guards liberty.

But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

16. In the case of **Panchanan Mishra v. Digambar Mishra (2005) 3 SCC**

143, Hon’ble Supreme Court has held as under:-

“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.”

17. Again Hon'ble Supreme Court in **Prahlad Singh Bhati vs. NCT of Delhi** reported in **(2001) 4 SCC 280**, wherein it has been opined as under :-

- “(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
- (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of

bail.

- (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
- (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

18. Again in the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan reported in (2004) 7 SCC 528, Hon’ble Supreme Court has held as under:-

“The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences

punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

19. The proposition of law, which can be crystallized from the cases discussed herein above, is that courts which grants bail, can also withdraw the concession of bail, either on its own, or on the application preferred by the Police/Complainant/any other aggrieved person. But, the Courts exercise their power of cancellation of bail with care and circumspection. Routinely, the Courts refuse to cancel bail, as it jeopardizes the personal liberty of the person. The Courts cancel bails only when they find on record a very cogent and overwhelming circumstances prevailing against the accused as held in the case of (i) **Bhuri Bai vs. The State of Madhya Pradesh**; 2022 LiveLaw (SC) 956 and (ii) **Bhagirath Judeja vs. State of Gujarat**: (1984) 1 SCC 284, it is stated that the power under Section

439(2) Cr.P.C. has to be exercised with extreme care and circumspection and very cogent and overwhelming circumstances are, or ground has to be made out as relied upon by the respondent No.2.

20. Also 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 and if relevant materials, 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, were ignored by the court granting bail. Those orders are against the well-recognized principles underlying the power to grant bail and the same are legally infirm and vulnerable leading to miscarriage of justice and even in absence of supervening circumstances, such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. notwithstanding.

21. This court has also taken note of the ratios laid down in the decisions so referred by learned counsel for both the parties. There is no quarrel at the bar in respect of the proposition of law laid down in the cases referred by them. Some of them are already referred to and discussed herein above. The decisions, that has been discussed herein above and the proposition of law, that can be crystallized from the same, and further considering the given facts and circumstances on the record, this court is of the view that the said proposition of law are more than sufficient to decide the points raised in this

petition. Therefore, this court deemed it not necessary to discuss and refer to rest of the decisions cited at the bar.

22. Having informed ourselves about the proposition of law, so laid down by the Hon'ble Supreme Court in respect of cancellation of bail, now an endeavor will be made to examine the impugned order dated 13.06.2024, passed by the learned Addl. Sessions Judge-I, Aizawl in Bail Application No. 676/2024, arising out of Crime and Economic Offence P.S. Case No. 03/2024, under Sections 408/419/466/467/468/470/471/477A/120B IPC as to whether the order of granting bail to the respondent No. 2 is perverse and suffers from any infirmities, and thereby, resulted in miscarriage of justice and whether there arises any supervening circumstances or very cogent and overwhelming circumstances, so as to interfere with the impugned order.

23. That, perusal of the impugned order reveals that while granting bail to the respondent No.2, two factors weighed the learned trial court and these factors are:-

(i) two FIRs were submitted by two different persons, but, it relates to the same subject matter and same persons;

(ii) and the other ground is parity, as one of the co-accused, namely, Mr. Jakir Habibur Hussain was granted bail in connection with the same case.

24. It also appears that besides, aforementioned grounds the learned court had also considered the nature and gravity of the offence, of course, without however, elaborate discussion on the same. Therefore, it is cannot be said that the learned court had not at all considered the nature and gravity of the offence. The learned court had also discussed the medical condition of the respondent No.2 in the impugned order.

25. It is not in dispute that the FIR, in connection with which Crime and Economic Offence P.S. Case No. 03/2024, under Sections 408/419/466/467/468/470/471/477A/120B IPC, was registered, is the second FIR. The first FIR was lodged by one Ankit Bagree on 20.03.2024. He was the authorized signatory of the present petitioner. Upon the said FIR, Aizawl P.S. Case No. 96 of 2024, under Sections 406/467/468/34 IPC was registered. In both the cases, the I.O. had completed investigation and submitted charge sheet. That being so, there is no question of hampering the investigation and tampering the witnesses. Now trial will start and the respondent has to prepare his defence.

26. The law, regarding maintainability of second FIR, is well settled in catena of decisions by Hon'ble Supreme Court. In the case of **T.T. Antony vs. State of Kerala, (2001) 6 SCC 181**, Hon'ble Supreme Court has held as under:-

“20. From the above discussion it follows that

under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.”

26.1. In the said case Hon’ble Supreme Court has also held that :- “21.

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The Code of Criminal Procedure 1973, specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 of Cr.P.C. and forwarding of further report or reports to the

concerned Magistrate under Section 173(8) of Cr.P.C. It follows that if the gravamen of the charges in the two FIRs - the first and the second - is in substance and truth the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular and the Court cannot take cognizance of the same.”

27. Thus, it appears that registration of second FIR in connection with identical allegation, and if the test of sameness is applicable in both the FIRs, then successive FIR is liable to be quashed. It is also held that filing of second FIR is nothing but an abuse of the process of the law and it leads to miscarriage of justice and violate the fundamental right of the accused, guaranteed by Article 21 of the Constitution of India. Reference in this context can be made to a decision of Hon’ble Supreme Court in **Babubhai and Ors. vs. State of Gujarat, reported in (2021) 12 SCC 254**. This being the position, referring to the maintainability of second FIR by the learned court in the order impugned, cannot be said to be suffered from any infirmity or illegality. It is a fact that only the High Court is empowered under Section 482 Cr.P.C. to quash an FIR and the trial courts had no such power. But, it does not mean that the learned trial court would have no power even to discuss the same while dealing with an application for bail. If the court cannot take cognizance of the charges, in the vent of the gravamen of the charges in the

two FIRs - the first and the second - is in substance and truth the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr.P.C. will be irregular, as held in the case of **T.T. Antony (supra)**, then we see no reason as to why the court cannot consider the same. If registration of second FIR, on the same fact is not only impermissible but also violates the fundamental right guaranteed under Article 21 of the Constitution of India, then while dealing with bail application, the court definitely can take into account of the same, absence of quashing power notwithstanding. This being the position, the submission of Mr. Singh, the learned Senior Counsel for the petitioner, ought not to be sanctified with approval of this court.

28. It is well settled that in catena of decision of Hon'ble Supreme Court that the principle of parity can be considered while granting bail to co-accused. However, in applying the same the court has to consider the totality of the circumstances. While applying the principle of parity, court must focus on the role of the accused and the reasons cannot be the usage of similar weapons of the accused, which was granted bail. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. (see-**Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli) & Anr.** reported in (2021) 6 SCC 230.

29. In the impugned order, however, the learned trial court had only observed that accused Jakir Habibur Hussain, who is the main accused in the said two FIRs has been released on bail. It has not discussed the role of the respondent No.2 in the impugned order. However, on going through the scanned copy of the record of the learned trial court, it appears that Zakir Habibur Husain is identified as the kingpin of the offences in both the cases. It also appears that the respondent No.2 is a Director of a company in the name and style of AIDU Motors Private Ltd., a dealer of vehicles. The role of the company of respondent No.2, as it appears from the record is that it accepts the delivery order from MMFSL and released the vehicle to such customers. The respondent No.2 and its company are not privy to the agreement between MMFSL and customers, as per Annexure-1, of the written objection.

30. Thus, this court is of the view that application of the rule of parity by the learned court, while granting bail to the respondent No.2, cannot be said to be illegal or infirm. It appears that the learned court had rightly applied the principle of parity while granting bail to the respondent No.2.

31. It is also well settled that bail can be cancelled in the event of existence of any supervening factors. The following situations are illustration of some of the supervening factors:-

1. Interference or attempt to interfere with the due course of

- administration of justice;
- 2.Evasion or attempt to evade the due course of justice;
- 3.Abuse of the concession granted to the accused;
- 4.Possibility of the accused absconding;
- 5.Likelihood of/ actual misuse of bail;
- 6.Likelihood of the accused tampering with the evidence or threatening witnesses;
- 7.Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

32. Admittedly, there is no supervening circumstance here in this case. The petitioner could not show existence of any of the aforesaid circumstances herein this case. As stated in the foregoing para, the investigation has already been completed and charge sheet has already been submitted before the trial court and both cases are now pending for furnishing copies to the accused persons. That be so, there is no apprehension of hampering the investigation. The respondent No.2, as submitted by learned counsel for that the respondent No.2, is a permanent resident of Aizawl, and he had business there and he is also a Doctor by profession and he assured that the respondent No.2 will appear before the trial court regularly.

33. The record also indicates that the respondent No.2 had suffered heart attack after arrest here in this case and now he is undergoing treatment at a private Hospital in Aizawl. The learned counsel for the respondent No.2 had pointed out that Doctor has suggested him angioplasty as soon as practicable and in entire Mizoram such a facility is not available. This factum is not in disputed by the petitioner and the learned court also discussed the same in the order impugned.

34. It is also well settled in the case of **Mohit alias Sonu and Another vs. State of Uttar Pradesh and Another** reported in (2013) 7 SCC 789, the inherent power under Section 482 Cr.P.C. can be exercised when there is no express provision in the Code. In para No.28 it has been held as under:-

“28. So far as the inherent power of the High Court as contained in Section 482 CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal

Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.”

35. It is to be noted here that there is express provision in the Code, i.e. Section 439(2) Cr.P.C., to take care of the grievances so raised in this petition i.e. for cancellation of bail. Therefore, this court is of the view that the inherent jurisdiction cannot be invoked herein this case. Mr. Das, the learned Senior Counsel for the respondent No.2, has rightly raised this arguable point and this court record concurrence to the same.

36. Notably, this application is also preferred under Section 439(2) of the Code of Criminal Procedure. But, in view of the foregoing discussion and also balancing the individual interest of the respondent No.2 with that of the societal interest, this court is of the view that no cogent and overwhelming factors could be shown to have existed in this case so as to cancel the bail granted to the respondent No.2. Thus, this court is left unimpressed by the submission of Mr. Singh, the learned Senior Counsel for the petitioner, that the learned court had granted bail to the respondent No.2 on irrelevant consideration.

37. In the result, this court finds no merit in this petition and accordingly, the

same stands dismissed leaving the parties to bear their own costs.

38. Before parting with the record this court would like to make it clear that the observation made herein above is only for the purpose of disposing of the present application, not on merit of the case. The learned trial court shall proceed to hear the case, without being influenced by any of the observation made herein above.

39. In terms of above this petition stands disposed of.

JUDGE

Comparing Assistant