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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 21.01.2016

ORDERS DELIVERED ON: 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C. (MD) .No.561 of 2015

and

M.P. (MD) No.1 of 2015

M.Shabeer

: Petitioner/Accused No.3

Vs.

1. Mannar Mohammed @ Jahangeer

: 1st Respondent/Petitioner/
Defacto Complainant

2. The State rep. By
Inspector of Police,
Fort Crime Police Station,
Trichy.
(Crime No.606 of 2015)

: 2nd Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to order, dated 03.11.2015, passed in Crl.M.P.No.2474 of 2015 on the file of the Learned Principal District and Sessions Judge, Trichirappalli and set aside the same.

For Petitioner : Mr.C.Jegananthan

For R1 : Mr.S.Rajeshkumar
for

Mr.G.Balumahendran

For R2 : Mr.P.Kandasamy

Government Advocate (Crl. side)

ORDER

The Revision Petitioner/Accused No.3 has filed the present Criminal Revision Petition before this Court as against the order, dated 03.11.2015, in Crl.M.P.No.2474 of 2015, passed by the Learned Principal Sessions Judge, Trichirappalli.

2.The Learned Principal Sessions Judge, Trichirappalli, while passed the impugned order in Crl.M.P.No.2474 of 2015 (filed by the First Respondent/Petitioner/Defacto complainant under Section 439(2) of Cr.P.C. to cancel the bail granted to the Revision Petitioner/accused), at paragraph Nos.12 and 13, had observed the following:-

<https://hcservices.ecourts.gov.in/hcservices/> 12. The contention of the Respondent/A3's counsel is that the accused moved bail application before Judicial Magistrate by engaging counsel Thiru.T.A.Omprakash and during



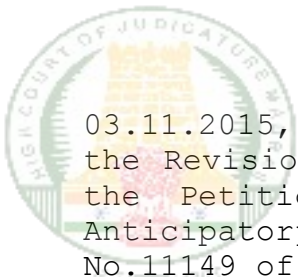
the pendency of the application, his defence counsel has filed another bail application before the Sessions Court and therefore, the Petitioner has not pressed the application pending before Judicial Magistrate No.I, Trichy on 07.09.2015 at 10.30 a.m. itself. Though the petitions have been filed by two different counsel, the Petitioner is the same person and ought to have given instructions to his counsel in the second application regarding the pending of earlier bail application before the Judicial Magistrate. Further, in view of the decision of the Hon'ble Supreme Court in Harjeet Singh case reported in 2002 CrL.L.J., 571 subsequent bail application ought to have been placed before the same Judge who had passed earlier orders and judicial discipline requires that such matters should be placed before the same Judge and the aggrieved party shall approach the court for Cancellation of Bail on the ground of any objectionable conduct on the part of the accused and/or pointing out that the order granting bail was obtained by suppression of material fact.

13.The Learned counsel for the Respondent/A3 contended that bail granted can be cancelled only on supervening circumstances such as (i) tampering of evidence (ii) committing similar offence or any heinous offence (iii) possibility for absconding (iv) Activities become hazard to peaceful life and (iv) threat to the witnesses and none of the above grounds have been put forth by the Petitioner any valid ground for Cancellation of Bail. Admittedly, the Petitioner has not made out any of the above grounds. But on the basis of the principle laid down by the Hon'ble Supreme Court in Harjeet Singh case reported in 2002 CrL.L.J., 571, the conduct of the Respondent/A3 in the present case amounts to suppression of material fact. Further in view of the decision of the Hon'ble High Court Madras reported in (2015) 3 MLJ (CrL.) 6 - R.Gobinath V. State the Petitioner is responsible for filing of two applications seeking bail by two different counsel in two different forums. Therefore, the Petitioner/Defacto complainant is entitled to get an order cancelling the bail order as prayed for. The Respondent/A3 can move bail application before the Judicial Magistrate No.I, Trichy and the Court shall pass orders on the bail application after hearing the objections, if any, and pass orders on merits and in accordance with Law."

and resultantly, allowed the petition and cancelled the bail granted to the Revision Petitioner/A3 in CrL.M.P.No.2450 of 2015, dated 07.09.2015.

3.Aggrieved against the said order, dated 03.11.2015, in CrL.M.P.No.2474 of 2015, (filed by the First Respondent/Petitioner/Defacto complainant), the Revision Petitioner/A3, has projected the instant Criminal Revision Petition contending that the impugned order passed by the Learned Principal Sessions Judge, Trichirappalli, is against Law, weight of evidence and probabilities of the case.

4.The Learned counsel for the Revision Petitioner urges before this Court that the Learned Principal Sessions Judge, Trichirappalli, at the time of passing the impugned order in CrL.M.P.No.2474 of 2015, dated



03.11.2015, had not taken into consideration of the important fact that the Revision Petitioner/A3 had filed a bail petition before him, wherein the Petitioner had not stated about the dismissal of the earlier Anticipatory Bail petition filed before this Court in CrI.O.P.(MD) No.11149 of 2015, which was dismissed on 11.08.2015.

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5.At this juncture, it is represented on behalf of the Revision Petitioner/A3 that after dismissal of the Anticipatory Bail petition, the Petitioner was remanded to judicial custody on 20.08.2015 and after such remand, the Petitioner preferred a bail petition before the Learned Principal Sessions Judge, Trichirappalli and the same was ordered. Moreover, the First Respondent/Defacto complainant, had filed a petition to cancel the bail petition before the Learned Principal Sessions Judge, Trichirappalli.

6.The plea of the Revision Petitioner/A3 is that once he was arrested and remanded to judicial custody, there is no question of mentioning about the dismissal of the Anticipatory Bail petition and this primordial fact was not at all taken into account by the Learned Principal Sessions Judge, Trichirappalli and this has resulted in serious miscarriage of justice.

7.Advancing his arguments, the Learned counsel for the Revision Petitioner proceeds to point out before this Court that the Learned Principal Sessions Judge, failed to appreciate that the bail application filed before the Learned Judicial Magistrate No.I, Trichirappalli in Cr.M.P.No.3351 of 2015 was dismissed as withdrawn and hence, on this score alone, the impugned order is liable to be set aside by this Court sitting in 'Revision'.

8.Expatiating his contention, the Learned counsel for the Revision Petitioner contends that in the present case, initially, the bail petition was filed before the Learned Judicial Magistrate No.I, Trichirappalli, which was dismissed and later, the second bail petition was filed before the same Court, which was dismissed as withdrawn, on the date of granting bail by the Learned Principal Sessions Judge. Therefore, there is no question of pending of any bail petition before the lower Court.

9.The Learned counsel for the Revision Petitioner, takes a legal plea that there are five grounds for Cancellation of Bail i.e. (i) Where accused was found tampering with evidence during trial or investigation; (ii) when accused committed similar offence or heinous offence during trial period; (iii) When accused absconded and trial gets delayed on that account; (iv) offence committed by accused had created serious law and order problem; and (v) When lower Court exercise its judicial power wrongly while granting bail when accused has misused privilege of bail and when life of accused itself be in danger. To lend support to this contention, he cites the Division Bench Judgment of this Court in **STATE BY INSPECTOR OF POLICE v. SIVAKUMAR**, reported in **2003 (4) CTC 695**.

10.He relies on the decision of the Hon'ble Supreme Court in **DOLAT RAM v. STATE OF HARYANA** reported in **1995 (1) SCC 349**, whereby and where under, it is observed and held as follows:-

"Rejection of bail in a non-bailable case at the



initial stage and the Cancellation of Bail already 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 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 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."

11.Also, the Learned counsel for the Revision Petitioner/A3, refers to the decision of the Hon'ble Supreme Court in **BHAGIRATHISINH JUDEJA v. STATE OF GUJARAT** reported in **AIR 1984 SC 372**, wherein it is observed and held as follows:-

"Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. It is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted ill his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

12.That apart, the Learned counsel for the Revision Petitioner/A3, seeks in aid of the decision of the Hon'ble Supreme Court in **MOHAN SINGH v. UNION TERRITORY, CHANDIGARH** reported **1978 SCC (Cr1.) 190**, at special page 191, whereby and where under, it is observed and held as follows:-

"The offence alleged in this case against the appellant is one under Section 5(2) of the Prevention of Corruption Act. Bail was granted by the Sessions Judge after hearing counsel on both sides but it was cancelled by the High Court mainly for the reason that the appellant had simultaneously moved for bail in the Sessions as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. This naturally made the High Court feel that the party was not straight-forward in his dealings, with the Court. The consequence was that the bail already granted was reversed.



2. Counsel for the State pressed before us that the corruption of which the appellant was guilty prima-facie (according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale, of bail. This Court has explained the real basis of bail law in Gurcharan Singh & ors. etc. v. State (Delhi Administration) (1). We do not think there is as yet any allegation against the appellant of interference with the course of justice or other well-established grounds for refusal of bail. In this view, we direct that the appellant be allowed to continue on bail until further orders to the contrary passed by the Sessions Court if good grounds are made out to its satisfaction."

13. In response, the Learned counsel for the First Respondent/Defacto complainant submits that the Revision Petitioner was arrested on 20.08.2015 by the second Respondent/Police and was remanded to Judicial custody. Later, the Learned counsel for the Revision Petitioner filed a petition for bail before the Learned Judicial Magistrate No.1, Trichirappalli in CrI.M.P.No.3180 of 2015 and the same was dismissed on 31.08.2015.

14. According to the Learned counsel for the First Respondent/Defacto complainant, on 02.09.2015, the Revision Petitioner projected a second bail application, before the Learned Judicial Magistrate No.I, Trichirappalli in CrI.M.P.No.3351 of 2015 on engaging an advocate and that on 02.09.2015, a notice was issued to the second Respondent/Police and the matter was adjourned to 04.09.2015.

15. Continuing further, the Learned counsel for the First Respondent contends that on 03.09.2015, one Balakumar, who is none other than the junior counsel to the Learned Advocate, Thiru.T.A.Omprakash and on obtaining instructions from the said counsel filed a bail petition before the Sessions Court, Trichirappalli in CrI.M.P.No.2450 of 2015 and further that on 04.09.2015, the said counsel took adjournment of the bail petition filed before the Learned Judicial Magistrate No.I, Trichirappalli to 07.09.2015 after the filing of the intervening petition by the First Respondent through his counsel.

16. The Learned counsel for the First Respondent/Defacto complainant, brings it to the notice of this Court that on 07.09.2015, the bail application filed before the Sessions Court was called in the morning Session and that the Sessions Court, had granted bail, on the misrepresentation and misleading of pending bail application before the Learned Judicial Magistrate No.I, Trichirappalli. In fact, it is represented on behalf of the First Respondent/Defacto complainant that the Sessions Court has granted bail in the Fore Noon and the Learned counsel had withdrew the bail application pending before the Learned Judicial Magistrate No.I, Trichirappalli without disclosing that the bail was granted to the Petitioner before the Sessions Court, Trichirappalli.

<https://hcservices.ecourts.gov.in/hcservices1> grievance of the First Respondent/Defacto complainant is that the bail application filed before the Learned Judicial Magistrate No.I, Trichirappalli was not disclosed before the Learned Principal



Sessions Judge and the Sessions Court had granted bail based on fraudulent representation.

18. The Learned counsel for the First Respondent/Defacto complainant, submits that on the very day of granting bail to the Revision Petitioner, the Learned counsel for the First Respondent/Defacto complainant, filed a petition for Cancellation of Bail in CrI.M.P.No.2474 of 2015 by narrating the full facts. At this stage, it is the stand of the First Respondent/Defacto complainant, that on 3.11.2015, the Learned Principal Sessions Judge, had cancelled the bail granted to the Petitioner in CrI.M.P.No.2450 of 2015, dated 07.09.2015 after perusing the petition for Cancellation of Bail.

19. At this juncture, the Learned counsel for the First Respondent/Defacto complainant, contends that the Petitioner/A3, who was under custody of the entire amount of Rs.7,20,000/- (Rupees Seven Lakhs and Twenty Thousand Only) (which was stolen from the shop of the firsts Respondent/Defacto complainant) had shared the said amount with other two accused and till date, there is no recovery of the amount in question.

20. Besides the above, it is the submission of the Learned counsel for the First Respondent/Defacto complainant, that the Revision Petitioner, has not come before this Court with clean hands and hence, prays for dismissal of the Criminal Revision Petition.

21. In this connection, the Learned counsel for the First Respondent/Defacto complainant, cites the decision in **R. GOBINATH v. STATE** reported in **2015 (3) MLJ (CrI.) 6**, at special page 7, wherein it is observed and held as follows:-

"It is evident that there were two applications filed by the petitioner for the very same relief of bail in which he could obtain an order of bail in the second application. This is more so that in the first application, the intervenor has filed a petition opposing grant of bail and therefore, the petitioner has conveniently filed the second application for bail. In such circumstances, it cannot be said that the petitioner could not be held responsible for filing of two applications seeking bail by two different counsel. The Principal Sessions Judge has appreciated all the above factual contentions raised on behalf of the petitioner and came to a correct conclusion that for having suppressed the filing of the earlier bail application, the bail granted to the petitioner has to be cancelled. No reasons to interfere with such well considered order passed by the Court below. Considering the over all facts and circumstances of the case, this Court directs that the petitioner shall surrender before Judicial Magistrate and then it is open to him to file a fresh application seeking bail."

22. In fact, in the aforesaid decision, the decision of the Hon'ble Supreme Court in **MOHAN SINGH v. UNION TERRITORY, CHANDIGARH** reported **1978 SCC (CrI.) 190**, was not cited or referred to.

23. He also cites the Judgment of the Hon'ble Supreme Court in **HARJEET SINGH v. STATE OF PUNJAB** reported in **2002 CrI.L.J. 571**, whereby and where under, it is observed and held as follows:-



"If the accused had obtained bail order by misrepresentation or by suppression of facts, it was for the State Government or the aggrieved party to approach the appropriate higher forum. In any case, for cancellation of the bail on the ground of misrepresentation or mis-statement, the matter ought to have been placed before the same Judge. It was not open to the other Judge of the High Court to sit in appeal against the order passed by co-ordinate bench of the same Court.

Long-standing convention and judicial discipline require that subsequent bail application ought to have been placed before the same Judge who had passed earlier orders. Placing of such matter before the same Judge has its roots in principle as it prevents abuse of process of Court inasmuch as an impression is not created that a litigant is shunning or selecting a Court depending on whether the Court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up; if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders. The Court finally observed that judicial discipline requires that such matters should be placed before the same Judge, if he is available for orders. Same principle is required to be followed even for setting aside the order passed by the Court granting bail on the ground of mis-representation or mis-statement or suppression of some facts."

24.The Learned Government Advocate (crl. Side) for the second Respondent contends that when the bail petition filed by the Petitioner before the Learned Principal Sessions Judge, was pending, the petition for bail filed by the Petitioner/A3 before the Learned Judicial Magistrate No.I, Trichirappalli, was also pending on 07.09.2015 and that the withdrawal of the petition before the Learned Judicial Magistrate No.I, was made only after the bail was ordered by the Learned Principal Sessions Judge, based on the petition for Cancellation of Bail filed by the First Respondent/Defacto complainant, before the Sessions Court, the Learned Principal Sessions Judge, Trichirappalli had rightly cancelled the bail.

25.At this juncture, this Court aptly points out the decision of the Hon'ble Supreme Court in **GURUCHARAN SINGH v. STATE (DELHI ADMN.)** reported in **AIR 1978 SC 179**, wherein it is observed and held as follows:-

"If a police officer arrests a person on a reasonable suspicion of commission of an offence punishable with death or imprisonment for life and forwards him to a Magistrate, the Magistrate at that stage will have no reasons to hold that there are no reasonable grounds for believing that he has not been guilty of such an offence. At that stage, unless proviso to Section 437(1), bail appears to be out of the question. The only limited inquiry may then relate to the materials for the suspicion. The position will naturally change as investigation progresses and more facts and circumstances come to light. Section 439(1), on the other hand, confers special powers on the High Court or the Court



of Session in respect of bail. Unlike under Section 437 (1) there is no ban imposed under S.439 (1), against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its Judicial discretion in considering the question of granting of bail under S.439(1). The overriding considerations in granting bail which are common both in the case of S.437(1) and S.439(1), are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offences of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out. The two paramount considerations, viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. The question of cancellation of bail under S.439 (2) is certainly different from admission to bail under S.439 (1). Under S.439 (2) the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. Under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under S.439 (2). Under S.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.

All the accused persons ranging from the Deputy Inspector General of Police and the Superintendent of Police at the top down to some people constables were alleged to be a party to a criminal conspiracy to kill one Sunder and they were alleged to have caused his death by drowning him in the Jamuna river in pursuance of the conspiracy. During the preliminary inquiry. All the six alleged eye-witnesses did not support the prosecution case, but gave statements in favour of the accused. During the course of the investigation, seven witnesses including six persons already examined during the preliminary inquiry, gave statements



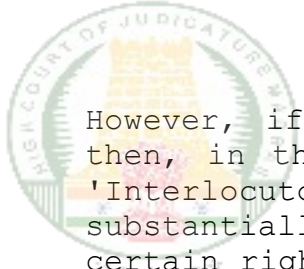
implicating the accused in support of the theory of prosecution. The witnesses were also forwarded to the Magistrate for recording their statements under S.164, Cr.P.C. All the seven witnesses continued to support the prosecution case in their statements on oath recorded under S.164, Cr.P.C. Six eye-witnesses who made discrepant statements and had supported the defence version at one stage, explained that some of the accused had exercised pressure on them to make statements in favour of the defence. It was in the above background that the Delhi Administration moved the High Court for cancellation of the bail granted by the Sessions Judge alleging that there was grave apprehension of the witnesses being tampered with by the accused persons on account of their position and influence which they wielded over the witnesses; and

That the Sessions Judge did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses. In the peculiar nature of the case revealed from the allegations and the position of the accused in relation to the eye-witnesses it was incumbent upon the Sessions Judge to give proper weight to the serious apprehension of the prosecution with regard to tampering with the eye-witnesses, which was urged before him in resisting the application for bail. The High Court had correctly appreciated the entire position. Therefore, the Supreme Court will not be justified under Art.136 of the Constitution in interfering with the discretion exercised by the High Court in cancelling the bail of the accused persons."

26.It is to be borne in mind that a Court of Law is to exercise its power as regards the 'Cancellation of Bail' with utmost care and caution, as opined by this Court. Further, a Court of Law is to balance the right to personal liberty versus the Society's interest.

27.Also, when petition for bail filed by the Revision Petitioner as Petitioner before the Learned Principal Sessions Judge, Trichirappalli, was pending, the petition for bail filed by him before the Learned Judicial Magistrate No.I, was also pending on 07.09.2015 and that the withdrawal of the bail petition before the Learned Judicial Magistrate No.I, Trichirappalli, was done, only after the bail was granted by the Learned Principal Sessions Judge. To put it succinctly, these facts as projected by the First Respondent/Defacto complainant are not disputed by the second Respondent/State and in fact, they were admitted.

28.It cannot be gain said that when a person approaches a concerned Court of Law, he is to come with clean hands. In fact, he should not suppress any material or fact mainly with a view to obtain an favourable order in his favour. One cannot brush aside an important fact that an 'Interlocutory Order' is one granted during the progress of an action. Arbitrarily, it would not finally dispose of the litigant's right. The real consideration whether an order passed by the Court concerned is an 'Interlocutory Order' or a 'final one' is to be seen in the light of order/Judgment being passed disposing the rights of litigants in a given situation and in the context, it is a final order.



However, if a Court of Law does not dispose of the litigant's rights, then, in the considered opinion of this Court, it can be termed as an 'Interlocutory Order'. In short, an order which materially and substantially affects the rights of a person/accused and determines the certain right of a party, then, it would not be an 'Interlocutory Order', as per decision of this Court in **SULOCHANA v. M.KULASEKARAN** reported in **2003 Cr1.L.J. 4373 (4377) (Mad.)**.

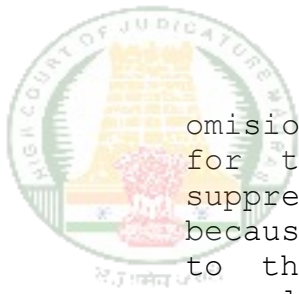
29.It is to be noted that reasons to be assigned by a Court of Law in an order/Judgment are the flesh and blood of a judicial adjudication. As a matter of fact, such reasons ought to be shown in the order/Judgment, which is liable to be assailed before a Higher Forum. In fact, ascribing of reasons would exhibit objectively besides clarity. In fact an order/a decision ought not to be like 'inscrutable face of sphinx'.

30.Also, that the 'Cancellation of Bail' should not be ordered by way of punishment even if prima facie case against an accused is proved. In reality, the High Court cannot cancel the Bail on a ground alien to the grounds mentioned in Section 437 of Cr.P.C., as opined by this Court.

31.In this connection, it is not out of place for this Court to cite the decision of the Hon'ble Supreme Court in **KASHMIRA SINGH v. DUMAN SINGH** reported in **AIR 1996 SC 2176**, whereby and where under, it is observed and held as follows:-

"In the instant case there was a fight between two groups. Which party had launched the attack would be a matter of evidence. Even assuming that the accused's side was the aggressor the fact, remains that there was casually on both sides since both sides were armed. Whether a cross complaint was filed or not does not alter this factual reality. The possibility of the respondent's side being the aggressor, or there being a free fight cannot be overlooked altogether. Non-filing of a cross-complaint may be relevant factor, but that there were injuries on both sides has to be accepted. This fact was known to the Court when it granted bail. Therefore, this ground would not be strong enough for cancellation of bail granted to accused.

The ground regarding suppression of facts by accused was still weaker. In the first place, knowledge of two bail applications of the co-accused having been rejected has been imputed to the accused without valid basis. Secondly, the fact that the co-accused had applied for bail and had later not pressed the application, had been disclosed since it was known to the accused. That was sufficient indication that the co-accused had not been enlarged on bail. His decision not to press for bail would be indicative of the fact that the Court was disinclined to grant bail or, he did not see sufficient grounds to press the bail application. Be that as it may, the fact remains that the Court was aware that the co-accused was not granted bail. That was sufficient for the Court when it considered the accused's application for bail. Besides, it was the prosecution/complainant's duty to bring to the Court's notice that two applications of the co-accused for bail were rejected. If the accused did not mention it, nothing prevented the opposite side from placing it on record. It seems to be an



omission on the part of the prosecution/complainant's side but, for that it would be wrong to charge them with having suppressed facts. So also for the accused, more particularly because, there was no positive evidence to attribute knowledge to the accused. Hence, it cannot also be a ground for cancellation of bail granted to accused. Moreover there was no evidence of accused having threatened anyone while on bail."

32.It is to be noted that Bail can be cancelled on existence of cogent and overwhelming circumstances. But not on re-appreciation of the facts of the present case, as per decision of Hon'ble Supreme Court in **RAM CHARAN v. STATE OF MADYA PRADESH, in 2004 (13) SCC 617.**

33.As far as the present case is concerned, it is held by this Court that the impugned order, dated 03.11.2015, passed by the Learned Principal Sessions Judge, Trichirappalli, is a final order, since it affected the right of the Revision Petitioner/A3, whereby and where under, his bail, already granted by the Sessions Court was cancelled. Therefore, he is an aggrieved person and in the considered opinion of this Court, has filed the present Crl.R.C.(MD)No.561 of 2015 exercising the procedural facility offered to him under the Criminal Procedure Code.

34.Be that as it may, on a careful consideration of respective contentions, and also this Court bearing in mind of the fact that the Revision Petitioner/A3 had not disclosed the filing of bail application before the Learned Judicial Magistrate No.I, Trichirappalli, in Crl.M.P.No.2450 of 2015, which resulted in filing of Crl.M.P.No.2474 of 2015 praying for Cancellation of Bail, wherein the Cancellation of Bail was ordered by the Learned Principal Sessions Judge, this Court is of the considered view that the impugned order, dated 03.11.2015 in Crl.M.P.No.2474 of 2015 passed by the Principal Sessions Judge, Trichirappalli, is in negation to the decision of the Hon'ble Supreme Court in **MOHAN SINGH v. UNION TERRITORY, CHANDIGARH** reported **1978 SCC (Crl.) 190** and accordingly, interferes with the said order and sets aside the same to prevent an aberration of justice and in furtherance of substantial cause of justice. Consequently, the the Revision succeeds.

35.In the result, the Criminal Revision Petition is allowed. The impugned order, dated 03.11.2015, of the Learned Principal Sessions Judge, Trichirappalli, in Crl.M.P.No.2474 of 2015 cancelling the bail granted to the petitioner/A3 in Crl.M.P.No.2450 of 2015, dated 07.09.2015 etc., is set aside by this Court for the reasons assigned in this Criminal Revision Petition. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1. The Principal District and Sessions Judge,
Trichirappalli.
2. The Judicial Magistrate No.I, Trichy.
3. The Inspector of Police,
Fort Crime Police Station,
Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.VEERA KATHIRAVAN, ADVOCATE IN SR NO.5355

RJ2

TE/PM-MP/ : 11/02/2016 : 12P/7C

Pre-Delivery Order made in
Crl.R.C. (MD) .No.561 of 2015
and
M.P. (MD) No.1 of 2015
28.01.2016