

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 11th, 2016

+ CRL.M.C. 1094/2016

PRASHANT KUMAR UMRAO

..... Petitioner

Through Mr.R.P. Luthra, Adv.

versus

STATE & ANR

..... Respondent

Through Mr.Rahul Mehra, Standing counsel,
Ms.Richa Kapoor, ASC (Crl.),
Ms.Seema Pathak, Adv. & Mr.Tushar
Sannu Dahiya, Adv.

Mr.P.S. Kushwah, DCP (Spl. Cell),
Mr.Manishi Chandra, Addl. DCP (Spl.
Cell) & Mr.Umesh Barthwal,
Inspector (Spl. Cell).

AND

+ CRL.M.C. 1095/2016

VINEET JINDAL

..... Petitioner

Through Mr.Raj Kishore Choudhary, Adv.

versus

KANHAIYA KUMAR & ANR

..... Respondent

Through Mr.Rahul Mehra, Standing counsel,
Ms.Richa Kapoor, ASC (Crl.),

Ms.Seema Pathak, Adv. & Mr.Tushar Sannu Dahiya, Adv.

Mr.P.S. Kushwah, DCP (Spl. Cell),
Mr.Manishi Chandra, Addl. DCP (Spl. Cell) & Mr.Umesh Barthwal, Inspector (Spl. Cell).

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. By this order, I shall dispose of both these applications. The present applications have been filed by the petitioners for cancellation of bail granted to the Kanhaiya Kumar, respondent no.2 in CrI.M.C. 1094/2016 & respondent no.1 in CrI.M.C. 1095/2016 (hereinafter referred to as “respondent/accused”) vide order dated 02.03.2016 by this Court in FIR No.110/2016, under Sections 124-A/120-B/147/149/34 IPC, Police Station Vasant Kunj North.

2. Vide order dated 02.03.2016, this Court granted interim bail to the respondent/accused Kanhaiya Kumar for a period of six months.

3. The law regarding cancellation of bail is well settled. In the judgment of Hon’ble Apex Court in the case of *Dolat Ram v. State of Haryana 1995 SCC (1) 349*, it was observed 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted.”

4. **Section 439(2) of the Code of Criminal Procedure** (hereinafter referred to as “Cr.P.C.”) envisages the right to move the application for cancellation of bail with the investigating agency against the person as per the circumstances mentioned in the judgment in the case of *Dolat Ram* (supra). As per the Code of Criminal Procedure set up, the criminal proceedings are between the State and

the accused or between the complainant and the accused. A stranger does not have any access to the proceedings particularly when the investigation is already in progress to prepare the report to submit the same before the Court. The investigation cannot be interfered with or intervened in any manner by any stranger and the Investigating Officer is to take decisions regarding the conduct of the investigation and the accused as provided by the Cr.P.C.

5. Apart from the judgment referred above, this Court is of the considered opinion that investigation is the prerogative and domain of the Investigating Officer and that no other person is allowed to intervene in the same. The Investigating Officer is to ensure that his investigation is moving smoothly without any interference or obstruction caused by the accused. So, as per the principle laid down in the case of *Dolat Ram* (supra), the Investigating Officer is the only appropriate person to move the application for cancellation of bail through the State, if need arises. In the present case, no hindrance or obstruction has been brought forth by any of the parties, rather it is the specific case of the petitioners that they are seeking cancellation of bail solely on account of the alleged violation of the conditions imposed in the bail order dated 02.03.2016.

6. **The present applications** have been moved by the petitioners in their individual capacity claiming themselves to be citizens of India and on the basis of judgments in the cases of *Sheonandan Paswan v. State of Bihar and others* (1987) 1 SCC 288 and *A.R. Antulay v.*

Ramdas Srinivas Nayak and another (1984) 2 SCC 500 that there is no bar to a stranger from putting the criminal process in motion. On the basis of the judgments cited by the counsel for the petitioners, the plea taken is that after the grant of bail the accused/respondent made various statements which tantamount to breach of the conditions of bail and therefore sought the cancellation thereof.

7. In pursuance of the notice, State/Government of the National Capital Territory of Delhi was asked to file reply to clear its status and to know the stand of the prosecution as to whether they wished for the cancellation of the bail to be granted to the respondent/accused or not.

8. On 28.04.2016, in the interest of justice, the State/Govt. of NCT of Delhi was directed to file reply within four weeks and the matter was adjourned to 19.07.2016. Again on 19.07.2016, the State/Govt. of NCT of Delhi was directed to file the reply within one week and the matter was adjourned to 09.08.2016. Reply was filed to the present applications in which it is mentioned that it is for this Court to form an opinion whether the respondent/accused has violated the conditions of bail or not. The stand taken by the learned Standing Counsel for the State/Govt. of NCT of Delhi on the instructions of the Investigating Officer was that the prosecution is not in favour of cancellation of bail granted to the respondent/accused.

9. During the course of arguments, counsels for the petitioners submitted that there are more than 50 accused persons involved in the present case and that the information regarding alleged statements

made by the respondent/accused is on the basis of Television and that they have no personal knowledge. It was further submitted that the petitioners have not lodged any complaint to any authority against the respondent/accused and they do not know the respondent/accused personally.

10. The Code of Criminal Procedure envisages or confer the right to move the application for cancellation of bail only by the investigating agency or by the complainant. As per the judgments in the case of ***Sheonandan Paswan*** (supra) and ***A.R. Antulay*** (supra), a stranger can move the application to put the law into motion by the competent authority i.e. the prosecution. Any application moved by a stranger should be on the basis of a substantial set of facts and on sound basis of law and without the same, the application should not be entertained by the Court. In the facts and circumstances, the petitioners have failed to bring forth any case which leads to the issuance of notice to the respondent/accused.

11. The contentions made by the counsel for the petitioners that the speeches made by the respondent/accused subsequent to the grant of bail are anti national and violative to the conditions of bail, do not find any substance on the file. The alleged speeches made by the respondent/accused have been noticed by the petitioners from the Television or newspapers. The petitioners have no personal knowledge of the speeches so made and contents thereof. Even the petitioners are not aware whether these speeches were declared anti

national by any court of law or whether such speeches are the subject matter of any prosecution before any court of law. Alleging the speeches as anti national is the personal perception of the petitioners and nothing has been brought forth to establish that such speeches were actually made or that the same were declared anti national by any court of law.

12. After filing of the applications, the matters came up for hearing on 16.03.2016 and on the request of the counsel for the petitioners, the matters were adjourned to 17.03.2016. On 23.03.2016, on the request of the counsel for the petitioners, matter was adjourned to 28.04.2016. On 28.04.2016, on the request of the Standing Counsel (Criminal) of the State/Govt. of NCT of Delhi to file reply to the applications, the matters were adjourned to 19.07.2016. On 19.07.2016, reply was not filed by the State/Govt. of NCT of Delhi and the matters were adjourned to 09.08.2016 to enable the State to file the reply within one week. In the reply filed by the Investigating Officer it is submitted as under :

“That the question whether Respondent No.2 violated the conditions of bail order thereby which he was granted Bail is to be answered in the light of subsequent event happened whereby which Respondent No.2 had given various speeches on 3rd March and 8th March subsequent thereto. The sequence of events has been placed before this Hon’ble Court and this Hon’ble Court may be pleased to form appropriate opinion in the light of material placed on record.”

It would be pertinent to mention that at no point of time did the State/Govt. of NCT of Delhi seek the cancellation of bail and ultimately on 09.08.2016, the Standing Counsel (Criminal), State/ Govt. of NCT of Delhi on the instructions of the Investigating Officer categorically stated that the “*State (Police) is not for cancellation of bail*”.

13. In view of the above discussion, the prosecution does not wish to enter into the question whether any such speech made is violative to the condition of bail and instead wishes to continue with the investigation smoothly without any hindrance and is of the categorical stand that the bail need not to be cancelled.

14. The argument advanced by the counsel for the petitioners that the applications have been moved to put the legal process in motion is without any substance as the state machinery was already in motion and investigation was being conducted smoothly, so such applications are unwarranted.

15. In totality of the circumstances, this Court is of the considered opinion as under :

(i) The Investigating Officer is to take decision seeking cancellation of bail and the grounds thereof on the basis of material collected during investigation.

(ii) Section 439(2) of the Cr.P.C. does not envisage any right upon any stranger to approach the Court for cancellation of

bail, a right which has been conferred only on the Investigating Officer or under exceptional circumstances to the complainant.

(iii) Application of a stranger cannot be entertained by the Court without any substantial set of facts and circumstances or without sound principle of law to call upon the accused for cancellation of bail who has been protected under Article 21 of the Constitution of India except the authority empowered under the Code of Criminal Procedure.

16. In view of the facts and circumstances and discussions dealt with above, this Court does not find any substance to cancel the bail granted to the respondent/accused and to issue notice to the respondent/ accused for cancellation of bail. Thus, the applications are dismissed.

17. Apart from the above discussion, this Court is of the considered opinion that much time has already spent on the applications. It would be appropriate if the Investigating Officer submit his report within a period of six months from the date of grant of bail for consideration of the Court.

(P.S.TEJI)
JUDGE

AUGUST 11, 2016
dd