

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 835 of 2016**

Smt. Anita Pawar W/o - Late Dilip Pawar Aged About 42 Years R/o -
Sadar Bazar, Budhapara Ward Police Station - City Kotwali, Raipur,
Tehsil & District - Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : Police Station - City Kotwali, District - Raipur Chhattisgarh
2. Ashok Golchha S/o - Pukhraj Golchha Aged About 52 Years R/o - Sadar Bazar, Police Station - Kotwali, District - Raipur Chhattisgarh

---- Respondents

For the Petitioner	: Shri D.K. Gwalre, Advocate.
For Respondent No.1/ State	: Shri Lav Sharma, Panel Lawyer.
For Respondent No.2	: Shri Devershi Thakur, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****07.07.2017**

1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure with a prayer to cancel the bail granted to respondent No.2 – Ashok Golchha, accused in Crime No. 200 of 2013 of police station City Kotwali, Raipur, Chhattisgarh for the offences under Sections 306 read with Section 34, 365 and 392 of the Indian Penal Code.

2. Learned counsel for the petitioner submits that the petitioner is widow of deceased – Dilip Pawar has stated that her husband was abducted and wrongfully confined in the house of absconding accused Mukesh Golchha by respondent No.2 and co-accused persons, on account of some indebtedness of the deceased. The deceased was tortured while in confinement till the date of his suspicious death. Respondent No.2 – Ashok

Golchha has been granted bail under Section 439 of the Cr.P.C. vide order dated 1.8.2013, passed in Bail Application No. 1494 of 2013, in which specific conditions were imposed that the applicant shall not influence and shall cooperate in the investigation, and also that the applicant will not leave the city of Raipur till filing of final report and will give his attendance daily in the concerned police station at 11:00 hrs.

3. As per information of the petitioner, respondent No.2 is not complying the conditions imposed in the order granting bail. It is submitted that the petitioner has moved an application under Section 439 (2) of the Cr.P.C., which was registered as Bail Application No. 893 of 2016 and the same has been decided and rejected vide order dated 1.7.2016 by the Sessions Court. Hence, this petition.

4. Learned counsel for the petitioner submits that respondent No.2 is not cooperating in the investigation and also not complying the condition of giving attendance in the concerned police station, which was imposed against him while granting bail. Further, on several occasions he left the city of Raipur without obtaining prior permission of the Court. Attendance record of respondent No.2 has been obtained by the petitioner under Right to Information Act which clearly shows the dates of his absence in the attendance register and hence, respondent No.2 is clearly violating the conditions imposed. For these reasons, it is prayed that the bail granted to him be canceled in the interest of justice.

5. Learned State counsel has duly assisted the Court.

6. Learned counsel for respondent No.2 submits that in this regard the

law is now quite well settled that rejection of bail stands on one footing whereas cancellation of bail stands on hard footing because it interferes with the liberty of an individual. Hence, the provisions under Section 439 (2) of the Cr.P.C. cannot be resorted to lightly. Hence, the bail once granted cannot be cancelled in a mechanical manner.

7. Learned counsel for the petitioner has placed reliance on **R. Rathinam vs. State** reported in **(2000) 2 SCC 391**, **Raghubir Singh vs. State of Bihar** reported in **(1986) 4 SCC 481**, **Dolat Ram vs. State of Haryana** reported in **(1995) 1 SCC 349**, **Puran vs. Rambilas** reported in **(2001) 6 SCC 338**, **CBI vs. Subramani Gopalakrishnan** reported in **(2011) 5 SCC 296**, **State of Maharashtra vs. Sitaram Popat Vetal**, reported in **(2004) 7 SCC 521**, **Kalyan Chandra Sarkar vs. Rajesh Ranjan**, reported in **(2004) 7 SCC 528**, **Dinesh M.N. (S.P.) vs. State of Gujarat** reported in **(2008) 5 SCC 66**, **Narendra K. Amin (Dr.) vs. State of Gujarat** reported in **(2008) 13 SCC 584**, **Kanwar Singh Meena vs. State of Rajasthan and Anr**, reported in **AIR 2013 SC 296** and **Neeru Yadav vs. State of U.P.**, reported in **(2014) 16 SCC 508**. On the broadly well settled principles laid down by the Hon'ble Apex Court that when there is 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 liberty granted to a person in any manner it is only in such case a bail may be cancelled. The petitioner has laid emphasis on the breach of the conditions by respondent No.2.

8. Learned counsel for respondent No.2 has placed reliance on the judgment passed by this court in **Kokila Prasad Dewangan vs. State of**

Chhattisgarh and Others reported in **2015(2) C.G.L.J. 257** in which it has been held that cancellation of bail under Section 439(2) Cr.PC. and other relevant provisions can be taken into consideration only when the accused misuses his liberty by indulging in similar criminal activity, interferes with the course of investigation, attempts to tamper with evidence or witnesses, threatens witnesses or indulges in similar activities which would hamper smooth investigation, there is likelihood of his fleeing to another country, attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, attempts to place himself beyond the reach of his survey etc. Reliance has also been placed by respondent No.2 on the orders passed by this Court in the cases of **Savita Khande and Ors vs. State of Chhattisgarh and Others** in **Cr.M.P. No. 469 of 2015** by order dated 27.7.2015 and **Mehboob Dawood Shaikh vs. State of Maharashtra** reported in **(2004) 2 SCC 362**.

9. Considering the facts as aforesaid in the case, it may be so that the petitioner has willfully omitted to record his attendance in the police station City Kotwali and has left Raipur City without the permission of the Court concerned, but this activity on the part of respondent No.2 is not covered in any of the grounds for consideration mentioned hereinabove for cancellation of bail. There is nothing to assume that respondent No.2 has interfered with the administration of justice, indulged in any other criminal activity, attempted to temper evidence or witnesses or has made himself unavailable to the investigating agency. Though it is necessary for respondent No.2 to comply with the conditions imposed upon him, however the conditions imposed on respondent No.2 have not been strictly complied with, and compliance of such conditions can be ensured by the concerned police station and on any

failure on the part of respondent No.2 it can be reported to the Court, which granted the bail for obtaining suitable orders in this respect. Certainly this situation does not make a ground for cancellation of bail. Hence, this petition is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi