

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 436 of 2017**

Smt. Sakshi Shroti, W/o. Avdesh Shroti, Aged About 27 Years, R/o.
Kanya Parisar Road, Namna Kala, Ambikapur, District Surguja,
Chhattisgarh

---- Petitioner**Versus**

1. Avdhesh Shroti, S/o. Ashok Kumar Sharma, Aged About 25 Years,
R/o. Water Works Colony, Quarter No. F-7, Hathras, District
Hathras, Uttar Pradesh.
2. Ashok Kumar Sharma, S/o. Late Onkar Prasad Sharma, Aged
About 50 Years, R/o. Water Works Colony, Quarter No. F-7,
Hathras, District Hathras, Uttar Pradesh.
3. Smt. Urmila Sharma, W/o. Ashok Kumar Sharma, Aged About 45
Years, R/o. Water Works Colony, Quarter No. F-7, Hathras, District
Hathras, Uttar Pradesh.
4. Ku. Madhuri Sharma, D/o. Ashok Kumar Sharma, Aged About 20
Years, R/o. Water Works Colony, Quarter No. F-7, Hathras, District
Hathras, Uttar Pradesh.
5. State Of Chhattisgarh, Through Incharge Mahila Thana, Police
Station Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. N.K.Chatterjee, Advocate.
For Respondents 1 to 4	:	Mr. Vishnu Koshta & Mr. Shobhit Koshta Advocates
For State/Respondent No.5:	:	Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03.07.2017**

Heard

1. The present petition is for cancellation of the bail granted to the
Respondent No.1- Avdesh Shroti, Respondent No.2- Ashok Kumar

Sharma & Respondent No.4- Ku. Madhuri Sharma, as they were enlarged on anticipatory bail by an order dated 14.03.2016 in MCRCA No.1229 of 2015. The Respondent No.3- Smt. Urmila Sharma though have been made a party, however, perusal of the order dated 14.03.2016 would show that she was not enlarged on bail, however, she has been made a party, which remained unexplained.

2. Learned counsel for the petitioner would submit that the respondents after grant of bail on 14.03.2016 have not followed the condition imposed on them which mandates that the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case. It is stated that despite those conditions the respondents are disrupting the proceeding of the Court and interfering with the administration of justice. It is submitted that exemption applications are being filed for their appearance and the case is adjourned from day to day at the behest of the respondents. It is further submitted that apart of these activities the husband of the applicant namely Awdhesh has filed an application at Hathras under Section 13 of Hindu Marriage Act for divorce and exparte order was obtained, however, the same was set aside after the application was filed by the applicant for hearing the case byparte. It is submitted that therefore, the respondents who have been enlarged on bail are trying to disrupt the proceeding by all means available to them and will not allow the Court to conclude the trial in the fair and impartial manner; therefore, the bail granted to the respondents No.1, 2 & 4 should be canceled.

3. On the other hand, learned counsel for the respondents Shri Vishnu Koshta assisted by Shri Shobhit Koshta vehemently opposes the same. It is submitted that nothing is on record to show that the respondents are trying to influence the witnesses or are creating any hindrances in the trial Court to conduct just and expeditious trial. He placed his reliance in case of ***Savitri Agarwal & Ors. v. State of Maharashtra & Anr.***¹ and would submit that under the circumstances, no case is made out for cancellation of bail, as the conditions for grant of bail and cancellation are entirely different. Therefore, the application is completely frivolous and deserves to be rejected.
4. Heard learned counsel for the respective parties. Perused the order of bail dated 14.03.2016 passed in MCRCA No.1229 of 2015. Primarily, the respondents were enlarged on anticipatory bail considering the fact that the respondents were already granted bail under Section 498-A of I.P.C. for which they were charged earlier. Subsequently, during investigation, offence under Section 313 of I.P.C. was clamped. Therefore, taking into such fact and further delay in lodging the report and that primarily allegations were attributed to the mother-in-law, the prayer for bail to mother-in-law was rejected, however, the other respondents were enlarged on bail.
5. Perusal of entire records of this petition and the documents do not suggest that the petitioner is able to project any valid reason for cancellation of bail with respect to the touchstone of principle laid down by the Supreme Court. The Supreme Court in case of ***Savitri Agarwal***¹ has reiterated the earlier principles laid down in

¹ AIR 2009 SC 3173

Dolat Ram & Ors. v. State of Haryana² and observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail has to be considered or dealt with on different basis. It is settled principle that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted.

6. In the instant case perusal of document shows that the pleading are not supported with a minimum proof that the respondents are trying to tamper with the evidence or are creating obstructions in fair & impartial trial so as to create a very cogent and overwhelming situation for cancellation of bail. Filing of the matrimonial divorce case would not be a material which may needs consideration for cancellation of bail. It is a right available to husband or wife to file a case for divorce if situation mandate.
7. Furthermore, the bail granted can only be canceled when (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. It is also well settled that even if two views are possible, once the bail has been granted, it should not be cancelled. In facts of this case nowhere suggest that any of the aforesaid condition exists in the instance case, therefore, the principles laid down as above shall squarely apply in the instant case.

² (1995) 1 SCC 349

8. Furthermore, as has been held in case of **Abdul Basit alias Raju & Ors. v. Mohd. Abdul Kadir Chaudhary & Anr.**³, that the court granting bail can cancel the bail on the ground of accused misconduct or new adverse fact, however, in view of express bar contained in Section 362 of Cr.P.C., it was held that difference between review/recall of order granting bail from cancellation of bail order will have the different parameters. It was held that having granting bail cannot review its order on the ground of it being illegal, unjustified or perverse in view of express bar contained in Section 362 of Cr.P.C. The same principle has been held in paragraphs 20, 21, 26 & 27 of the report as under :

“20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and canceled the bail on ground of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the

Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

27. Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction into itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside."

9. Considering the same and applying the aforesaid principles, in the considered view of this Court, no case is made out for cancellation of bail or review or recall the order, as no ground is made out for consideration of the same.
10. In a result, the petition is dismissed being devoid of merit.

Sd/-
(Goutam Bhaduri)
Judge