IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1098 OF 2018

Imamuddin Nihaluddin Shaikh … Applicant
Vs.
1. State of Maharashtra
2. Hemprakash Hiraji Patil … Respondents
…
Mr. Aabad Panda a/w Mr. Vagish Mishra & Mr. Samir Singh I/by Law Counsellors for applicant.
Mr. Y.M. Nakhwa, APP for the Respondent-State.
Mr. Prashant Maggu for Respondent No.2.
...
CORAM : PRAKASH D. NAIK, J.
DATE : 22nd OCTOBER, 2018.

P.C.

1. The applicant is aggrieved by order dated 21st June, 2018 passed by the Additional Sessions Judge, Thane allowing Misc. Application No. 476 of 2017 and cancelling anticipatory bail application granted to the applicant.

2. The applicant had preferred an application for anticipatory bail before the Court of Additional Sessions Judge Thane, viz ABA No. 593 of 2017 apprehending arrest in C.R. No.8 of 2017 registered with Meera Road Police Station for the offences punishable under Sections 420, 465, 467, 468, 471, 473 and 120B

of Indian Penal Code. The said application was allowed vide order dated 24th March, 2017 by confirming interim order passed therein with direction to attend the concerned police station for investigation purpose twice in a week on Monday and Thursday between 11 a.m. to 5 p.m. till the investigation is completed and that he shall co-operate with investigation.

3. In pursuant to that Respondent No.2 preferred an application for cancellation of anticipatory bail on 30th October, 2017 before the Court of Sessions at Thane. The said application was allowed by order dated 21st June, 2018 by setting aside the order granting anticipatory bail.

4. The First Information Report was registered on 5th January, 2017 with Meera Road Police Station. The case of the prosecution is that Respondent No.2/complainant is the resident of Navghar Village, Bhayender (East). His family owes various ancestral properties in the areas of Bhayender (East) which are agricultural lands, viz. old survey No. 424(New Survey No. 104), Hissa No. 2(27.3 Gunta), old survey No. 428(New Survey No.98), Hissa No. 3.63 Gunta, Old survey No. 420 (New Survey No.116) Hissa No. 5 admeasuring 13.5 Gunta. His grand father Jayaram Patil was the sole legal heir of the said properties. He died on 2nd October,

1971. After his death his wife Janibai J. Patil and son Hiraji J. Patil inherited the said property and entries were made in the name of Hiraji J. Patil (father of the complainant). Smt. Janibai J. Patil died on 2nd May, 1999. The father of the complainant died on 4th February, 2014. Smt. Laxmi Hiraji Patil mother of the complainant, Jayant Hiraji Patil (brother), Nishikant Hiraji Patil (brother), Smt. Leelawati (sister), Smt. Basanti Ramnath Thakur (sister) and the applicant were legal heirs in relation to the said properties. Their names were entered on 7/12 extract of the property. When the complainant and other legal heirs visited the office of Talathi Navghar it was learnt that false documents viz agreement for development cum sale was submitted to the said office for registration on 28th September, 1991. Said documents was allegedly signed by Smt. Janibai Patil and Shri Hiraji Patil in favour of Shri Otaram Jassaji Chouwdhari. It was revealed that signature of the father of the complainant and thumb impression of grand mother were forged. The property was purportedly purchased for meagre consideration of Rs.2,75,000/- and out of that Rs.25,000/- was paid at the time of execution of agreement and balance consideration to be paid within a period of one year. The complainant and other legal heirs had not visited the office of

Registrar (Stamps) for registration of documents. It was also noted that Otaram Jassaji Chowdhari had fabricated a agreement for development on 28th September, 1991 by selling the property to the applicant accused, for consideration of Rs.6,75,000/- on 16th February, 1995 by false and fabricated deed of conveyance which was registered with the office of Registrar Stamps. Property viz old survey No. 420 (new survey No. 116) was purportedly shown to have been sold to Sushilkumar Chamdiya by power of attorney and sale-deed which is unregistered and notice was published in that regard in the news paper dated 30th January, 1988. On inquiry it was found that the document dated 1st October, 1991 was tendered by person name Otarmal for registration and the same was registered. The document dated 1st October, 1991 was allegedly executed between Smt. Janibai J. Patil and Hiraji J. Patil with purchaser Otarmal Jassaji Choudhari and not Otaram Choudhary. Several other irregularities were noticed and hence the FIR was lodged on 5th January,2017.

5. Learned advocate for the applicant submitted that impugned order is contrary to well established principle of law. Mr. Otaram Choudhary had executed an agreement for sale with Janibai H. Choudhari dated 21st September, 1991 which was duly registered

with Sub-Registrar, Thane 1st October, 1991 wherein the said vendors had consent all rights, title and interest in the said land in favour of the Otaram Chaudhari. They had executed general power of attorney dated 10th October, 1991 in favour of the said person empowering him to execute various acts on their behalf. The applicant executed MOU dated 18th March, 1994 with Mr. Otaram in respect to the said land, wherein it was agreed by and between parties to sale and purchase the the lands for consideration of Rs. 6,75,000/-. The applicant executed deed of conveyance dated 16th February, 1995 with Mr. Otaram Choudhary for total consideration of Rs.6,75,000/-. The said amount was duly received by Otaram Choudhary. The deed of conveyance was confirmed by deed of confirmation dated 11th December, 1991. It was registered in the office of Sub-Registrar, Thane and the applicant had acquired all rights and titles in the said land and become absolute owner thereof being purchaser. It is submitted that the name of the applicant was entered in 7/12 extract as the owner in respect of the said land. The mutation entry was challenged by relatives of complainant and others. The objection was rejected. They preferred RTS appeal before the SDO Thane. The applicant preferred appeal against the said order which is pending. The complainant and others also filed suit against the applicant and others. The nature of dispute is purely of civil nature. The complaint was filed with a view to harass the applicants and others. The applicant had also filed a complaint against the complainant for taking forcible possession of the property. The applicant preferred an application for anticipatory bail, it was allowed. The applicant had co-operated with the investigation in pursuant to the order passed by the Sessions Court allowing the application for anticipatory bail. During the pendency of the said application, interim relief was granted to the applicant with direction to attend police station and the said directions were complied by the applicant. The entire matter relates to documents and the custodial interrogation of the applicant is not necessary. Learned Sessions Judge while granting anticipatory bail had taken into consideration all the aspects and was pleased to allow the said application with condition to attend the police station and co-operate with investigation. It is submitted that while allowing the application vide order dated 24th October, 2017, the Sessions Court has taken into consideration all the aspects of the matter and observed that civil suit are filed by both the parties and they have also produced the documents in those cases. It was also observed that the applicant has also produced the documents before the police and he is ready to co-operate with the Investigating Officer for the purpose of investigation. Hence, custodial interrogation is not required. It is submitted that while allowing the application for cancellation of bail, the learned Sessions Judge had failed to take into consideration that there was no overwhelming circumstances to set aside the order granting anticipatory bail in exercise of powers under section 439(2) of Code of Criminal Procedure. The learned Judge has reviewed his own order by terming it as perverse which ought to have been considered by the superior court. The applicant had not committed breach of condition and has not defaulted the order granting anticipatory bail in any manner. There was no change in circumstances and there was no new material. The FIR contains all the allegations which were considered while allowing the application for anticipatory bail. To set aside the order of bail, the Court was required to consider exceptional circumstances which warrants cancellation of bail. Learned Judge has failed to take into consideration the principle enunciated in various decisions of the Apex Court and this Court with regards to cancellation of bail. In the complaints lodged by the complainant no overt act has been attributed to the applicant and the Sessions Court while considering the said N.C. Complaints has misread the material on record. The learned Judge has mechanically accepted the submissions advanced by the counsel for Respondent No.2 while setting aside the order granting anticipatory bail. In paragraphs of 14 and 15 of the impugned order, the Sessions Court has relied upon the alleged incident of August, 2017 and September 2017 and attributed overt act to the applicant, although he was not present at the scene of offence. There is non-application of mind on the part of the Court while considering the complaints relied upon by the Respondent No.2. It is submitted that the reasons stipulated in paragraph 27 of the impugned order wherein reference to forgery of document is made, were existing at the time of grant of anticipatory bail as the said allegations are reflected in the First Information Report. However, while setting aside the order of anticipatory bail the said documents and factual aspects was considered which amounts to review of the earlier order which is not permissible in law. The complainant was aggrieved by the order passed by the Sessions Court, and it was open for him to move the higher court challenging the said orders on merits. There is no breach of the order passed by the Sessions Court and in the absence of any material in that regard, the Court ought not to have set aside the order of anticipatory bail. The applicant had attended the police station on several occasions and no case for custodial interrogation is made out. While allowing the earlier application, the said aspects was taken into consideration and there was no reason to take a different view. It is submitted that the Sessions Court has misread the judgment of the Apex Court referred to in paragraph 32 of the impugned order which relates to the cancellation of bail if order granting bail results in miscarriage of justice. In the present case the Sessions Court had granted anticipatory bail and it was for Higher Court to set aside order in case there was miscarriage of justice and not for same Court by review of its order. The Respondent No.2 has not made out any grounds for cancellation of anticipatory bail. The applicant had not mislead the Court while prefering the application for anticipatory bail. The prosecution and Respondent No.2 again relied upon the new material to seek cancellation of anticipatory bail. The material relied upon by the Respondent No.2 is not on record. The bail granted has to be availed off to cancel the same in exercise of power under section 439(2) of Code of Criminal Procedure. It is therefore submitted that the impugned order be set aside. Learned counsel relied upon the several decisions in support of his argument which are as follows:-

i) **Narendra K. Amin (Dr.) Vs. State of Gujarat and Anr.**[1]

ii) **Abdul Basit Alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another**[2]

iii) **Puran Vs. Rambilas and another**[3]

iv) **Dolat Ram and others Vs. State of Haryana**[4]

v) **Hazari Lal Das Vs. State of West Bengal and Anr.**[5]

vi) **X Vs. State of Telangana**[6]

vii) **Mahant Chand Nath Yogi and another Vs. State of Haryana**[7]

viii) **Savitri Agarwal and others Vs. State of Maharashtra and**

1.(2008) 13 Supreme Court Cases 584.

2.(2014) 10 Supreme Court Cases 754.(2014)

3.2001(6) Supreme Court Cases 338.

4.1995(1) Supreme Court Cases 349

5. 2009(1) Supreme Court Cases 652

6.2018 SCC Online SC 549

7. 2003 1 Supreme Court Cases 326

another[8]

ix) Mahendra Manilal Shah and etc. Vs. Rashmikan Mansukhlal Shah[9]

6. Learned APP supported the impugned order. It is submitted that there was sufficient material to set aside the order granting anticipatory bail. It is submitted that in the event new material is brought on record during the course of investigation, the anticipatory bail granted to the accused could be cancelled. It is further submitted that applicant accused have not co-operated with the investigation after the impugned order was passed which inherents cancellation of the said order. It is further submitted that the applicant had misused the liberty granted by the Sessions Court allowing the application for anticipatory bail by indulging into various acts as pointed to the Sessions court and therefore the impugned order is justified. It is submitted that NC complaints were lodged against the applicant by the respondent No.2. He had indulged any acts of threatening the complainant. The applicant has not co-operated for the investigation on material points. Mere attendance to the police station is not enough. He has tempered

8. 2009 (8) Supreme Court Cases 325

9. 2010 Cril.L.J. 4357.

with the prosecution witnesses. Attempted to lure them. Learned APP also pointed out that the Investigating Officer had issued notice to the applicant and sought various information from him. He was asked the detail address of Otaram J. Choudhary and to furnish the name of advocate, the name of witness who had signed all the documents and their addresses. It was also stated in the notice that the applicant had not furnished required information. He was asked to produce the address of Advocate B.M. Agrawal for the purpose of recording his statement and Advocate J.P.Masand Notary of Greater Bombay for the purpose of investigation, he did not submit their address, contact number etc. They were not made available for recording statements.

7. Learned counsel for the Respondent No.2 submitted that the applicant is involved in a serious crime. The learned Sessions Judge has considered the parameters for cancellation of bail. The conduct of the accused was also taken into consideration. The Respondent No.2 has made out the grounds for cancellation of bail. After registration of FIR, the applicant had preferred suit before the concerned Court with a view to plead that the documents are part of the suit and thereafter preferred application for anticipatory bail. The Respondent No.2 preferred an

application for cancellation of bail on 30th October, 2017. The police filed a report and supported the said application. The applicant is involved in forgery of documents and creating fictitious person. The records were changed. Documents were inserted. The case of the applicant is that Otaram J. Choudhary had sold the agreement for a consideration of Rs.6,75,000/-. It is submitted that the agreement dated 1st October, 1991 was submitted by Otarmal Choudhary and fake person was created by the accused in the name of Otaram J. Choudhary. Said person does not exist. Although, the applicant was directed to co-operate with the investigation, he did not furnish the details of such persons. He has not provided the requisite information sought by the police by notice issued to him. He had indulged in the intimidating acts and thereby misused the liberty granted to him. He had criminal antecedents which were suppressed by him. Learned counsel for the Respondent relied upon several documents highlighting the role played by the applicant in fabricating documents. He pointed out agreement for development cum-sale executed on 28th September, 1991 between Janibai Patil, Hiraji Patil and Otaram Jasaji Choudhary. He also pointed out that Ottarmal has put up his initial as Ottaram J.

Choudhary. He also pointed out the original document dated 1st October, 1991 which was executed between Ottarmal J. Choudhary and Devram Janeshwar in respect to the purchased of the property. It is submitted that all this evidence was pointed out to Sessions Court which was not available while granting anticipatory bail. Learned counsel pointed out the complaints lodged by the Respondent No.2 with the police station alleging violent act against the applicant. It is therefore submitted that the application be rejected.

8. I have perused the documents on record. FIR was lodged on 5th October, 2017. The applicant had preferred an application for anticipatory bail which was allowed vide order dated 24th March, 2017. Investigation was carried out which revealed substantial evidence against the applicant. While allowing the application, the Sessions Court had observed that there are suits filed by both the parties against each other and these documents have been filed. It was also observed that applicant has produced documents before the police and he is ready to co-operate with the Investigating Officer for the purpose of investigation. He was directed to attend the concerned police station for investigation

purpose till the investigation is completed and to co-operate for investigation. Investigating Officer had filed say after filing of the Misc. Application No. 476 of 2017 preferred by the Respondent No.2. It was submitted by the Investigating Officer that on perusal of documents alleged to have been executed by Otaram Choudhary in favour of the accused and all documents alleged to have been executed by Janabai Patil and Hiraji J. patil are forged document. The existence of person named Otaram Choudhary is not traced out. During investigation it was transpired that Otaram J. Choudhary had purchased the gala No.3 Lokmayna Thane from Tukaram Ghaneshwar on 1st October, 1991. It was registered in the office of Registrar at Sr. No. 8554 of 1991. The registered document is used for forgery. The person in the name of Otaram J. Choudhary is not in existence. Sub Registrar Office has reported that the said document is forged and bogus. The details as to how the documents are forged and bogus were provided in the report filed by the police. It was also indicated that the accused has not given any information for the purpose of investigation and failed to co-operate with the investigation. The Investigating Officer has produced the copies of notice dated 18th March, 2017, 13th April, 2017 and 20th May, 2017 calling upon requisite information which was not provided by the applicant. The report of handwriting expert and report of Sub-Registrar and documents tendered indicate that all the documents are forged and fabricated. It was reported from the Registrar Office that no such documents is registered at Sr. No. 8554 of 1991 in favour of the applicant in the Sub-Registrar Office. It was transpired in the investigation that document at Sr. No. 8554 of 1991 was executed between Ottaram J. Chaudhary and Devrao Hilaji Ghaneshwar. According to the prosecution, these documents are misused and forged and upon that document the power of attorney is prepared between Hiraji Patil and Janibai Patil in favour of Otaram Choudhary. According to the prosecution, it transpired in the investigation that in registered MOU in favour of Otaram J. Choudhary dated 18th July, 1994 and deed of conveyance dated 16th February, 1995 in favour of Otaram Choudhary and deed of confirmation executed by Otaram. J. Choudhary are forged and mutation entry in favour of the applicant is cancelled by SDO. The address of Otaram Choudhary was mentioned in all the documents as form No.12 but no detail has been mentioned. The documents dated 18th March, 1994 and dated 16th February, 1995 were notorized with Mr. B.M. Agrawal but he is not traceable and deed of confirmation dated

11th December, 1997 is fabricated. Otaram J. Choudhary and B.M. Agrawal are not traceable and the applicant had knowledge of their address or had a knowledge where these persons are really in existence which was required to be investigated. The contention of the applicant is the all the aforesaid material cannot be considered by the Sessions Court, in the application for cancellation of anticipatory bail. Court was not empowered to review its own order. It was vehemently argued that at the most the complainant ought to have preferred an application before the Superior Court and the Sessions Court was precluded from reviewing its own order. Order can be set aside on the ground of being perverse and on merits by the higher court and not by the same Court. It is pertinent to note that the aforesaid investigation warrants co-operation from the applicant. While allowing the application for anticipatory bail, the Court had directed him to co-operate however inspite of request to him, he had not disclosed the required information and has not co-operated with the investigation. In the NC complaint filed by the Respondent No.2, the presence of the applicant may not have been established at the time of commission of the acts supported therein but the case of the complainant is that applicant has misused his liberty by indulging such acts through other and thereby the applicant is not entitled to continue to avail the facility of anticipatory bail. The complainant has lodged the complaint on 4th August, 2017 alleging that to protect his property watcman has been deputed. On 4th August, 2017, the complainant and his friends Tufail Rahi and Vijay Gohil were present at the site. Watchman informed him that 3 to 4 persons are abusing and threatening him. The complainant and his friends questioned them. At that time, they stated that the property belongs to Imanuddin. Hemprakash Patil has taken possession of property and they should leave the place or else they would be killed. The complaint lodged in respect to above incident was registered as NC. This was one of the ground for cancellation of bail. It was also submitted before Sessions Court that the applicant has gone to the extent of threatening this complainant of life and limb as he has contacts in police and that investigation conducted by Mira Road Police would be taken care of by him. It was further alleged that complainant was threatened that he should stop his activities or else he would get call from Dubai. It is also alleged that on 28th September, 2017 complainant was tried to be assaulted by throwing glass bottle at him. Goodas kept on hurling glass towards him and he was required to take shelter of JCB machine. The assailants also threatened him that he had lodged complaint against Imanuddin and now he will be murdered. Complaint was lodged on 7th October, 2017 with Superintendent of Police, Thane. It was also alleged that the applicant tried to influence witness Tufail Rahi and Vijay Gohil. All these aspects were taken into consideration by Sessions Court.

9. In the application preferred by Respondent No.2 seeking cancellation of bail, it was pointed out that the applicant accused in collusion and connivance with his anti social elements is trying to subvert investigation by threat, influencing independent witnesses and attempted to destroy the trail of available evidence. It was also pointed out that the accused had mislead the court and prevented it from considering the relevant material. It was also stated that Otaram J. Chaudhary is absconding and address of Otaram mentioned in the document, it was purported are executed by the accused who had filed a suit against him denoting some address hence it is evident that he has exclusive knowledge of whereabout of Otaram J. Choudhary. In the suit filed by applicant, Ottaram J. Choudhary was impleaded as defendant. Learned Sessions Judge has allowed the earlier application on the

ground that suit is pending. However, during the course of investigation the details about such persons were not provided and the accused has not co-operated with the investigation. Non-cooperation amounts to breach of order which can be set aside by the same Court.

10. In the case of ***Savitri Agarwal and others***(supra), the Supreme Court has observed that cogent and overwhelming circumstances are necessary for order directing cancellation of bail already granted. It was further observed that merely because High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, it was not a valid ground to label order passed by the Sessions Court as perverse. The High Court over looked the discretion of facts relevant for rejecting bail for non-bailable case. In the case of ***Mahant Chand Nath Yogi and another Yogi***(supra), the Supreme Court has made similar observations in relation to power under Section 439(2) of Code of Criminal Procedure. It was observed that cogent and overwhelming grounds and circumstances are required to cancel the bail already granted. The High Court failed to consider distinction between rejection of bail in the non-bailable case at the

initial stage and cancellation of bail already granted. In the case of ***"X" -Vs. State of Respondent***(supra). The same principle was reiterated with regards to the breach of court in cancellation of bail by observing that there is a distinction between rejection of bail in non-bailable cases and the cancellation of bail. Bail once granted should not be cancelled unless case based on any supervening event has been made out. In the case of ***Hazari Lal Das*** (supra), the Supreme Court observed that nothing was brought on record to show that there had been interference, or attempt to interfere with due course of administration of justice by appellant, or concession granted to him had been abused in any manner, or any supervening circumstance had surfaced justifying cancellation of anticipatory bail. In the case of ***Narendra K. Amin*** (supra) it was observed by the Supreme Court that while dealing with the cancellation of bail the Court is required to find whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration while granting bail. The Court should avoid re-appreciation of evidence. Parameters for grant of cancellation of bail are different. In the said decision it was further observed that while granting bail criminal antecedents of the deceased were considered and on facts it was held that irrelevant material had been taken into consideration and relevant material has been omitted while granting bail to accused and hence Court was justified in cancellation of bail granted to the accused. It was further observed that in the circumstances that there was no supervening circumstances has no relevance in such cases. Once it is found that bail was granted on untenable grounds the same can be cancelled. In the case of ***Abdul Basit Alias Raju and others***(supra), the bail granted to the accused was cancelled by the High Court. While cancelling bail, it was observed that directions of the Sessions Judge to conduct further investigation of the case under Section 173(8) of Code of Criminal Procedure does not tantamount to re-investigation or fresh investigation of the case and did not render chargesheet submitted by the police in the said case as infructuous and the accused was not entitled to avail default bail under Section 167(2)(a)(i) of Code of Criminal Procedure on the ground that chargesheet was not submitted within 90 days. The order was challenged before the Apex Court on the ground that High Court could not have entertained an application for cancellation of bail on the grounds of misrepresentation and such objection could only be raised in an appeal by the informant. It was also contended that order cancelling bail passed by the High Court means to review the earlier order of the High Court whereby it had granted bail to the accused and such review being barred by Section 362 of the Code renders the impugned judgment and order perverse and liable to be set aside. It was further observed that Section 439 empowered the High Court and the Sessions Court to direct any accused to be released on bail. The said section also empowers the Court to direct any persons arrest who has been released on bail and generally the grounds for cancellation bail broadly are (i) accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) the attempts to tamper with the evidence of witnesses, (iv) threats witnesses or indulgence in similar activities it would hamper smooth investigation etc. It was also observed that if the Sessions Court had admitted the accused persons 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 *viz-a-viz*, the High Court. The concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of bail on the ground of accused's misconduct or new adverse facts having surfaced after grant of bail which require such cancellation. Learned counsel for the applicant had relied upon the said decision to bring home the point that the Sessions Court ought not to have cancelled the bail granted to the accused in the absence any supervening circumstances as expressed in the aforesaid decision. The counsel for the Respondent No.2 has also relied upon the said decision and submitted that the illustration referred in paragraph 14 of the decision with regards to the grounds of cancellation of bail are apparent in the present case. It is the case of the respondent and the prosecution that there was a new material and the activities of the accused had hampered the smooth investigation, there is tampering of evidence of the witnesses etc. In the light of the material placed before the Sessions Court, it is evident that the applicant has tried to hamper the investigation and attempted to tamper with the evidence. The prosecution has also pointed out that new material which was brought on record during the course of investigation. The applicant has not co-operated with the investigation, it was one of the condition while allowing application for anticipatory bail. In the circumstances, the sessions Court has passed the impugned order in accordance with law and principle laid down in the aforesaid decision. In the case of ***Puran Vrs Rambilas and another***(supra), the Hon'ble Supreme Court has observed that concept of setting aside unjustified, illegal or perverse order is different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts required such cancellation. The Apex Court has referred to in the earlier decision of the ***Gurcharan Singh Vs. State (Delhi Admn)***[10] in which it was observed that if the Court of Sessions had admitted an accused person on bail, the State has two options. It may move the Sessions judge if certain new circumstances have arisen which were not earlier know to the State and necessarily, therefore to that Court. The State may as well approach the High Court being

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10. AIR 1978(1) SC 118

the superior court under section 439(2) to commit the accused to the custody. From the parameters laid down in several decision it is apparent that order of bail can be cancelled in the event there is breach of condition, misconduct of the accused having surfaced after grant of bail and new adverse facts came to light after grant of bail. The impugned order is therefore within the parameters of law, it cannot be said that Court has reviewed its earlier order. The Sessions Court has assigned cogent reasons for setting aside its earlier order. In the case of ***Mahendra Manilal Shah*** (supra), this Court has dealt with issue of cancellation of bail. The principles laid down by the Supreme Court are reiterated in the said decision. The Court has further made observations that for exercising powers under Section 439(2) of Code of Criminal Procedure, the person has to be arrested and to be admitted on bail and only on such eventuality such powers of cancellation of bail can be exercised. From the decision referred herein above delivered by the Apex Court, while dealing with the cancellation of bail, it is not held that the accused has to avail the bail facility granted under Section 438 of Code of Criminal Procedure to seek cancellation under Section 439(2) of Code of Criminal Procedure on board principle which are to be followed for cancellation of bail as observed in several decisions are required to be followed which are to be considered in the present case. Hence, the application is devoid of any merits and same is required to be rejected. Hence, I pass the following order.

ORDER

Criminal Application No. 1098 of 2018 is rejected and stands disposed off.

(PRAKASH D. NAIK, J.)