

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 18.03.2021****Order Passed on : 29.06.2021****CRMP No. 1257 of 2020**

- Sarita Tandan D/o Shri Ramsakha Tandan, aged about 32 years, R/o Ward No.12, Pragati Nagar, Bhatgaon, P.S. Bhatgaon, District Balodabazaar-Bhatapara (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Superintendent of Police, District Balodabazaar-Bhatapara (C.G.)
2. Station House Officer, Police Station Bhatgaon, District Balodabazaar-Bhatapara (C.G.)
3. Ramsai Singh Baghel, S/o Shri Kirtan Singh Baghel, aged about 44 years, R/o Pragati Nagar, Bhatgaon, District Balodabazaar – Bhatapara (C.G.)

---- Respondent

For Petitioner	:	Mr. Anchal Kumar Matre, Advocate.
For Respondents/State 1&2 :		Mr. Samir Uraon, G.A.
For Respondent/accused -3 :		Mr. Raghavendra Pradhan, Advocate.

Hon'ble Smt. Justice Rajani Dubey**CAV Order****29/06/2021**

1. The petitioner has filed this petition under Section 439(2) of the CrPC praying for cancellation of bail which was granted to accused/respondent No.3 namely Ramsai Singh Baghel vide order dated 04.08.2020 passed in MCRC No.3696/2020 by this Court.

2. Brief facts of the case is that on 09.03.2020, the prosecutrix/petitioner had lodged an FIR against accused/respondent No.3 at Police Station - Bhatgaon under Sections 376, 506 and 496 IPC alleging that he developed physical relations with her on the pretext of marriage and ultimately refused to marry her. The accused/respondent No.3 was arrested and, thereafter, vide order impugned he was released on regular bail by this Court.
3. The petitioner filed this petition on the ground that, (i) immediately after releasing on bail the accused/respondent No.3 started threatening the petitioner with malafide intention, which was reported to respondent No.2 as also respondent No.1- Superintendent of Police, Balodabazar-Bhatapara, but they have not taken any action against the accused, (ii) On 19.08.2020, the petitioner moved a written complaint against accused/respondent No.3 about torture and sufferings being done by the accused and also apprised the police that she is a single lady residing along with her two minor children at Pragati Nagar, where accused along with his wife approached her and threatened that they will throw her out of the town after raping her, (iii) again on 29.08.2020 and 01.09.2020, accused/respondent No.3 pelted stones, broke the lock

of her house with an intention to kill her and also sold the building material belonging to the petitioner, (iv) the accused/respondent No.3 is an Advocate by profession and, therefore, no advocate at Bhatgaon is willing to help the petitioner for filing the complaint case, and (v) continuous mischievous act of the accused/respondent No.3 compelled her to leave Bhatgaon and stay at district headquarters. He has taken illegal possession of her house. According to the petitioner, release of respondent 3 on bail has adversely affected her life, therefore, the impugned bail order deserves to be cancelled.

4. Learned counsel for the petitioner has referred to grounds mentioned in the petition. According to him, the annexures filed along with the petition clearly shows that the accused/respondent No.3 threatened the petitioner right from his release on bail. The accused is facing trial for the offence punishable under Section 376 IPC. The accused is not only an Advocate but also has relation with political persons of ruling party, therefore, none of the advocates are even ready to file a complaint case against him. Police is also not extending help. Learned counsel submits that the object of cancellation of bail is to protect the fair trial and secure justice to the society by preventing the accused who is set at liberty

by the bail order from tempering with the evidence in the heinous crime. Once a person is released on bail in serious criminal cases where punishment is quite stringent and deterrent, accused in order to get away from the clutches of the same indulge in various activities like tempering with the prosecution witnesses and threatening the members of aggrieved party. In support of his submission, learned counsel placed reliance on the decisions Hon'ble Supreme Court in the matter of **Surya Narain and others Vs. State of U.P. and others** reported in **1999 (CRI.L.J. 496** and **Nityanand Rai Vs. State of Bihar & Anr.** reported in **2005 (2) Crimes 102 (SC).**

5. Learned counsel for the respondents No.1 and 2/State supported the arguments advanced on behalf of petitioner and prays for cancellation of bail granted to accused/respondent No.3.
6. Learned counsel for accused/respondent No.3 submits that the petitioner is a married lady and she has not divorced with her husband and, therefore, from the FIR itself it is clear that she herself was not in a position to marry during subsistence of her first marriage. The petitioner has lodged an FIR (annexure R-3/3) against her husband on 11.12.2020 under Section 294, 323 and 506 IPC. She has also lodged a false FIR against

respondent No.3 and, immediately after releasing on bail, the petitioner made a false complaint before police authority alleging that the accused/respondent No.3 threatened the petitioner for dire consequence just to get cancel the bail order granted by this Court. Learned counsel also submits that document filed by him (Annexure R-3/1 to R-3/3) clearly established that the petitioner has filed various petitions against her husband and she is still wife of one Shri Mahboob Ali Faruqi. It is next submitted that the accused/respondent No.3 never misused the liberty granted by this Court and, therefore, the petition may be dismissed. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Mehboob Dawood Shaikh Vs. State of Maharashtra** reported in **(2004) 2 SCC 362.**

7. Heard learned counsel for the parties and perused the material available on record.
8. The question which falls for consideration, in order to invoke the jurisdiction of this Court in entertaining the present application under Section 439(2) of the Cr.P.C., is whether the petitioner has prima-facie made out any ground for cancellation of bail under Section 439(2) of the Cr.P.C.. Section 439 Cr.P.C. confers concurrent jurisdiction on the Court of Sessions and the High Court. For facility of reference, Section 439 Cr.P.C., is

reproduced herein-under :-

“439. Special powers of High Court or Court of Session regarding bail.---

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

1[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

2[(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

9. The Hon'ble Supreme Court, in the matter of **Abdul**

Basit alias Raju and others Vs. Mohd. Abdul Kadir Choudhary and another reported in **(2014) 10 SCC 754**, has considered all its earlier judgments on the issue and pointed out distinction between review/recall of order granting bail from cancellation of bail order and has held that the Court granting bail cannot review its order on the ground of its being illegal, unjustified or perverse in view of express bar contained in Section 362 of the Cr.P.C. and held in paragraphs 20, 21, 26 and 27 of the report, which reads thus:-

“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 its 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 cancelled the

bail on grounds 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 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 setting 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 required to be set aside."

10. *Further, on the issue with regard to rejection of bail and cancellation of bail already granted, the Hon'ble Supreme Court, in the matter of **Dolat Ram and others Vs. State of Haryana** reported in **(1995) 1 SCC 349**, has held in para 4, which reads as under:-*

“4. 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.

11. The Hon'ble Supreme Court in the matter of **Hazari Lal Das Vs. State of West Bengal and Another** reported in **(2009) 10 SCC 652** held in para 7, which reads thus:-

“7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that the concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained.”

12. It is clear from documents (Annexure R-3/1 to R-3/3) filed by accused/respondent No.3 that the petitioner has filed various complaints against her husband also. In the present case, cancellation of bail is claimed mainly on

the ground that just after releasing on bail, the accused/respondent No.3 threatened the petitioner of dire consequences. The petitioner has not come before this Court with incriminating evidence to substantiate her ground. Bail granted earlier cannot be cancelled on the basis of mere allegations unless truthfulness of the allegation is established. The Apex Court had an occasion to deal with this aspect in the matter of **Mehboob (supra)**. In that case also there was an allegation in respect of threats. Referring to this aspect, Their Lordships observed in para 11 of the report that mere assertion of alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warranting law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped in the bud and an irretrievable stage is not reached.

13. In the facts of the present case, applying the statement of law by their Lordships of Hon'ble Supreme Court in **Hazari (Supra)** and **Mehboob (supra)** and in the

absence of other circumstances to substantiate the allegations regarding threats, mere allegations of the petitioner regarding solitary instance cannot be treated as sufficient to warrant cancellation of bail granted earlier. Before considering cancellation of bail it has to be borne in mind that a citizen cannot be deprived of his liberty without sufficient justification. Such a justification is not available in the present case. The petitioner has miserably failed to make out a strong case for cancellation of bail. In this view of the matter, the petition being devoid of substance, deserves to be dismissed. As such, the petition filed under Section 439 (2) of Cr.P.C. is dismissed.

**Sd/-
(Rajani Dubey)
JUDGE**