



report and pursuant to the said direction report has been filed and the same is placed before this Court.

4. A perusal of the said report reveals that the while filing the bail application in Crl. M.P. No.1215/2021 before the trial court, there is no whisper in the said bail petition that the earlier bail petition in Crl. O.P. No.17959/2021 was dismissed by this Court on 28.9.21. Neither the petitioner nor the respondent police have disclosed either the dismissal of the earlier bail petition in Crl. O.P. No.17959/21 or the pendency of the present bail petition. It is more curious to point out that the advocate, who had filed the earlier bail petition as also the present bail petition had only filed the bail petition in Crl. M.P. No.1215/2021 before the trial court. Naturally, it is expected of the learned counsel for the petitioner that while filing the bail petition before the trial court, the learned counsel ought to have disclosed the dismissal of the earlier bail petition as also the pendency of the present bail petition. Not oblivious of the dismissal of the earlier petition and the pendency of the present petition, the report further reveals that considering the stage of investigation and also the filing of the final report and also the period of incarceration of the petitioner and also his age, bail was granted by the trial court with stringent conditions.

5. In the backdrop of the above fact, this Court addresses to itself the present question - *Whether there are supervening circumstances, as has been enumerated by the Hon'ble Supreme Court in case of **Daulat Ram - Vs - State of Haryana (1995 (1) SCC 439)** warranting cancellation of bail granted by the trial court.*

6. Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify cancellation of bail :-

i) *Interference or attempt to interfere with the due course of administration of justice;*

ii) *Evasion or attempt to evade the due course of justice;*

iii) *Abuse of the concession granted to the accused;*

iv) *Possibility of the accused absconding;*

v) *Likelihood of/actual misuse of bail;*

vi) *Likelihood of the accused tampering with the evidence or threatening witnesses;*



vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

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7. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-

"i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;

ii) Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.

iii) Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;

iv) Where bail has been granted on untenable grounds;

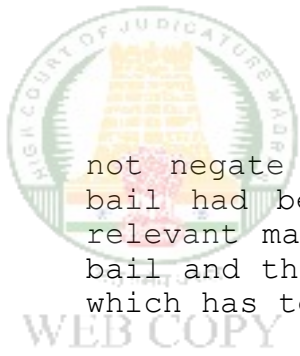
v) Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;

vi) Where the grant of bail was not appropriate in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;

vii) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case."

(Emphasis Supplied)

8. The Hon'ble Supreme Court in *Daulat Ram's case* (supra), has clearly held that bail, once granted, the same shall not be cancelled unless supervening circumstances are brought to the notice of the Court. Equally, it is the ratio laid down in the said decision that the mere fact that no supervening circumstances are pointed out, does

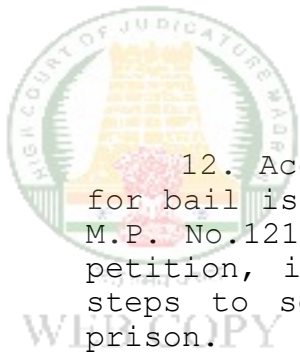


not negate the power of the Court to cancel the bail, if the said bail had been granted on extraneous and untenable reasons and the relevant materials are not taken into consideration for granting the bail and the position of the victim *qua* the accused also is material, which has to be looked into.

9. From the above proposition of law laid down by the Hon'ble Supreme Court, it is crystal clear that this Court is clothed with power to cancel the bail granted, irrespective of the oft quoted saying that "*Bail is the norm and Jail is exception*", when the facts in the case reveal that bail ought not to have been granted to the accused even at the earliest point of time.

10. Though it is pleaded by the learned counsel for the petitioner that it is an inadvertent omission on the part of the counsel appearing for the petitioner and that the said act is neither wilful nor wanton and the mistake committed by the learned counsel may not be put against the petitioner, however, it is to be pointed out that this Court, taking all the factors, including the statement of the victim, recorded u/s 164 Cr.P.C. into consideration had dismissed the first bail application of the petitioner.

11. The present bail petition, the second in line, was filed on 11.10.21 on behalf of the petitioner by the same learned counsel, who filed the earlier bail petition. However, pending the present petition, without disclosing the dismissal of the earlier bail petition and also the pendency of the present petition, bail petition has been moved by the same learned counsel before the trial court and without disclosing the above facts, bail was obtained. Had the above facts been brought to the notice of the trial court, the trial court would definitely not have granted bail to the petitioner. However, suppressing the aforesaid facts, bail has been obtained from the trial court, which is a supervening circumstance, which necessitates invocation of the power of this Court u/s 439 (2) Cr.P.C. This is a classic case, which squarely falls under the clauses enumerated by the Hon'ble Supreme Court relating to supervening circumstances and accordingly warrants cancellation of bail granted to the petitioner.



12. Accordingly, for the reasons aforesaid, the present petition for bail is dismissed and the bail granted by the trial court in Crl. M.P. No.1215 of 2021 vide order dated 1.11.2021, pending the present petition, is also cancelled and the trial court is directed to take steps to secure the presence of the petitioner and commit him to prison.

-sd/-

26/11/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
W-20, ALL WOMEN POLICE STATION,
SAIDAPET, CHENNAI-600 015.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

+1 CC to M/S S.AMBIGAPATHI Advocate on payment of necessary
charges SR.NO.13658

CRL OP.20487/2021

Date :26/11/2021

TA-10/12/2021