

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO.51/2021

APPLICANT : Raju @ Rajesh s/o Malhari Salunke
Aged 53 years, Occ. : Agriculture,
R/o Pusad, Tal. Pusad, Dist. Yevatmal.

...VERSUS...

RESPONDENTS :

1. Gyanendra s/o Darbalilal Kashuwah
Aged 60 years, Occ. Advocate,
R/o. Pandey Lay Out, Pusad,
Tal. Pusad, Dist. Yevatmal.
2. Fiza Parvin d/o Naushad Khan
Aged 21 years, Occ. Service,
R/o. Vasant Nagar, Galli No.1, Pusad,
Dist. Yevatmal.
3. State of Maharashtra
through Police Station Vasant Nagar,
Pusad, Distt. Yavatmal.

Shri R.S. Nayak, Advocate for applicant
Mrs. Shital V. Dhawas, Advocate for non-applicant nos.1 and 2
Shri S.A. Ashirgade, Additional Public Prosecutor for non-applicant no.3

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/01/2022

1. The present revision raises an interesting question, and
therefore has been heard extensively.

2. On account of a dispute between the applicant and the non-applicants, regarding the occupation of a piece of land, an offence under Sections 307, 326, 504, 506 and 34 of the I.P.C., came to be registered with the Police Station Vasant Nagar, Pusad, as Crime No.339/2020, against the present applicant.

3. The applicant applied for anticipatory bail vide Misc. Criminal Application No.249/2020, which came to be allowed by the Additional Sessions Judge, Pusad, by his order dated 25/1/2021, on conditions, one of them i.e. condition No. (vi) being that the applicant shall not stay in Pusad town till completion of the investigation, which is quoted herewith for ready reference :

“vi. After discharge from the hospital, applicant shall not stay in Pusad till completion of the investigation. The applicant shall furnish his place of residence and mobile number to the Investigating Officer, and shall not change the residence without prior permission of the investigation officer till the completion of the investigation.”

4. The applicant thereafter filed Misc. Criminal Application No.2/2020, seeking relaxation of the condition No. (vi)

in the order dated 25/1/2021 passed in application in Misc. Criminal Application No.249/2020, on the ground that the applicant was a Nagar Sevak of Pusad Municipal Council having permanent residence at Subhash Ward, Prabhag No.6 at Pusad and therefore was required to attend the meetings of the Municipal Council, Pusad. It was also claimed that he being an Honorary Magistrate has to issue certificates to the students residing within the Municipal limits, due to which his presence or stay in Pusad was necessary. It was also claimed that he was a Director of Sheshrao Patil Ginning and Processing, Pusad and so also of Pushpawanti Nagari Sahakari Pat Sanstha, Pusad and therefore was also required to attend the meetings of the above said two societies, on account of which, the condition No. (vi), which debarred him from entering Pusad, was required to be relaxed.

5. The Investigating Officer gave his no objection for relaxing condition No. (vi), subject to the point that the applicant could do the work from the place of his residence as if he visits the disputed site, a serious incident may occur. It is also stated in the reply by the I.O. that the applicant may visit his place of work with

prior permission of the Court and give intimation to the I.O., and should also not pressurize the witnesses. The learned Sessions Court, found that it would not be proper to allow the applicant to visit the disputed site, which is the place of the incident and accordingly, relaxed condition No. (vi), as contained in the order dated 25/1/2021 in the following terms :

“2) The condition in bail order in crime No.339/2020, Dt. 25/01/2021 at serial number (vi) that ‘Applicant shall not stay in Pusad’, is hereby modified as under :

“The applicant may visit Pusad City to visit his work place between 10.00 a.m. to 5.00 p.m. with prior permission of I.O. but he shall not visit the disputed site which is the place of the incident till completion of the investigation.

3) The applicant shall abide by the above modified condition and all the rest of the conditions of the order dated 25/1/2021.”

6. The applicant, in contravention to the relaxed condition, was found on the site of the incident on 16/3/2021, as a result of which, an application for cancellation of the anticipatory bail, granted on 25/1/2021 to the applicant came to be filed by the

respondent Nos. 1 and 2, which was supported by the I.O. and the learned Sessions Court, finding that the presence of the applicant, at the site of incident was demonstrated, which was contrary to the relaxed condition as per the order dated 20/2/2021, by the impugned order dated 2/6/2021, cancelled the anticipatory bail granted to the applicant. The present revision application challenges this order, cancelling the anticipatory bail.

7. By an order dated 07/07/2021, this Court, while issuing notice was pleased to direct that in the interregnum, no coercive action shall be taken against the applicant, pursuant to the order impugned.

8. Mr. Rajesh Nayak, learned Counsel for the applicant does not dispute the visit/presence of the applicant at the agricultural field, adjacent to the site of the incident, claimed to be belonging to the applicant, on 16/3/2021, nor does he dispute, the presence of the applicant on the spot of incidence on 16/3/2021. It is his contention, that on 16/3/2021, when the applicant had visited his agricultural field at Pusad, since the electric motor pump of five horsepower installed therein, was found to be defective and had

stopped working, therefore, the electric motor was taken by the applicant from his field to the shop of one Shri Kanoje (Sanjay Mechanical Workshop), who found that the wiring was burnt. The applicant, therefore was standing in the said shop, for repairing of his motor pump, when he saw some policemen were standing on the disputed site/incident and merely out of curiosity had been there, whereupon the police personnel had asked him to leave, upon which, he had returned back to the shop of the said Kanoje, in support of which, reliance is placed upon the receipt issued by Sanjay Mechanical Workshop on 16/3/2021 (pg.49). This averment is in ground no.(iv) of the memo of the criminal revision, filed in this Court. Mr. Nayak, learned Counsel for the applicant therefore submits that there was no breach of the condition whatsoever on part of the applicant.

8.1] He further submits that on 16/3/2021, the applicant had been to Pusad after informing the I.O., for which reliance is placed upon the call history details of the mobile of the applicant, which indicate telephonic calls having been made to the I.O. Mr. Subhash Kisanrao Kale on his mobile number (pg. 46 to 48). He

contends that there is no contravention of this condition, in view of which, there was no requirement of any permission in writing of the I.O.

8.2] He further submits that on 16/3/2021, though the applicant was on the spot of the incident, however, he had done nothing, for which, he invites my attention to the say of the I.O. before the learned Sessions Judge (Pg.50-51); the statement of Subhash Kisanrao Kale, the I.O. (Pg.52) and that of Bholanath Ambadas Kanade, Police Constable (Pg.53).

8.3] It is further contended that there was no other way available to approach the agricultural field of the applicant, which was adjacent to the site of the incident, other than the road, passing in front of the spot of the incident and therefore, it cannot be said that there was any violation on part of the applicant. He further contends that the spot of the incident is a public road and not any isolated place, where entering would be an offence (Pg.81). He further contends that the applicant had not done anything, there was no act attributed to the applicant, other than of his remaining present on the spot of the incident on 16/3/2021.

8.4] He contends that even otherwise, the investigation was already completed, for which reliance is placed on the communication dated 17/3/2021, addressed by the I.O. to the Deputy Director, Forensic Science Laboratories, Amravati.

8.5] Inviting my attention to Section 437 (3)(c) of the Code of Criminal Procedure, it is contended, that the condition imposed not to visit the spot, from the nature of the dispute, was due to erection of wires for making boundaries and therefore, the purpose for its imposition was that there should be no further quarrel. He submits, that expression "interest of justice" has to be construed accordingly and when the applicant had not done anything, not indulged into any threat giving, did not cause any disturbance of public peace or tranquility, did not cause any abuse, the liberty granted by way of anticipatory bail, cannot be taken away. It is contended that there may be a breach of the condition but there was no abuse. It is further submitted that the expression "abuse" would mean misuse of anything and requiring a physical act to be done, in pursuance to such misuse. Reliance is also placed upon the definition of the word "abuse" as accruing in Section 3,

Explanation-I, (i)-physical abuse, as accruing in the Protection of Women from Domestic Violence Act, 2005. It is therefore submitted that merely going to the spot was no abuse and something more was required, in the nature of causing any harm, so as to satisfy the definition of abuse. Relying upon the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 it is submitted that abuse would require an overt act and not a passive one.

8.6] In so far as the office objection raised that the revision was not maintainable, reliance has been placed upon the following decisions :

(1) Prashant Kumar Vs. Mancharlal Bhagatram Bhatia and others, 1988 Cri.L.J. 1463. (para 9)

(2) Chandra Pal Singh Choudhary Vs. Vijit Singh and another, 2009 Cri.L.J. 3516. (paras 17 and 18)

(3) Puran Vs. Rambilas and another, AIR 2001 SC 2023 (Para 16)

(4) Janapala Krishna Vs. The State of Andhra Pradesh, Through the Public Prosecutor, High Court of A.P., Hyderabad, 2014 SCC OnLine Hyd 742.

(5) Miss R. Shakuntala Vs. Roshanlal Agarwal and others, 1985 Cri.L.J. 68. (Para 11)

(6) Intelligence Officer, Narcotic Control Bureau, Sub Zone, Kakkand, Kochi Vs. Lijo K. Jose, 2016 Cri.L.J. 594. (para 41).

(7) Surya Narain and others Vs. State of U.P and others, 1999 Cri.L.J. 496 (para 4).

(8) Nilu and others Vs. The State, 1983 Cri.L.J. 1590 (Para 2).

(9) State of U.P Vs. Karan Singh and another, 1988 Cri.L.J. 1434 (para 6)

(10) Prasad Jacob (US Citizen) & Ors. Vs. State of Kerala and another, 2010 Cri.L.J. 4137 (Para 10)

(11) Sardela Damodar Vs. State of Andhra Pradesh and others, 1998 Cri.L.J. 277 (paras 11 and 12)

and learned counsel submits that even if it is held that a revision would not be maintainable, Section 482 of Cr.PC. would surely come to his aid in the Court entertaining the proceedings and since this Court was also entrusted with jurisdiction under Section 482 of Cr.PC., it would be permissible for it to hear and decide the matter, even in its jurisdiction under Section 482 of Cr.PC. and the application could be treated as one under it.

8.7] He further submits that an application for cancellation of anticipatory bail, can only be filed by the Public Prosecutor and not by the complainant, for which reliance is placed on ***Sardela***

Damodar Vs. State of Andhra Pradesh and others, 1998 Cri.L.J. 277 (paras 11 and 12).

8.8] He submits that the parameters for cancellation of bail are totally different and bail once granted ought not to be canceled, as the liberty has not been misused and there has been no violation of the terms of grant of anticipatory bail and so also a further chance needs to be given, for which reliance is placed upon the following decisions :

(1) Bhagirathsingh Judeja Vs. State of Gujrat, AIR 1984 SC 372 (para 6)

(2) Manjit Prakash and others Vs. Shoba Devi and another, 2008 AIR SCW 5099 (paras 6 and 7)

(3) State (Delhi Administration) vrs. Sanjay Gandhi AIR 1978 SC 961 (para 13)

(4) Kunal Kumar Tiwari alias Kunal Kumar Vs. State of Bihar and another, AIR 2017 SC 5416 (para 11).

(5) Mohan Singh Vs. Union Territory, Chandigarh, AIR 1978 SC 1095.

(6) Panchanan Mishra Vs. Digambar Mishra and others, AIR 2005 SC 1299 (para 13).

(7) Kalawanti Shamsunder Advani .Vs... The State of Maharashtra and others (Cri. Application No. 800/2015 decided on 5.10.2021 by Principal Seat of this Court) (para 5 and 7)

(8) Satish Kumar..Vs...State of Himachal Pradesh AIR OnLine 2019 HP 366

(9) Vivek Rai Vs. State of Jharkhand and another, 2007 Cri.L.J. 680 (para 9)

(10) Mohan Singh Vs. State of Haryana and others, 1997 Cri.L.J. 2098 (Para 4)

(11) Karan Singh Vs. The State of Rajasthan and others, 1993 Cri.L.J. 251 (paras 4 and 5).

(12) D. Chandran –Vs State Assistant Commissioner of Police (L&O)T, Nagar Range, Madras 1997 Cri.L.J. 1945

(13) Ananth Kumar Naik Vs. The State of Andhra Pradesh, 1977 Cri.L.J. 1797

(14) Antaryami Das alias Ganesh Dash Vs. State of Orissa, 2003 Cri.L.J. 2393 (para 10)

(15) Rankanidhi Panda Vs. State of Orissa and others, 1997 Cri.L.J. 4217 (para 5).

9. Mrs. Dhawas, learned Counsel for the respondent Nos. 1 and 2 submits that the relaxation, granted was only for the purpose of official work and not for any other purpose. There was no relaxation, granted for the purpose of visiting the agricultural field of the applicant or the disputed site. She further submits that the permission to visit Pusad City, as per the order of relaxation was between 10:00 a.m to 5:00 p.m., that too, only with prior permission

of the I.O., and in this case, the applicant has not even obtained the prior permission of the I.O., as was necessary in terms of the order of relaxation dated 20/2/2021, even to visit Pusad City. She submits that there was total prohibition, upon the applicant for visiting the disputed site, which was the place of the incident, till the completion of investigation, in spite of which, he was found on the spot of the incident on 16/3/2021, which was in Pusad and the presence of the applicant, even in Pusad City, was without any prior permission of the I.O., which would indicate the violation of the condition of anticipatory bail, imposed upon him by the Court.

9.1] Learned Counsel further by inviting my attention to the complaint dated 17/3/2021, (Pg.218) made to the Police Station Vasant Nagar, Pusad, submits that the applicant, on 16/3/2021, had been to the spot of incident at about 11:33 a.m. along with Jayashree Ramkrushna Wankhede and Ramkrushna Maroti Wankhede and three more persons to whom, he was telling that the half portion of the land of field Survey No.81/1-A was to be fenced off by erecting a wire compound and a road was to be erected, adjacent to the Nallha by placing mud thereupon, whereupon the

respondent Nos.1 and 2 and other persons having approached, they were threatened with being eliminated. Even though the applicant was pointed out that his presence on the spot of the incident, was in violation of the terms of his release on anticipatory bail, the applicant had stated that nothing would happen (Pg.218). It is further submitted that the entire incident had been recorded on the CCTV camera, the footage thereof, was submitted, to the learned Sessions Court along with the necessary certificate under Section 65 (B) of the Indian Evidence Act, which would also indicate, the actions on part of the applicant and the violation of the conditions of the bail.

9.2] She therefore submits that a person like the applicant, who had intentionally and knowingly violated the terms of his release, cannot be permitted any leniency, as the very violation would be an abuse of the liberty granted to him. Reliance is placed upon *Mahipal Vs. Rajesh Kumar Alias Polia and another, (2020) 2 SCC 118*.

10. Learned Additional Public Prosecutor Mr. Ashirgade submits that the applicant was throughout aware of the entire

procedure for entering Pusad city, and the condition thereof, in spite of which, no permission was ever obtained from the I.O. by the applicant, even to visit his work place and therefore, the presence of the applicant at the spot of the incident on 16/3/2021, which is undisputed, was contrary to the terms of his release, and therefore, the bail has rightly been canceled.

11. In so far the contention regarding maintainability of a revision against an order canceling an anticipatory bail is concerned, it would be material to note that the same cannot be construed to be an interlocutory order, so as to fall within the meaning of the expression as used in Section 397(2) of the Cr.P.C. as it finally decides the proceedings initiated for cancellation of bail. [See *Prashant Kumar 1988 Cr.L.J.1463; Chandra Pal Singh 2009 Cr.L.J.3516*]

12. The next contention is that the application for cancellation of bail can be filed only by the Public Prosecutor and not by the complainant. Though in *Sardela Damodar* (supra) relied upon by Mr. Nayak, learned Counsel for the applicant, it has been so held, however, this position is no longer extant in view of what has

been held in *Puran v. Rambilas, (2001) 6 SCC 338* which states as under :

“14. Mr Lalit next submitted that a third party cannot move a petition for cancellation of the bail. He submitted that in this case the prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of the bail. He relied upon the cases of *Simranjit Singh Mann v. Union of India [(1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280]* and *Janata Dal v. H.S. Chowdhary [(1991) 3 SCC 756 : 1991 SCC (Cri) 933]*. Both these cases dealt with petitions under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This Court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence imposed by the court after a regular trial. It was held that the petitioner, who was a total stranger, had no locus standi to challenge the conviction and the sentence awarded to the convicts in a petition under Article 32. The principle laid down in these cases has no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of *R. Rathinam v.*

State by DSP [(2000) 2 SCC 391 : 2000 SCC (Cri) 958]
needs to be seen. In this case bail had been granted to
certain persons. A group of practising advocates presented
petitions before the Chief Justice of the High Court seeking
initiation of suo motu proceedings for cancellation of bail.
The Chief Justice placed the petitions before a Division
Bench. The Division Bench refused to exercise the suo motu
powers on the ground that the petition submitted by the
advocates was not maintainable. This Court held that the
frame of sub-section (2) of Section 439 indicates that it is a
power conferred on the courts mentioned therein. It was
held that there was nothing to indicate that the said power
can be exercised only if the State or investigating agency or
a Public Prosecutor moves a petition. It was held that the
power so vested in the High Court can be invoked either by
the State or by any aggrieved party. It was held that the
said power could also be exercised suo motu by the High
Court. It was held that, therefore, any member of the
public, whether he belongs to any particular profession or
otherwise could move the High Court to remind it of the
need to exercise its power suo motu. It was held that there
was no barrier either in Section 439 of the Criminal
Procedure Code or in any other law which inhibits a person
from moving the High Court to have such powers exercised
suo motu. It was held that if the High Court considered that
there was no need to cancel the bail then it could dismiss
the petition. It was held that it was always open to the High

Court to cancel the bail if it felt that there were sufficient reasons for doing so.

In this case the application for cancellation of bail, has been filed by the complainant and has been supported by the I.O., considering which there is no merit in this contention.

13. Much has been said regarding the difference between the parameters for rejection of bail and cancellation of bail. There is no doubt a marked difference in the two propositions as has been held in *Dolat Ram v. State of Haryana [(1995) 1 SCC 349]* in the following words :

“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. -----”.

The same position has been reiterated in *Puran v. Rambilas, (2001) 6 SCC 338*. Other cases relied upon by Mr. Nayak, learned counsel for the applicant are *Bhagirathsinh Mahipatsinh Jadeja* (supra) wherein it has been held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. In *Manjit Prakash* (supra-2008) it has been held that even though the re-appreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration

and that is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail. In **Pancham Mishra** (supra-2005) it has been held that the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation. **Vivek Rai** (supra-2007) relies upon **Biman Chatterjee v. Sanchita Chatterjee**, reported in **2004 Cr LJ 1451** which holds that the grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an

assurance of compromise or cancellation of a bail for violation of the terms or such compromise. What the Court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code and having granted the bail under the said provision of law, it is not open to the Trial Court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law. **Karan Singh** (supra -1993 Cri L.J. 251) holds that different considerations prevail with the Court in granting and canceling the bail. While at the time of granting the bail, the Court has to take into account the nature of the crime, the nature of the charges, the evidence on record, the possibility of interference with the course of justice, the antecedents of the accused, furtherance of interest and socio-geographical circumstances, whereas while considering the application for cancellation of the bail, the Court has to see, whether after the grant of the bail, the accused has, in any way, misused the liberty granted to him. The object of Sub-section (5) of Section 437 of Cr. P.C. is not punitive but to protect the interest of justice and to prevent, it from being tampered with in any manner by the accused. The bail granted to an accused can be canceled if the accused, after his release on bail, tries

to tamper with the evidence or hampers the trial or investigation, committing an act of violence or commits the same offence again. The powers vested with the Court for cancellation of the bail have to be exercised with care and circumspection. Unless there are strong and compelling circumstances and the High Court is not expected to interfere with the discretion exercised by the learned Sessions Judge in granting the bail. In **Sanjay Gandhi** (Supra **AIR 1978 SC 961**) it was held that rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over.

There cannot be any quarrel with the principles enunciated regarding the cancellation of bail, in the judgments referred to above and relied upon by Mr. Nayak, learned counsel for the applicant.

14. What is material to be noted is that the present case does not call upon me, to consider what are the parameters for grant of anticipatory bail, but whether the cancellation of anticipatory bail as ordered by the learned Sessions Court, was based upon parameters permissible to be considered and whether the discretion exercised was correct. In **Ananth Kumar Naik (supra-1977 Cr L.J.1797)**, relied upon by Mr. Nayak, learned counsel for the applicant, it was held that in any case, under Clause (c) of sub-section (3) of section 437 of Cr.P.C. a condition 'otherwise in the interests of justice' can be imposed, which is not a position which falls for consideration in the present case. **Mohan Singh (supra – 1978)** is a case in which bail was granted by the Sessions Judge after hearing counsel on both sides but it was canceled by the High Court mainly for the reason that the appellant had simultaneously moved for bail in the Sessions as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court, which position also does not fall for consideration in the present matter. **Mohan Singh (supra- 1997 Cr LJ 2098)** was a case in which cancellation of bail was sought on the ground that the bail was granted on the

erroneous assumption that the name of the applicant was not mentioned in the FIR and without there being anything else, it was held that mere noticing of a wrong fact by the trial Court by itself would not constitute sufficient ground for cancellation of the bail granted to the accused by the trial Court. The facts in the present matter are quite different. **D. Chandran (supra- 1997 Cr.L.J. 1945)** was a case in which the accused did not attend the police station for 3 days, due to an ailment, which ailment was supported by the prescription of the Doctor, in view of which it was held that there was sufficient cause, in view of the earlier and subsequent conduct of the accused, which again is inapplicable on facts. **Rankanidhi Panda (1997 Cr L.J. 4217)** was a case in which the Court found on the basis of the police report that the allegation against the accused made for cancellation of bail was factually incorrect and therefore refrained from doing so which position is not extant in the present matter. In **Antaryami Das (supra- 2003 Cri LJ 2393)** based upon the facts discretion was exercised by the Court to set aside the order of cancellation of bail, inspite of availability of series of criminal cases instituted against the petitioner and the petitioner was guilty of violating the terms and conditions imposed by the lower Court while

allowing the petitioner to go on bail and was a matter of exercise of discretion based upon the facts prevailing therein. **Kalawanti Advani** (supra) holds that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice or if the court granting bail has ignored relevant material indicating prima facie involvement of the accused or takes into account irrelevant material which has no relevance to the question of grant of bail. **Kalawanti Advani** (supra) however does not consider case of violation of the conditions of the bail and therefore is inapplicable on the facts of the present case. **Kunal Tiwari** (supra-2017) deals with the nature of conditions to be imposed while granting anticipatory bail, which is not the issue in the present case. **Satish Kumar (supra-AIR online 2019 HP 366)** was a case in which the applicant had come to the court under the influence of alcohol, being offended by which, the learned Sessions Court had cancelled the bail, without anything else, which again is not attracted on the facts of the present matter.

15. The position enunciated in ***Dolat Ram*** and ***Puran*** (supra) as indicated above as well as in the other judgments cited by

Mr. Nayak, learned Counsel for the applicant, is only illustrative and not exhaustive. There can be incidences/cases/instances, when considering the given facts of a case, the Court may deem it proper to cancel the anticipatory bail/ bail, once granted. Each case has to be decided on its own facts, by applying the principles enunciated. Though it is trite that the liberty granted to an accused, by way of releasing him, either on anticipatory bail or regular bail, ought not to be easily interfered with, by canceling or recalling the order of anticipatory bail or regular bail, that however is not an absolute principle but is one dependent upon the facts of each case. Where it is shown that the liberty granted, had been abused, misused or the conditions of release have been violated, and the reason for such violation is not logical or is improper or does not appeal to the conscience of the Court, the liberty can always be curtailed by exercising the powers under Section 439(2) of the Cr.P.C. or by exercise of the inherent powers under Section 482 of Cr.P.C. [See *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1 (para 68)].

16. The contention of Mr. Nayak learned Counsel for the applicant, that the word 'abuse', must necessarily indicate an overt

or physical act on part of the applicant in pursuance to such misuse, in my considered opinion, has to be construed in the background of the condition imposed. In the instant case, considering the plea of the applicant, the condition which initially restricted his entry into Pusad city, was relaxed, at his behest by permitting the applicant to enter Pusad City to visit his work place between 10.00 a.m. to 5.00 p.m. with prior permission of I.O. and a further specific restriction had been imposed that he shall not visit the disputed site which is the place of the incident till completion of the investigation. The contention that merely because the applicant had been at the spot of the incident on 16/3/2001, without anything further or an overt act, would not mean that the condition was violated, is clearly misconceived. This is for the reason, that by the very terms of the order of his release on anticipatory bail, the applicant was bound to honor the conditions to which the applicant was put. Though the order dated 25/1/2021 relaxed the prohibition upon the applicant not to visit the city of Pusad, the same was not without conditions, but was only for visiting his work place between 10.00 a.m. to 5.00 p.m. for which the applicant was specifically obligated to (a) obtain the prior permission of the I.O. and (b) continued the restriction

upon the applicant not to visit the spot of the incident. The very purpose of putting conditions upon a person, while granting him anticipatory bail, was to ensure that the apprehension of any incident happening, the influencing of the witnesses, the tampering of the evidence is prevented. Thus an applicant when put to conditions by a Court while granting anticipatory bail / regular bail, is by the very terms of the imposition, duty bound to strictly adhere to the terms imposed upon him, being aware that the liberty granted to him, is not absolute, but is conditional, upon him complying and continue to comply with the conditions imposed upon. This is further spelt out from clause (3) of the order dated 25/ 1/2021, which stated thus :

“3) The applicant shall abide by the above modified condition and all the rest of the conditions of the order dated 25/1/2021.”

The condition imposed placed two restrictions upon the applicant :

- (a) The applicant may visit Pusa City to visit his work place between 10.00 a.m. to 5.00 p.m. with prior permission of I.O.
- (b) he shall not visit the disputed site which is the place of the incident till completion of the investigation.

In so far as the first restriction is concerned, the applicant was permitted to visit the city of Pusad to visit his work place, only with prior permission of the I.O. There is no such permission obtained by the applicant. A prior permission, would necessarily mean a prior permission in writing or by e-mail, or by whatsapp. There is no application placed on record to indicate that any permission of the I.O. was solicited by the applicant for visiting Pusad City, on 16/3/2021, nor is there any such permission placed on record. Mr. Ashirgade, learned APP, has categorically stated that no such permission was given by the I.O. to the applicant for visiting Pusad City on 16/3/2021. The contention of Mr. Nayak, learned Counsel for the applicant, that the applicant had called the I.O. on his mobile phone on 15/3/2021, 16/3/2021, by placing reliance upon the printouts of his mobile for the above two dates (pages 46 to 48) is of no consequence, as these printouts may at the most indicate the attempt of the applicant to contact the I.O. may be for the purpose of seeking permission to visit Pusad City. They however do not indicate that any such permission was granted by the I.O. What is required by the order dated 25/1/2021, is the prior permission of the I.O., and the mere calling the I.O. on his mobile phone, does not satisfy this

requirement. Moreover the I.O. through the learned APP categorically states that there was no prior permission granted to the applicant for visiting Pusad City on 16/3/2021. It is thus apparent that on 16/3/2021, the applicant was in Pusad city without obtaining the prior permission of the I.O. as was necessary for him, in terms of the order dated 25/1/2021 and thus had committed a conscious breach of this condition imposed upon him.

The order dated 25/1/2021, imposed a further condition upon the applicant of not visiting the disputed site which is the place of the incident till completion of the investigation. Admittedly the applicant was found at the disputed side, which is the place of the incident, on 16/3/2021, which again constituted a breach of the condition imposed upon him, by the order dated 25/1/2021. Though the complaint dated 17/3/2021 (pg.218) by the respondent Nos. 1 & 2, to the Police, attributes allegations to the applicant of attempting to change the situation by directing those present with him, to erect a fencing and place earth upon the area adjacent to the Nali, which falsifies the plea raised by Mr. Nayak learned Counsel for the applicant that nothing was done by the

applicant by placing reliance upon the statements of Subhash Kale/ I.O. (pg.52) and Bholanath Kanade *P.C. (pg.53)* , even discounting the same, it is apparent that the applicant has breached the conditions imposed upon him, by entering Pusad City without the prior permission of the I.O. and so also by visiting the spot of the incidence. The contention, that on 16/3/2021, as the motor pump at the agricultural land of the applicant which is adjacent to the place of the incident, had malfunctioned and was required to be repaired and was thus taken to the mechanic for repairs, whose workshop was situated on the public road in front of the site of the incident, only adds insult to the injury as the applicant by the very terms of the order dated 25/1/2021, was restrained from entering Pusad City without the prior permission of the I.O., which as is apparent he had not only done, but had also been to the spot of the incident, which he was further prohibited from doing by the order dated 25/1/2021. The question thus required to be considered is whether the conditions put by a Court of law, upon a person seeking anticipatory bail, while granting him anticipatory bail, have any legal sanctity/ force or are they merely directory so as to be violated with impunity, merely for the sake of protecting the liberty granted to the said

person. In my considered opinion, each and every condition, imposed by a Court while granting anticipatory bail / regular bail, is mandatory to be followed by the applicant who is receiving the benefit of liberty based upon such conditions. To hold otherwise, would render the very purpose of imposing any conditions nugatory. A person therefore who secures his liberty from the rigors of the Criminal law, being accused of having committed an offense, thus has to unscrupulously follow and adhere to the conditions upon which his liberty has been secured by the Court. The contention thus that there has to be an overt physical act attributed to the applicant, to claim violation of the condition by him and his presence on the spot of the incident, would not suffice, is clearly misconceived, as the condition asked the applicant to refrain from visiting the spot of the incident, which he not only did, but justified his such action, which considering the nature of the condition is enough to demonstrate a violation.

17. The further contention that the investigation was complete, based upon the communication dated 17/3/21, addressed by the I.O. to the Deputy Director of the Forensic Laboratory seeking

analysis of the blood samples and soliciting of an early report, is again misconceived as the report of the forensic analysis of the blood was yet to be received then and even otherwise, the completion of investigation could be evinced by the report as contemplated by Section 173(2) of the Cr.P.C. which came to be filed only on 25/5/2021.

18. Thus what has to be seen is whether the learned Sessions Court was within the parameters of law, in having canceled the anticipatory bail granted to the applicant. A perusal of the impugned order would indicate that the learned Sessions Court has taken note of the conduct of the applicant, where instead of being contrite in having violated the conditions of anticipatory bail, the applicant, was on the other hand trying to justify, his presence on the spot of the incidence on 16/3/2021, on the alleged ground that the motor pump in his agricultural field was to be repaired, when as per the conditions imposed upon him by the order dated 25/1/2021, it was not even permissible for the applicant to be in Pusad City without the prior permission of the I.O., much less on the spot of incident, which was totally prohibited to the applicant. The learned

Sessions Court, in my considered opinion, has correctly held that the applicant, had violated the conditions of anticipatory bail, imposed upon him, by the order dated 25/1/2021, which were binding upon him. There was and could be no justification whatsoever, for having violated the conditions imposed upon the applicant, for he was specifically aware that his liberty had been secured to him and its continuance was dependent upon the applicant, scrupulously following the conditions, inspite of which the applicant, not only entered Pusa city without prior permission of the I.O. but was even found on the spot of the incident, which action could not have been countenanced by the learned Sessions Court, as it was duty bound to protect the majesty of law, and to ensure that the conditions imposed by a Court of law, for setting the applicant at liberty, were strictly followed.

19. In light of the discussion, made above, in the facts of the present case, where it is an admitted position by the applicant himself that he had violated the conditions of anticipatory bail, on which he was released, and considering the reasoning of the learned Sessions Court, I do not find any infirmity or perversity therein so as

to permit me to interfere. The application thus lacks merits and is accordingly dismissed.

Judge.