

CRM-M-35903-2023

2023:PHHC:164447

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35903-2023

Date of Decision: 21.12.2023

RAJIYA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the condition/observation i.e. *in case, the applicant is involved in any other case of similar nature, the bail granted, in the case in hand shall deemed to be dismissed without further notice* imposed vide order dated 12.10.2020 passed by the Addl. Sessions Judge, Faridabad (Annexure P-3) while granting bail to the petitioner in FIR No.450 dated 08.09.2020 registered under Sections 20-61-85 of NDPS Act at Police Station Surajkund, Faridabad, Haryana as well as the order dated 21.10.2022 (Annexure P-8) whereby the bail granted to the petitioner has been cancelled.

2. The brief facts of the case are that an FIR No.450 under Section 20 of the NDPS Act, Police Station Surajkund, Faridabad, Haryana came to be registered against the petitioner with the allegations that 1 Kg 534 Gms of Ganja had been recovered from her. The copy of the said FIR is attached as Annexure P-2 to the petition.

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3. The petitioner sought the concession of bail and was granted the same by the Court of Addl. Sessions Judge, Faridabad vide order dated 12.10.2020 (Annexure P-3) with the following observations:-

“It is made clear that in case, the applicant is involved in any other case of similar nature, the bail granted, in the case in hand shall deemed to be dismissed without further notice.”

4. Thereafter, an FIR No.207 dated 14.04.2022 under Sections 20/61/85 of the NDPS Act, Police Station Surajkund, Faridabad, Haryana came to be registered against one Hamida from whom the recovery of 3 Kgs 770 Gms of Ganja was effected. The copy of the said FIR is annexed as Annexure P-4 to the petition. The name of the petitioner surfaced in the disclosure statement of the said Hamida. Hamida was granted bail vide order dated 06.07.2022. The petitioner was arrested on 11.03.2023 and was granted bail on 08.05.2023 by the Addl. Sessions Judge, Faridabad, Haryana.

5. An FIR No.378 dated 03.07.2022 under Sections 20/61/85 of the NDPS Act, Police Station Surajkund, Faridabad, Haryana came to be registered against one Amar who was found in possession of 610 Gms of Ganja. The copy of the said FIR is annexed as Annexure P-6 to the petition. The petitioner was named in the disclosure statement of Amar. He was granted bail in this FIR vide order dated 09.05.2023 passed by the JMIC, Faridabad, Haryana.

6. Thereafter, an application was moved by the prosecution for cancellation of bail granted in the instant FIR bearing No.450 on the grounds that the petitioner had subsequently been found to have been involved in other FIRs (Annexures P-4 & P-6). A response to the said application was

filed and it was contended that she had been named in the disclosure statements of the arrested accused at the instance of the Investigating Agency. On the basis of the respective pleadings of both the parties, the regular bail granted to the petitioner vide order dated 12.10.2020 (Annexure P-3) was cancelled on the ground that there was a condition for automatic cancellation of bail in para 7 of the order. The copy of the order cancelling bail granted to the petitioner vide order dated 21.10.2022 is annexed as Annexure P-8 to the petition.

7. The condition imposed vide order dated 12.10.2020 (Annexure P-3) and the order dated 21.10.2022 (Annexure P-8) whereby the bail has been cancelled are under challenge in the present petition.

8. The learned counsel for the petitioner contends that the condition imposed in the order dated 12.10.2020 (Annexure P-3) was contrary to the settled proposition of law and in fact, no condition for automatic cancellation of bail could be imposed while granting bail. There must be cogent and overwhelming circumstances to cancel the bail already granted and the same could not be cancelled in a mechanical manner. Even otherwise, mere violation of the bail conditions was not sufficient to cancel the bail but the satisfaction of the Court was necessary that the bail was required to be cancelled after examining various factors. Reliance is placed on the judgments in the cases of Subhendu Mishra Versus Subrat Kumar Mishra and another, 1999 AIR (Supreme Court) 3026, Godson Versus State of Kerala, 2022(3) Crimes 191, Abdul Lathif @ Shokkari Lathif Versus State of Kerala, CRL. MC No.6677 of 2022, decided on 10.02.2023 and Renjith Versus State of Kerala, 2023(1) ILR (Kerala) 1060.

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9. On the other hand, the learned State counsel while referring to the reply dated 02.09.2023 contends that the condition for automatic cancellation of bail had rightly been imposed vide order dated 12.10.2020 (Annexure P-3). In fact, pursuant to the grant of bail to the petitioner in FIR No.450, he had been found to be involved in two other cases under the NDPS Act itself. It was in that situation that the application for cancellation was filed and the bail granted to the petitioner was cancelled. As the condition had rightly been imposed, the subsequent cancellation of bail could not be faulted. He, therefore, contends that the present petition was liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. Before proceeding further, it would be apposite to examine to the various judgments referred to by the counsel for the petitioner and the relevant extracts of the same are as under:-

The Hon'ble Supreme Court in the case of **Subhendu Mishra Versus Subrat Kumar Mishra and another, 1999 AIR (Supreme Court) 3026**, held as under:-

3. We have perused the order of the High Court and heard learned counsel for the parties.

4. In Dolat Ram v. State of Haryana (1995) 1 SCC 349 while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, it was opined by this Court :

". 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."

(emphasis supplied)

The Kerala High Court in the case of **Godson Versus State of Kerala, 2022(3) Crimes 191**, held as under:-

2. The petitioners were arrested in connection with the said case and later, as per order dated 9.2.2018 in Crl.M.C.No.197/2018, the 2nd Additional Sessions Court, Ernakulam, granted bail to them subject to certain conditions. One of the conditions was that they should not involve in any other crime of similar nature during the bail period. Subsequently, the investigation in the said case is completed, and the final report has been submitted.

3. Later, Crl.M.P.Nos.249/2022 and 247/2022 were submitted by the Public Prosecutor for cancellation of their

bail. The sole reason highlighted in the said petition is that both the petitioners are subsequently involved in Crime No.1159/2021 of Kuruppampady Police Station, which was registered for the offences punishable under Sections 143,147,308,324,506(ii)and 294(b) r/w. Section 149 of IPC. The learned Sessions Judge, as per orders dated 24.2.2022 allowed the said applications after hearing the petitioners and thereby, the bail granted to them was cancelled. These orders are now under challenge in this Crl.M.Cs.

7. The conditions to be imposed while granting bail, are contemplated under Sections 437(3) r/w. Section 439(1)(a) of Cr.PC. The condition not to involve in similar offences during the bail period is something which is specifically stipulated in the aforesaid provision. Since such a condition is specifically mentioned in the statute, that would indicate the importance of such condition and the necessity to insist on the compliance of the same. However, the question that arises here is whether a violation of the said condition should result in the cancellation of the bail in all the cases. In my view, merely because of the reason that such a condition was imposed while granting bail to the accused, that would not result in the cancellation of bail automatically. This is particularly because, since the order of cancellation of bail is something that affects the personal liberty of a person, which is guaranteed under Article 21 of the Constitution of India, unless there are reasons justifying or warranting such an order, the bail already granted cannot be cancelled. In Dolat Ram and Others v. State of Haryana (1995) 1 SCC 349, the Hon'ble Supreme Court has observed as follows:

"5. 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."

The aforesaid view was reiterated in X v. State of Telangana and Another reported in [(2018) 16 SCC 511].

8. In Dataram Singh v. State of Uttar Pradesh [(2018)3 SCC 22], it was observed by the Hon'ble Supreme Court in the manner as follows:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for

cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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."

Therefore, while considering an application to cancel the bail on the ground of non compliance of the conditions, the court has to consider the question whether the alleged violation amounts to an attempt to interfere with the administration of justice or as to whether it affects the trial of the case in which the accused is implicated. In XI, Victim SC No.211 of 2018 of POCSO Court v. State of Kerala and Others [2019 (3) KHC 26], this Court laid down the principles with regard to the nature of the enquiry to be conducted by the court concerned, while considering an application for cancellation of bail. In paragraph 9 of the said judgment, it was observed as follows:

"9. But in a case where the victim or the witnesses specifically complains of threat and intimidation and the said aspects are projected either by victim or by the prosecution before the Bail Court through an application as referred to in Ext.P- 5, then it is bounden duty of the Bail Court to consider the correctness or otherwise of the allegations in a summary manner after affording an opportunity of

being heard to the prosecution as well as to the affected accused concerned whose bail is ought to be cancelled and if possible to the victim as well, in a case like this. In such process of enquiry, the Bail Court could call for the records if any in relation to those allegations and if a separate crime has been registered in that regard, the records in those crimes should also be perused by the Bail Court in order to make an enquiry in a summary manner as to the truth or otherwise of the allegations therein, and after affording reasonable opportunity of being heard to the prosecution, accused and the victim, the Bail Court is expected to discharge its solemn duty and function to decide on the correctness or otherwise of the allegations in such a summary manner and the evidentiary assessment thereof could be on the basis of the overall attendant circumstances as well as the attendant balance of probabilities of the case. Based on such a process, the Bail Court is obliged to take a decision whether the bail conditions have been so violated and if it is so found that the bail conditions has been violated then it is the duty of the Bail Court to cancel the bail, but certainly after hearing the affected party as aforestated. So also, if the said enquiry process reveals that the truth of the above said allegations has not been established in a convincing manner in such enquiry process, then the Bail Court is to dismiss the application to cancel the bail. But the Bail Court cannot evade from the responsibility by taking up the specious plea that since the very same allegations also form subject matter of a distinct crime then the truth or otherwise of the allegations is to be decided by the Criminal Court which is seisin of that crime through the process of finalisation of said impugned criminal

proceedings by the conduct and completion of trial therein."

Thus, from all the above decisions, it is evident that, mere violation of the condition alone is not sufficient to cancel the bail granted by the court. Before taking a decision, the court has to conduct a summary inquiry based on the records, including the documents relating to the subsequent crime and arrive at a conclusion as to whether it is necessary to cancel the bail or not. Therefore, the orders impugned in these cases are to be considered by applying the yardstick as mentioned above.

9. When coming back to the facts of this case, it can be seen that the petitioners are seen implicated in the offences under Sections 341,308,324 r/w. Section 34 of the IPC, in a crime registered in the year 2018. They were granted bail on 9.2.2018, subject to the above conditions. Now the present application is submitted in the year 2022 on the allegation that the petitioners are involved in a crime committed in the year 2021. The fact remains that in both cases, final reports were already submitted by the Police. In the subsequent crime also, the petitioners were granted bail even after taking into consideration the criminal antecedents of the petitioners. Therefore, custody of the petitioners is not required to conduct the trial of the said cases. The allegations in the subsequent crime are not relating to an act which was allegedly committed by the petitioners with the intention to intimidate or influence any witnesses in the crime registered in the year, 2018. Both crimes are entirely different and have no connection with each other.

10. In my view, even though the court which granted the bail is empowered to direct the arrest of the petitioners who were already released on bail by virtue of the powers conferred upon the court as per Section 437(5) and 439(2) of Cr.PC, such power has to be exercised only if it is absolutely necessary. Of course, if the subsequent crime is allegedly

committed with the intention to influence or intimidate the witnesses, the consideration should have been different, but it is not the case here. In Dataram Singh's case, it was categorically observed that, bail once granted, cannot be cancelled 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.

11. While considering the alleged involvement of the petitioners in the subsequent crime for cancellation of bail, the fact that the second crime is after three years of the earlier crime is also a relevant aspect. The petitioners are indeed involved in some other cases, and one of the petitioners is already undergone preventive detention under KAA(P)A. However, that alone cannot be a reason to cancel the bail, unless it is shown that the involvement of the petitioners in the subsequent crime is affecting the trial of the earlier case. If the prosecuting agency is concerned with the commission of repeated offences by the accused persons, there are ample statutory provisions available for them to initiate appropriate proceedings for subjecting the accused persons to preventive detention. The stipulations contained in Section 437(5) and 439(2) of Cr.PC cannot be treated as a substitute for preventive detention laws. The legislature has brought into force, various enactments to enable the authorities concerned to keep the persons involved in repeated crimes under preventive detention, despite the stipulations in 437(5) and 439(2) of Cr.P.C. The said fact fortifies the view which I have taken as above. Moreover, there are no provisions in Cr.PC which specifically deal with the cancellation of bail and instead, the power is given to the court as per sections 437(5) and 439(2) to direct the person already released on bail, to be arrested and committed to prison, if it considers necessary to do so. When the court orders the arrest of a person already released on

bail, it would have the effect of cancellation of the bail. Therefore what is relevant is not a mere violation of the bail condition but the satisfaction of the court that 'it is necessary to do so'. While considering the aforesaid question, the matters such as; the time gap between the crimes, the possibility of false accusation in the subsequent case, bail granted to the accused in the subsequent crime, stage of the prosecution of the case in which cancellation of bail is sought, chances of affecting or causing interference in the fair trial of the case, etc. could be relevant. In some cases, the commission of heinous crimes repeatedly, in such a manner as to infuse fear in the mind of the witnesses, which may deter them from deposing against the accused, may also be relevant, as it is something which affects the conduct of the fair trial. However, no hard and fast rules can be laid down in respect of the same, and it differs from case to case. As held in the case of XI, Victim SC No.211 of 2018 of POCSO Court (supra), the court has to conduct a summary enquiry after perusing the records and arrive at a satisfaction as to whether it is necessary to cancel the bail of the accused.

12. While applying the above principles to the facts of this case, one of the crucial aspects relevant for consideration is whether the subsequent crime interferes with the conduct of a fair trial of the case in which he is involved. Such a situation is not there in this case. Further, the mere allegation of the involvement of the petitioners in the subsequent crime after three years of the crime in which the bail was granted, cannot by itself be a reason for the cancellation of bail. Even in the subsequent cases, the petitioners were granted bail and the investigation in that case was also completed. Therefore, the custody of the petitioners is not at all necessary, and hence I do not find any justifiable reason to sustain the order of cancellation of bail.

In the result, both these Crl.M.Cs are allowed. The orders passed by the IInd Additional Sessions Court, Ernakulam on 24.02.2022 in Crl.M.P.No.247/2022 and Crl.M.P.No.249/2022 in Crl.M.C.No.197/2018 are hereby quashed. However, it is made clear that, this shall not preclude the authorities concerned in initiating any proceedings for preventive detention of the petitioners if there are materials warranting the same.

(emphasis supplied)

In **Abdul Lathif @ Shokkari Lathif Versus State of Kerala,**

CRL. MC No.6677 of 2022, decided on 10.02.2023, held as under:-

Mr. V.G.Arun, J. - The petitioner is the accused in S.C. No. 10 of 2022 on the files of the Sessions Court, Kasargod which arose out of Crime No. 17 of 2021 registered by the Excise Enforcement and Anti Narcotic Special Squad for the offence under Sections 20(b)(ii)(B), 22(a) and 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short). In that crime, the petitioner was enlarged on bail by the Sessions Court on 31.12.2021 subject to certain conditions. One of the conditions was that the petitioner should not commit any offence while on bail. The petitioner was later arrested on 11.03.2022 in connection with Crime No. 5 of 2022 registered by the Excise Enforcement and Anti Narcotic Special Squad, Kasargod, this time for the offences under Sections 22(b), 27(a) and 29 of the NDPS Act. Consequently the petitioner was remanded to judicial custody again. On registration of the second crime, the Public Prosecutor moved an application under Section 439(2) Cr.P.C. seeking cancellation of bail in the first case for violation of the condition which required him not to commit any offence while on bail. Based on the petition, the Sessions Court

cancelled petitioner's bail as per Annexure A1 order. Hence, this Crl.M.C.

2. Learned Counsel for the petitioner contended that the alleged involvement in a subsequent crime cannot lead to automatic cancellation of the bail granted in the earlier crime, even if there is a condition that the accused should not commit any crime while on bail. It is submitted that the investigation in the first crime (Crime No.17/2021) was completed and the matter was pending before the Sessions Court as S.C. No. 10 of 2022. When the application for cancellation of bail was moved, the learned Sessions Judge, without considering the above fact or the allegations based on which the petitioner is implicated in the subsequent crime, mechanically cancelled the bail. Reliance is placed on the decision on *Godson & Anr. v. State of Kerala* (2022 (2) KLD 447) to contend that, order of cancellation of bail being an action affecting the personal liberty of a person guaranteed under Article 21 of the Constitution of India, bail cannot be cancelled in the absence of reasons justifying such an order. It was also held that involvement of the accused in a subsequent crime alone cannot be a reason to cancel the bail, unless it is shown that the involvement of the accused in the subsequent crime is affecting the trial of the earlier case. Reference is also made to the decision in *XI, Victim of POCSO Court v. State of Kerala & Ors.* (2019 (3) KHC 26), SC No.118 of 2018 wherein it is held that while considering the prayer for cancellation of bail, the bail court cannot evade from the responsibility of making a summary enquiry, as to the truth or otherwise of the allegations, based on the specious plea that those allegations form subject matter of distinct crime. The general principles to be followed while cancelling the bail is submitted with the aid of *X v. State of Telangana and Anr.* [(2018) 16 SCC 511] and *P. v. State of Madhya Pradesh & Anr.* (2022 SCC Online SC 552).

3. *Learned Public Prosecutor contended that, when an accused is granted liberty subject to certain conditions, he is bound to strictly abide by the conditions. If he misuses that liberty and commits another crime, that, by itself, is sufficient reason to cancel the bail. This aspect is laid down by the Supreme Court in P (supra) and has been followed by this Court in Sreeja Mannangath v. State of Kerala (2022 (6) KLT OnLine 1129).*

4. *There being no dispute to the fact that the petitioner was arrayed as an accused in a crime, subsequent to his release on bail in the first crime, the only question to be considered is whether involvement in the subsequent crime can result in automatic cancellation of the petitioner's bail. In X (supra) the bail granted by the High Court to the accused in a crime alleging commission of the offence under Section 376, was cancelled by the Sessions Court for failure of the accused to disclose the pendency of prosecution against him in the 2G Spectrum case. Setting aside the order of cancellation, the Apex Court held that the second FIR is not a supervening circumstance of such a nature as would warrant cancellation of the bail. For holding so, the Apex Court found that no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty was made out. This Court in Godson (supra) also held that involvement in a second crime alone cannot be a reason to cancel the bail, unless it is shown that such involvement is affecting the trial of the earlier case. Recently, in P (supra), the Supreme Court enumerated some of the circumstances where bail granted to the accused under Section 439(1) of the Cr.P.C. can be cancelled. One such circumstance is misuse of liberty by the accused, by indulging in similar/other criminal activity. It is pertinent to note the following observations of the Apex Court in the same decision.*

"25. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under Section 439(1) of the Cr.P.C. can be cancelled are enumerated below:-

- a) If he misuses his liberty by indulging in similar/other criminal activity;*
- b) If he interferes with the course of investigation;*
- c) If he attempts to tamper with the evidence;*
- d) If he attempts to influence/threaten the witnesses;*
- e) If he evades or attempts to evade court proceedings;*
- f) If he indulges in activities which would hamper smooth investigation;*
- g) If he is likely to flee from the country;*
- h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;*
- i) If he attempts to place himself beyond the reach of his surety.*
- j) If any facts may emerge after the grant of bail which are considered un-conducive to a fair trial.*

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive."

Following the decision in P (supra), this Court in Sreeja Mannangath (supra) and Jeby James v. State of Kerala (2023 KLT OnLine 1088) held involvement in subsequent crime to be a valid ground for cancellation of bail.

5. No doubt, involvement of an accused on bail in another crime is a supervening circumstance that would justify cancellation of bail. To reiterate, the question here is whether such cancellation is automatic or can be done in a mechanical manner. In my opinion, the answer to that question can only be in the negative. While deciding bail applications, the court has to always keep in mind the fundamental principle that bail is the rule and jail, the exception. Yet another pertinent aspect is that by cancelling the bail, a person is being deprived of the liberty granted to him after considering all relevant aspects. Therefore, very cogent and overwhelming circumstances are necessary for cancellation of bail once granted and there cannot be a mechanical cancellation of the bail. In this context, I find the following observations in XI, Victim SC No.211 of 2018 of POCSO Court (supra) to be very pertinent.

"9. But in a case where the victim or the witnesses specifically complains of threat and intimidation and the said aspects are projected either by victim or by the prosecution before the bail court through an application as referred to in Ext.P-5, then it is bounden duty of the bail court to consider the correctness or otherwise of the allegations in a summary manner after affording an opportunity of being heard to the prosecution as well as to the affected accused concerned whose bail is ought to be cancelled and if possible to the victim as well, in a case like this. In such process of enquiry, the bail court could call for the records if any in relation to those allegations and if a separate crime has been registered in that regard, the records in those crimes

should also be perused by the bail court in order to make an enquiry in a summary manner as to the truth or otherwise of the allegations therein, and after affording reasonable opportunity of being heard to the prosecution, accused and the victim, the bail court is expected to discharge its solemn duty and function to decide on the correctness or otherwise of the allegations in such a summary manner and the evidentiary assessment thereof could be on the basis of the overall attendant circumstances as well as the attendant balance of probabilities of the case. Based on such a process, the bail court is obliged to take a decision whether the bail conditions have been so violated and if it is so found that the bail conditions has been violated then it is the duty of the bail court to cancel the bail, but certainly after hearing the affected party as afore stated. So also, if the said enquiry process reveals that the truth of the above said allegations has not been established in a convincing manner in such enquiry process, then the bail court is to dismiss the application to cancel the bail. But the bail court cannot evade from the responsibility by taking up the specious plea that since the very same allegations also form subject matter of a distinct crime then the truth or otherwise of the allegations is to be decided by the criminal court which is seisin of that crime through the process of finalisation of said impugned criminal proceedings by the conduct and completion of trial therein."

Therefore, even in a case where the accused has committed a crime while on bail, the court has to consider whether crime is of such grave nature that it amounts to a supervening circumstance warranting cancellation of bail. For that, there has to be a preliminary assessment of the allegations with respect to the subsequent crime.

6. In the instant case, the learned Sessions Judge did not enter into any such exercise and proceeded to cancel the bail mechanically, as revealed from paragraph 7 of Annexure A1 order extracted hereunder;

"The accused is involved in another crime after he is released on bail in this case, it is clear violation of the order passed by the court in CMP No. 3282/2021. So the petitioner is not entitled to enjoy the freedom. Hence the bail granted to the accused as per order in CMP 3282/2021 in S.C No.10/2022 is hereby cancelled."

For the reasons aforementioned, the Crl.M.C. is allowed, the impugned order set aside and the Sessions court directed to reconsider C.M.P. No. 2072 of 2022 in S.C. No. 10 of 2022 and pass a fresh reasoned order, taking into account the observations herein. The impugned order having been set aside, the petitioner has to be enlarged on bail. However, in view of petitioner's involvement in the second crime, the bail bond is being increased and the following order issued;

The petitioner shall be enlarged on bail on executing a personal bond for Rs.2,00,000/- (Rupees Two Lakhs only). The above direction is in addition to the conditions imposed in the original order granting bail.

(emphasis supplied)

In **Renjith Versus State of Kerala, 2023(1) ILR (Kerala) 1060,**

held as under:-

Bechu Kurian Thomas, J. - Should the bail granted in one crime be cancelled merely because the accused had, in alleged violation of the conditions of bail, got himself entangled in a subsequent crime? The above question arises for resolution in the instant case.

2. Petitioner is an accused in C.C. No.1104 of 2022 on the files of the Judicial First Class Magistrate's Court,

Chavakkad, which arises from Crime No.31 of 2022 of Guruvayoor Police Station, Thrissur (hereafter referred to as the 'first crime'). The prosecution alleges that on 12.01.2022, petitioner had attacked the defacto complainant in front of a temple at Guruvayoor and caused grievous hurt and also stole her mobile phone and thus committed the offences punishable under sections 341, 323, 324, 325, 394 and 201 read with section 34 of the Indian Penal Code.

3. After petitioner was taken into custody on 23.05.2022, he was granted bail on 02.06.2022. One of the conditions imposed by the learned Magistrate, while granting bail was that petitioner should not involve in any other crime while on bail. Later, petitioner was arrayed as an accused in Crime No.1072/2022 of Thrissur Town West Police Station (hereafter referred to as the 'second crime') alleging offences punishable under sections 294(b), 323, 308, 354 and 354A of the Indian Penal Code, 1860. The allegations in the second crime include displaying his nudity before a lady and brandishing a chopper in an attempt to commit culpable homicide and shouting obscene words on a public road. Petitioner has been granted bail in the second crime also.

4. In the meantime, a petition was filed through the Prosecutor to cancel the bail granted in the first crime due to his involvement in the second crime in violation of the conditions of bail. By the impugned order, the learned Magistrate cancelled the bail due to his involvement in the subsequent crime.

*** *** ***

11. The mere registration of a subsequent crime against the accused by itself cannot result in an automatic cancellation of bail. Registration of a subsequent crime is only an indication of an allegation or a complaint of the accused having been involved in a subsequent crime. The presumption of innocence available to the accused in the

second crime, the right to liberty as a fundamental right under Article 21 of the Constitution of India which envelopes every provision of the Code of Criminal Procedure are factors which cannot be forgotten by the Court when called upon to cancel the bail. The possibility of false accusations being alleged with oblique motives also cannot be ignored. The nature of the subsequent offence and the persons against whom the offence is alleged to have been committed, the stage of the case wherein cancellation is sought are also factors that require appreciation. Apart from the above, while arriving at the conclusion to cancel the bail, the Court must also consider whether the accused had misused the liberty granted in such a manner that it has a tendency to interfere with the due course of the administration of justice. Thus, every case presents a unique situation and close scrutiny ought to be indulged in to identify whether overwhelming circumstances are indeed present in the subsequent crime which necessitates the cancellation of bail earlier granted.

12. As held in *Dolat Ram and Others v. State of Haryana* [(1995) 1 SCC 349] very cogent and overwhelming circumstances are necessary to cancel the bail already granted and that bail once granted should not be cancelled in a mechanical manner without considering whether the 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.

13. In this context, it is appropriate to refer to two recent decisions of this Court. In *Godson v. State of Kerala* [2022 (2) KLD 447] a learned Single Judge of this Court had observed that a mere violation of the bail conditions is not sufficient to cancel the bail but the satisfaction of the court that it is necessary to do so based on various factors have to be arrived at. However, another learned Single Judge in *Sreeja Mannangath v. State of Kerala* [2022 (7) KLD

109], relying upon the decision in *P. v. State of Madhya Pradesh (supra)*, cancelled the bail after observing that the accused had misused his liberty by violating one of the conditions of bail. In *Sreeja's case (supra)*, the accused is alleged to have involved in a subsequent crime against the defacto complainant in the earlier crime itself, in violation of the specific condition not to do so. The conclusion arrived at in *Sreeja's case (supra)* is based on the facts therein and cannot apply to the present situation. Further, the decision in *P. v. State of Madhya Pradesh (supra)* does not imply that on violation of any of the conditions of bail, there should be an automatic cancellation. The said decision has not diluted the principles laid down in *Dolat Ram's case (supra)* and on the other hand, specifically observes that there must be a significant scrutiny before bail is cancelled.

14. With the above principles in mind, when the circumstances of the present case are appreciated, it can be noticed that the learned Magistrate had, in exercise of the discretion to grant bail, released the petitioner on bail even in the second crime. Still, the petitioner has remained in jail for the last more than two months. Though the allegation as regards the second crime is serious, taking into reckoning the contention that the petitioner has been falsely implicated and the absence of any injury on any person and the general allegation that the accused attempted to commit culpable homicide by brandishing a sword in a public road, this Court is of the view that the second crime cannot be treated as overwhelming enough to impede fair trial in the first crime for cancelling the bail already granted. Further, the final report in the crime in which bail was sought to be cancelled was filed much earlier and there is no allegation that the petitioner had misused his liberty against the defacto complainant therein.

(emphasis supplied)

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12. Coming back to the facts of the instant case, when the petitioner was granted the concession of bail, a condition was imposed that his bail would be deemed to be dismissed in case he was found to be involved in cases of a similar nature in future. It was in pursuance to the said order, that the impugned order 21.10.2022 (Annexure P-8) has been passed cancelling the bail granted to the petitioner.

13. A perusal of the judgments referred to hereinabove would show that no condition for the automatic cancellation of bail can be imposed while granting bail. The only condition that can be imposed is that the Investigating Agency/complainant would be at liberty to move an application for cancellation of bail which would be adjudicated upon in accordance with law. In fact, bail once granted cannot be cancelled automatically and in a mechanical manner. There must be cogent and overwhelming circumstances necessary to cancel the bail once granted. Mere violation of the bail conditions would not be sufficient to cancel the bail. The Court must be satisfied that it is necessary to cancel the same keeping in view various factors. In the instant case, however, the bail has been cancelled automatically without examining any circumstances whatsoever one of which would have been that in the two other cases registered against the petitioner, she had been granted the concession of bail prior to her bail being cancelled in the instant case.

14. In view of the aforementioned discussion, the observation made in the order dated 12.10.2020 (Annexure P-3) which reads as *"It is made clear that in case, the applicant is involved in any other case of similar*

nature, the bail granted, in the case in hand shall deemed to be dismissed without further notice.” would be substituted with the following observations as “it is made clear that in case the applicant is involved in any other case of similar nature, the prosecution/Investigating Agency shall be at liberty to move an application for cancellation of bail before the appropriate Court which shall be adjudicated upon in accordance with law.”

15. Further, as the bail granted to the petitioner stood cancelled vide order dated 21.10.2022 (Annexure P-8) which was based on the observations made in the order dated 12.10.2020 (Annexure P-3), the order dated 21.10.2022 (Annexure P-8) whereby the bail granted to the petitioner was cancelled stands quashed.

16. However, it is made clear that the prosecution/Investigating Agency would be at liberty to move an application for cancellation of bail, if so advised and the same shall be adjudicated upon by the concerned Court in accordance with law in view of the observations made hereinabove.

(JASJIT SINGH BEDI)
JUDGE

21.12.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No