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CRM-M No.21419 of 2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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1. CRM-M No.21422 of 2024

Reserved on : 28.5.2024

Pronounced on : 25.7.2024

State of Haryana

.....Petitioner

Versus

Manjeet Kumar

.....Respondent

2. CRM-M No.21419 of 2024 – 2024:PHHC:096726

State of Haryana

.....Petitioner

Versus

Raj Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Virk, Senior DAG, Haryana

Mr. R.K. Lathwal, Advocate, for the respondents

SANDEEP MOUDGIL, J (ORAL)

This order shall dispose of the aforementioned two petitions since these are arising out of the same FIR.

1. By way of this petition filed under Section 439(2) read with Section 482 Cr.P.C., petitioner has prayed for setting aside the impugned orders dated 10.1.2024 annexed as (Annexure P-1) in CRM-M No.21422 of 2024 and 4.1.2024 annexed as (Annexure P-1) in CRM-M No.21419 of 2024, whereby regular bail was granted to respondents-accused by the learned Sessions Judge, Rohtak in FIR No.384 dated 27.12.2022 (Annexure P-2) registered under Section 21 (C) and 29 of the NDPS Act,



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1985 and Section 201 of the IPC, registered at Police Station PGIMS, Rohtak.

2. It is contended by Id. counsel for the petitioner that while passing the impugned order i.e. granting regular bail to Respondent No.2, the Court below has erred in law as the legal provisions guiding regular bail under the NDPS Act is not been followed. He further contends that the alleged recovery 470 grams of heroin was made from the joint possession of all the accused and, therefore, the trial Court has wrongly enlarged the respondents on bail.

3. He would further submit that co-accused namely Davender approached this Court for the grant of regular bail which stands dismissed as withdrawn on 28.5.2024. Therefore, the orders granting bail to the respondents should be cancelled and moreover, the trial Court has failed to appreciate the rigours of Section 37 of the NDPS Act.

3. I have considered submissions of both the sides and appraised the record carefully.

4. Proceeding ahead, there can be no doubt that certain factors are required to be taken into consideration while granting regular bail to an accused, but it is a well-established principle that once bail has been granted, it would require cogent and overwhelming circumstances for its cancellation. At the same time, equally important is to note that bail can be revoked by the superior court, if the court granting bail has ignored relevant material available on record, as observed by the Hon'ble



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Supreme Court in ***Vipan Kumar Dhir Vs. State of Punjab 2021 SCC***

OnLine SC 854.

5. In ***State Through Delhi Administration vs Sanjay Gandhi, 1978***

AIR 961, it has been observed by Hon'ble Apex Court 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.”

6. In ***Ms. X vs The State of Telangana (2018) 16 SCC 511***, Hon'ble Supreme Court held that:

*“In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in ***Dolatram v State of Haryana [(1995) 1 SCC 349]*** observed that:*

“Rejection of a 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 the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of 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



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his freedom by enjoying the concession of bail during the trial.”

*These principles have been reiterated by another two Judge Bench decision in **Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan (2011) 5 SCC 296** and more recently in **Dataram Singh v State of Uttar Pradesh (2018) 3 SCC 22***

"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."

7. In **Myakala Dharmarajam Vs. The State of Telangana, (2020) 2 SCC 743**, it has been held by the Hon'ble Supreme Court: -

*“In **Raghubir Singh v. State of Bihar, (1986) 4 SCC 481** this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.*



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It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores 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 to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.”

8. Hon’ble Supreme Court in ***Criminal Appeal No.658 of 2022 (arising out of SLP (Crl) NO.27 of 2022) titled as Imran Vs. Mr. Mohammed Bhava and another decided on 22.04.2022***, has held as under:

“26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles”.

9. It is, thus, clear that an appellate or a Superior Court can set aside the order granting bail, if the Court granting bail did not consider the relevant factors. Said position of law has been made further clear by Hon’ble Supreme Court in Criminal Appeal No.680 of 2021 arising out of SLP (Crl) No.3155 of 2018 titled as ***M/s Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. The State of Maharashtra and another decided on 26.07.2021***.



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10. Keeping in mind, the legal position as above, and the facts of the present case wherein the state counsel has neither shown any allegation nor any circumstance in order to prove that after grant of regular bail by way of impugned orders, respondent No.2 misused the same in any manner whatsoever. There is nothing on record to suggest that respondent No.2 interfered in the course of investigation or attempted to tamper with the evidence or witnesses or threatened the witnesses or indulged in any such activity or not attending the trial.

11. There is no dispute that cogent and overwhelming circumstances or ground are required to cancel the bail already granted and inordinarily unless a strong case based on any supervening event is made out the Court should not interfere with Section 439 (2) Cr.P.C. For cancellation of bail, this Court has to bear in mind that:-

- "a) the accused misuses his liberty by indulging in similar criminal activity,*
- b) interferes with the course of investigation,*
- c) attempts to tamper with evidence or witnesses*
- d) threatens witnesses or indulges in similar activities which would hamper smooth investigation,*
- e) there is likelihood of his fleeing to another country,*
- f) attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency and*
- g) attempts to place himself beyond the reach of his surety."*

In State through **"CBI versus Amarmani Tripathi, AIR 2005 SC 3490"**, the Hon'ble Apex Court observed that for cancellation of bail supervening circumstances alone are relevant.

12. In all the aforesaid facts and circumstances, this Court finds no ground to interfere in the impugned orders dated 10.1.2024 (Annexure P-

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1) in CRM-M No.21422 of 2024 and dated 4.1.2024 (Annexure P-1) in

CRM-M No.21419 of 2024, so as to cancel the regular bail granted to

respondents.

13. Dismissed.
14. Pending application (s), if any, stands disposed of.
15. Photocopy of this order be placed on the connected case file.

(SANDEEP MOUDGIL)
JUDGE

25.7.2024
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No