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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5248/2019**

ANIL KUMAR CHAUDHARYPetitioner
Through: Mr. H.S. Phoolka, Sr.
Advocate with Ms. Shilpa
Dewan & Ms. Surpreet
Kaur, Advocates.

versus

STATE & ANRRespondents
Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Manoj Kumar (P.S.
AEKC Crime Branch).
Mr. Amit Ahlawat,
Advocate.

+ **CRL.M.C. 6657/2019**
STATEPetitioner
Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Manoj Kumar (P.S.
AEKC Crime Branch).
Mr. Amit Ahlawat,
Advocate.

versus

PARVESH KUMARRespondent
Through: Mr. H.S. Phoolka, Sr.
Advocate with Ms. Shilpa
Dewan & Ms. Surpreet
Kaur, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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ORDER
26.09.2024



1. The present petitions are filed challenging the order dated 25.09.2019 passed by the learned Additional Sessions Judge ('ASJ'), South District, Saket Courts, New Delhi whereby Respondent No. 2/Parvesh Kumar in CRL.M.C. 5248/2019 was admitted on bail in FIR No. 227/2019.
2. The FIR in the present case was registered on a complaint given by the petitioner alleging that on 07.08.2019 at about 10:30 pm when the petitioner was on his way home from his office and had reached in front of the Hudco Place, four accused persons in their Honda City car chased the petitioner's car, and allegedly forcibly stopped his car. It is alleged that thereafter, the accused persons came out of their car, and allegedly started assaulting the petitioner with iron rod, paper cutter, and with fists and kicks. It is alleged that the accused persons gave beatings to the petitioner on his body and legs by iron rod. It is alleged that the petitioner raised an alarm, and two patrolling police personnel came near the spot. It is alleged that upon seeing the police, the accused persons started running away, however, two accused persons namely Lalit and Amarjeet Singh were caught red handed at the spot.
3. The learned ASJ *vide* order dated 25.09.2019, noting that one co-accused Ashok Kumar Singh had already been enlarged on bail by the court *vide* order dated 09.09.2019, and without commenting on the merits of the case, enlarged Respondent No. 2 on bail.
4. It is undisputed that Respondent No.2 after being granted bail by order dated 25.09.2019 has absconded. The proceedings under Section 82 of the Code of Criminal Procedure, 1973 ('CrPC') have also been initiated against Respondent No.2.



5. None has been appearing on behalf of Respondent No.2 before this Court as well.

6. The law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court, advertent to a catena of judgments, had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 (*pari materia* to Section 483 (3) of the BNSS) in the case of **Abdul Basit v. Mohd. Abdul Kadir Chaudhary : (2014) 10 SCC 754**.

The relevant portion of the judgment is reproduced hereunder:

“14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (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. These grounds are illustrative and not exhaustive....

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17. In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Narendra K. Amin v. State of Gujarat [(2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief



available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124]* has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

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19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

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21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, *functus officio* and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.”

(emphasis supplied)

7. The Hon’ble Apex Court in the case of ***Himanshu Sharma v. State of Madhya Pradesh : 2024 INSC 139*** had held as under:

“12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is



*satisfied that after being released on bail, (a) **the accused has misused the liberty granted to him**; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud.....”*

8. (emphasis supplied)

9. The accused/Respondent No.2 has, therefore, admittedly misused the liberty and violated the condition that he would join and cooperate with the investigation. The same is a ground for cancellation of a bail. Consequently, the bail granted to Respondent No.2, by order dated 25.09.2019, is cancelled.

10. The State is at liberty to take appropriate action for taking Respondent No.2 in custody.

11. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024

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