

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82908 of 2025

Arising Out of PS. Case No.-103 Year-2021 Thana- KHAIRA District- Saran

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1. Bhushan Ray S/o- Ramjiwan Ray Village- Loha Chapra P.S.-Khaira District- Saran
 2. Rohit Kumar @ Rohit Raj S/o- Bhushan Ray Village- Loha Chapra PS- Khaira District- Saran

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr. Gagandeo Yadav, Advocate Mr. Ravi Prakash, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP
Amici Curiae	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Dwij Raj, Advocate
For the Informant	:	Mr. Ravi S. Pankaj, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 04-05-2026

The present petition has been preferred by the Petitioners seeking anticipatory bail in connection with Khaira P.S. Case No. 103 of 2021 registered for the offences punishable under Sections 341, 323, 324, 325, 379, 504, 506 read with Section 34 of the Indian Penal Code.

2. As per the further averment, the Petitioners surrendered before the Court below in connection with the said FIR and got regular bail by the order dated 07.04.2021 and 13.04.2021 respectively, passed by learned Judicial Magistrate Ist Class, Saran at Chhapra.

3. It further transpires that, after investigation, charge-



sheet was submitted against the Petitioner and other co-accused on 24.05.2023 bearing no.195 of 2023 for higher offence punishable under Section 307, besides Sections 341, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code.

4. Hence, “apprehending their arrest”, the Petitioners preferred their anticipatory bail petition before the Sessions Court bearing A.B.P. No. 3500 of 2025, which was rejected by the Court below on 10.10.2025 on merit, holding that as per the injury report, the Petitioners have caused injury of grievous nature to the victim. Hence, the Petitioners are before this Court.

5. The Khaira P.S. Case No. 103 of 2021 was registered on the written report of one Amrendra Kumar, Son of one Jawahar Lal Rai on 17.03.2021 against four accused persons including the Petitioners under Sections 341, 323, 324, 325, 379, 504, 506 read with Section 34 of the Indian Penal Code.

6. As per the written report, the accused persons including the Petitioner came to the door of the Informant carrying *lathi*, *danda*, spade and *farsa* and after driving *khuta* into the ground, they tied three cattle on the land of the Informant and started abusing him and when the accused were opposed by the Informant, they started damaging the property of



the Informant and on direction of the Petitioner Bhushan Rai and co-accused Ramjivan Ray, co-accused Rahul got hold of the Informant and the Petitioner Rohit Kumar assaulted him on his head by farsa, causing injury on his nose. The co-accused Ramjivan Ray and the Petitioner Bhushan Ray also stole one bag containing cash of Rs.3,00,000/- and Jewellery. As per the injury report, the injury has been found to be of grievous nature.

Submissions of the parties.

7. I heard learned counsel for the Petitioners and learned APP for the State and the Informant. I also heard learned Amici Curiae.

8. Learned counsel for the Petitioners submit that the Petitioners are innocent and have falsely been implicated in this case. He further submits that the case has been filed by the Informant against the Petitioners and other co-accused only as a counter blast to the FIR lodged by the Petitioners' side against the Informant's side for the offences punishable under Section 341, 323, 379, 504 read with Section 34 of the Indian Penal Code. The case lodged by the Petitioners' side bears Khaira P.S. Case No. 82 of 2021 registered on 16.03.2021. He also submits that there is substantive delay in registration of the case on the written report of the Informant in view of the falsity of the case.



The written report was given by the Informant to the police on 17.03.2021. However, the police has registered the case only after 15 days on 01.04.2021. He also submits that the Petitioners and the Informant side are agnates and there is land dispute between them. Hence, this false case has been filed by the informant against the Petitioners.

9. He also submits that after lodging of the FIR, the Petitioners have already got regular bail after surrender. However, after investigation charge-sheet has been submitted for higher offence punishable under Section 307 of the Indian Penal Code and even cognizance has been taken against the Petitioners and other co-accused of the offence punishable under Section 307 of the Indian Penal Code and other minor offences. Hence, they are apprehending that their bail bond may be cancelled and they may be taken into custody by the Court after their appearance before the Court.

10. Hence, the Petitioners preferred anticipatory bail petition before the Sessions Court, but the same was rejected by the Court below. Hence, they are before this Court for anticipatory bail.

11. However, learned APP for the State and learned counsel for the Informant vehemently oppose the prayer of the



Petitioner for anticipatory bail submitting that the present anticipatory bail petition is not maintainable in view of the Petitioners being already in constructive custody of the Court because they had already surrendered before the Court in this case and they are on regular bail. Anticipatory bail petition is maintainable only when the accused are apprehending arrest and not when they are already in custody of the police or Court. After surrender, they were in custody of the Court and they are enlarged on regular bail. Hence, they are still in constructive custody of the Court. Hence, the anticipatory bail petition is not maintainable.

12. Learned Amici Curiae also make similar submission as made by learned APP for the State.

13. I considered the submission advanced by both the parties and perused the material on record.

Statutory Provisions and relevant Case Laws

14. Section 438 Cr.PC/ Section 482 BNSS deals with the grant of anticipatory bail providing where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Sessions for direction under this section that in the event of such arrest, he shall be released on bail.



15. Section 438 Cr.PC further provides, inter alia, the factors which are required to be considered by the Court while giving such direction.

16. As such, Sessions Court and High Court are empowered under Section 438 Cr.PC/482 BNSS to entertain applications of the accused for anticipatory bail when they are accused of committing non-bailable offence.

17. It also emerges from Section 438 Cr.PC/Section 482 BNSS that *sine qua non* for filing application by any accused before competent Court is that he is not in custody. In other words, if the accused is already in custody, no anticipatory bail application on his behalf would lie.

18. In the case on hand, I find that initially the petitioner was accused of having committed offence punishable under Section 379 and other sections of Indian Penal Code. Here, the offence punishable under Section 379 of IPC is non-bailable and hence, the petitioner herein surrendered before the Court and moved regular bail application before the Court and he was released on regular bail. However, in the charge-sheet, offence punishable under Section 307 of the Indian Penal Code was also added against the petitioner. Now, the petitioner is “apprehending arrest” and hence, he has moved the present



petition under Section 438 Cr.PC/482 BNSS.

19. Now, question is whether anticipatory bail application filed by the petitioner is maintainable and if not, what is the remedy available to the petitioner.

20. Coming to the question of maintainability, it is trite law that for filing any application under Section 438 Cr.PC/482 BNSS, the petitioner must not be already in custody in the case. If the petitioner is already in custody in the case, there is no question of apprehension of his arrest in that case.

21. Now next question is whether the petitioner could be deemed to be in custody when he had already surrendered in this case before Court and got released on regular bail under Section 439 Cr.PC/Section 482 BNSS.

22. In **Manish Jain v. Haryana State Pollution Control Board**, as reported in **(2020) 20 SCC 123**, Hon'ble Supreme Court has clearly held in para-2 of the judgment that a person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law and hence, Hon'ble Supreme Court rejected



the prayer of the petitioner for anticipatory bail and Hon'ble Supreme Court gave liberty to the petitioner to surrender within two weeks and seek regular bail to be decided on its own merits.

23. In Kanaksinh Mohansinh Mangrola v. State of Gujarat, as reported in **(2006) 9 SCC 540**, Hon'ble Supreme Court has again held in para-4 of the judgment that on the day of the appearance before the Court, the appellant was in custody as he was on interim bail for 15 days. Hence, his application for regular bail under Section 439 Cr.PC was maintainable.

24. Hon'ble Supreme Court in Niranjan Singh and Anr. v. Prabhakar Rajaram Kharote and Ors., as reported in **(1980) 2 SCC 559**, has held as follows, explaining the meaning of custody:

“7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused



did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439 CrPC. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but, sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below.”

(Emphasis supplied)

25. Hon’ble Supreme Court in Sunil Fulchand Shah

v. Union of India and Ors., as reported in (2000) 3 SCC 409, has held as follows, explaining the meaning of bail and constructive control of the Court over the accused released on



bail:

“24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety. In Halsbury's Laws of England [Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.] , the following observation succinctly brings out the effect of bail:

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.”

(Emphasis Supplied)

26. Hon’ble Supreme Court in Sunita Devi v. State of Bihar and Anr., as reported in **(2005) 1 SCC 608**, has again held as follows, explaining the meaning of custody:

“15. Since the expression “custody” though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in the setting in which it is used and the provisions contained in Section 437 which relate to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterised as “in custody” in a generic sense. The expression “custody” as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the



Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the court of the Magistrate.

20. For making an application under Section 439 the fundamental requirement is that the accused should be in custody.....”

(Emphasis supplied)

27. It would be also profitable to refer to **Manoj Suresh Jadhav and Ors. v. State of Maharashtra, [(2019) 17 SCC 362]**, wherein police had added another offence punishable under Section 376 of Indian Penal Code in the F.I.R. against the petitioner during investigation and arrested the petitioner who was already on bail in that case. Being aggrieved, the petitioner filed writ petition before the High Court which was dismissed. Hence, he moved before Hon’ble Supreme Court by way of SLP, wherein Hon’ble Supreme Court held that it was not permissible for State to re-arrest the petitioner by ignoring the bail order passed by learned Additional Sessions Judge which was in force at that time and directed to release the petitioner on the condition as imposed by bail order passed by learned Sessions Court. However, State was given liberty to apply for cancellation of the bail and seek the custody of the petitioner/accused. The relevant part of the judgment read as follows:



“1. By order dated 2-6-2016, the petitioners were granted bail for the offence punishable under Section 509 read with Section 34 of the Penal Code, 1860 (for short “IPC”) by the learned Additional Sessions Judge, Pune.

2. During the course of investigation, the police added another offence under Section 376 of the Penal Code in the FIR against the petitioners and re-arrested them. Being aggrieved, the petitioners filed writ petition before the High Court which was dismissed [*Manoj Suresh Jadhav v. State of Maharashtra*, 2017 SCC OnLine Bom 9972]. Hence, the special leave petition.

3. We have heard the learned counsel appearing for the parties and perused the record.

4. It is not permissible for the respondent State to simply re-arrest the petitioners by ignoring the order dated 2-6-2016 passed by the learned Additional Sessions Judge, Pune, which was in force at that time.

5. We direct that the petitioners shall be released on bail on the same condition(s) as imposed in the aforesaid order dated 2-6-2016 by the learned Sessions Judge, Pune.

6. Having regard to the provision of Section 439(2) of the Code of Criminal Procedure, the respondent State is at liberty to apply for cancellation of bail and seek the custody of the petitioner-accused.

7. With the aforesaid directions, the special leave petition is disposed of.”

(Emphasis supplied)

28. The present judgment would be *per incurium* without referring to **Pradeep Ram V. State of Jharkhand [(2019) 17 SCC 326]**, which is a leading case on the subject.

29. Here, one of the issues involved was as follows:-

“9.1(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody ?”

30. Hon’ble Supreme Court referred to and considered various relevant judgments of different High Courts as well as Hon’ble Supreme Court itself and arrived at the following



conclusion.

“**31.** In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3 [Ed. : Para 31.3 corrected vide Official Letter dated 31-7-2020.] . The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail.

32. Issue (i) is answered accordingly.”

(Emphasis supplied)

31. Regarding view of this Court on the subject, one may refer to **Mehendra Prasad Singh Vs. The State of Bihar** as reported in **2004 (3) PLJR 491**. In this case, the F.I.R. was lodged under Sections 364, 323 and 307 read with Section 34 of the Indian Penal Code and the accused was accordingly arrested by the police. However, during the investigation, police found



commission of only bailable offences, and hence, he released the accused on police bail. The police also filed charge-sheet for bailable offence. However, learned Judicial Magistrate disagreed with the charge-sheet and took cognizance of non-bailable offences. Hence, the petitioner “apprehending his arrest” moved anticipatory bail. However, the Co-ordinate Bench of this Court held that anticipatory bail petition was not maintainable, holding that there was no apprehension of arrest in the same case. Hence, the petitioner was directed to appear before the Court below without any delay and seek regular bail. The Court below was also directed to consider his prayer for bail in accordance with law keeping in view the well established principle that a person, who is already on bail, shall not be denied such privilege unless there is any allegation of misuse etc.

32. Mehendra Prasad Singh Case (supra) was followed by co-ordinate bench of this Court in **Sheochandra Singh and Ors. V. State** as reported in **2007 SCC OnLine Pat 333**. Here, informant and his son had got simple injuries. During investigation, the police found the case to be true only under bailable sections of the Indian Penal Code. Hence, the police released the petitioner on police bail and submitted charge-sheet



also for bailable offences punishable under Sections 341, 323 and 504 of the Indian Penal Code. However, learned Judicial Magistrate took cognizance of the offence also punishable under Section 307 of the Indian Penal Code, which is non-bailable. Summons was issued to the accused/petitioner for appearance. Hence, the petitioner filed anticipatory bail petition before Sessions Court which was rejected. Hence, the petitioner moved this Court wherein this Court held as follows:

“7. It is well settled that in anticipatory bail application is not maintainable on behalf of the persons who have also been allowed police bail or bail by a Magistrate. The above view has been reiterated in the case of Mahendra Prasad Singh that a person who has been apprehended and allowed bail cannot have any further apprehension of arrest in same cases. However, this Court observed that a person who has been allowed such bail by police would not be denied such privilege on appearance after taking of cognizance unless there is allegation of misuse etc.

10. This Court, at this stage is only of the view that the anticipatory bail application for the petitioners is not maintainable as accused persons were already on police bail in the year 2002 itself. Though as per petitioners there is no service report of receipt of summons but it appears that the accused persons did have knowledge of proceedings and taking of cognizance of offence under non-bailable sections way back in the year 2003 itself. The petitioners namely, Sheochandra Singh, Harishanker Singh and Anil Kumar Singh should surrender and pray for bail and the learned Magistrate will dispose of the same keeping in view the principle that a person who is already on bail shall not be denied such privilege unless there is allegation of misuse.”

(Emphasis supplied)

33. It would be also profitable to refer to **Chinmaya Sahu Vs. State of Orissa**, as decided by Orissa High Court and



reported in **2023 SCC OnLine Ori 5121**. Here, the accused Petitioner was granted bail by the Court of Judicial Magistrate in a case relating to bailable offence. However, in course of investigation, other offences were found to have been committed by the accused Petitioner punishable under Section 420, 465, 467, 471, 409 read with Section 120B of the Indian Penal Code. Consequently, the Investigating Officer of the case made prayer before learned Judicial Magistrate for cancellation of the bail bond of the accused Petitioner. Accordingly, the bail bond of the Petitioner was cancelled by the Court. This order of the cancellation was challenged before the High Court under Section 482 Cr.PC submitting that the bail was granted to him under Section 436 Cr.PC by the Court of Judicial Magistrate, and hence, the power of cancellation granted to the Magistrate under Section 437(5) of Cr.PC was not available to learned Judicial Magistrate. The bail order could have been cancelled only under Section 439(2) of Cr.PC by the Court of Sessions or by the High Court. It was also submitted by the Petitioner that the bail order was cancelled without giving opportunity of hearing to the Petitioner violating the principle of natural justice - *audi alteram partem*. The Petitioner also referred to and relied upon **P.K. Shaji @ Thammanam Shaji Vs. State of Kerala** as



reported in **(2005) 13 SCC 283** and **Gurdev Singh Vs. State of Bihar** as reported in **(2005) 13 286**.

34. In the aforesaid facts and circumstances, the Orissa High Court set aside the impugned order of the Judicial Magistrate, whereby bail bond of the Petitioner was cancelled, holding that the bail granted under Section 436 Cr.PC cannot be cancelled under Section 437(5) Cr.PC by the Judicial Magistrate. The order could have been cancelled only under Section 439(2) Cr.PC by the Court of Sessions or the High Court. The Orissa High Court also held that in view of the Ruling of **P.K. Shaji** and **Gurdev Singh** case (supra), the bail bond of the Petitioner could not be cancelled without giving opportunity of hearing to the Accused/Petitioner.

35. In **P.K. Shaji** case (supra), the accused was granted bail by the Court of Sessions subject to certain conditions and it was also stipulated that breach of conditions would be brought to the notice of learned Judicial Magistrate by the Investigating Officer and the Magistrate was authorised to take appropriate action as if the conditions was imposed by the Magistrate himself. Subsequently, breach of conditions was brought to the notice of learned Judicial Magistrate by the Investigating Officer of the case and learned Magistrate



cancelled the bail bond of the Accused/Petitioner. Consequently, the accused moved the High Court in Criminal Revision but the same was dismissed by the High Court, and hence, the Accused moved Hon'ble Supreme Court submitting that under Section 439(2) Cr.PC, bail granted by the Court of Sessions under Section 439 Cr.PC, cannot be cancelled by the Court of Judicial Magistrate, because such bail could be cancelled only by the Court of Sessions or by the Court under Section 439(2) Cr.PC.

36. Here, Hon'ble Supreme Court held that as a general proposition, the plea raised by the Accused/Petitioner was correct. However, in the given case, the Judicial Magistrate was authorised by the Court of Sessions itself to take appropriate action if breach of conditions was brought to his notice. Hence, there was no illegality in the cancellation order passed by learned Judicial Magistrate in view of the breach of the conditions imposed by learned Court of Sessions in the bail order. However, Hon'ble Apex Court also held that in view of the Ruling of Hon'ble Supreme Court in **Gurdev Singh** case (supra), the Accused/Petitioner should have been heard before cancellation of the bail.

37. In **Gurdev Singh** case (supra), Hon'ble Supreme Court has held that before cancellation of bail of any of the



accused, notice must be served upon him, and hence, the matter was remanded to the High Court for passing fresh order after hearing the Accused/Petitioner.

38. In Veer Pal Singh v. State of U.P. and Ors., as reported in **2026 SCC OnLine All 1155**, F.I.R. was registered against the petitioner under Sections 74 and 115(2) BNS and Section 7/8 of POCSO Act and he was already enlarged on bail granted by Allahabad High Court and subsequently, the victim committed suicide and hence, the application for cancellation of bail was moved against the petitioner.

39. Here, Allahabad High Court referred to and discussed various judicial precedents and cancelled the bail previously granted by it to the petitioner, holding that it is well settled that bail granted to an accused may be cancelled, where it is shown that such accused has misused his liberty by indulging in criminal activity or attempts to tamper with evidence or threatens witnesses or on the grounds of like nature. Here, High Court found that subsequent to release on bail, the petitioner again started harassing the victim lady which led to commit suicide.



Present Case

40. Coming to the case on hand, I find that the F.I.R. was lodged against the petitioners for offence punishable under Sections 341, 323, 324, 325, 379, 504, 506 read with Section 34 of the Indian Penal Code and they were released on regular bail by learned Judicial Magistrate. However, charge-sheet has been submitted against them for higher offence also punishable under Section 307 of the Indian Penal Code, besides other minor Sections 341, 323, 324, 325, 379, 504, 506 read with Section 34 of the Indian Penal Code and hence, the petitioners moved learned Court of Sessions for anticipatory bail, which has been rejected by learned Sessions Court on account of grievous nature of the injury caused to the victim. Hence, the petitioners are before this Court praying for anticipatory bail.

41. In view of the legal provisions as discussed above, it clearly transpires that the petitioners, who had surrendered before the Court of learned Judicial Magistrate and were enlarged on regular bail, are already in constructive custody of the Court and, hence, the anticipatory bail petition filed by the petitioners before this Court is not maintainable. Learned Sessions Court could not notice it and erroneously entertained the anticipatory bail petition bearing A.B.P. No.



3500 of 2025, filed by the petitioners before him and rejected it on merit.

42. Now question is what is remedy available to the petitioners in view of the addition of the higher offence punishable under Section 307 of the Indian Penal Code against them in the charge-sheet.

43. In such situation, the petitioners have remedy to surrender before the Court in seisin of the matter and seek regular bail afresh and in case of such eventuality, the Court concerned would be required to dispose of the regular bail application of the petitioners, applying the legal principles governing cancellation of bail on account of supervening circumstances. Here, cancellation of the bail would depend upon the nature of the new circumstances by way of addition of new offence and the prosecution material on record. Here, the Court may or may not cancel the bail already granted to the petitioners. The Court concerned is competent under Section 437(5) or 439(2) Cr.PC as applicable to cancel the bail granted to the petitioners and commit them to custody in view of the addition of the graver and non-bailable offence under Section 307 of the Indian Penal Code. However, the investigating agency cannot arrest and take the petitioners in custody, unless it



seeks order from the Court concerned under Section 437(5) or 439(2) Cr.PC. As per law, Court is also required to hear the accused/petitioners before cancellation of their bail under Section 437(5) or 439(2) Cr.PC. If the petitioners are not allowed to continue on the bail which they have already got, they would have remedy to challenge the order of the Court to the higher Court on merit – propriety or legality of the order. Even the investigating agency or the informant may challenge the order of the Court in higher Court if the Court allows the accused/petitioners to continue on bail.

44. Here, it would be pertinent to point out that legal principles regarding grant of bail and cancellation of bail are fundamentally different. Even cancellation of bail is sought in two situations; firstly, when the bail has been granted in violation of the legal principles governing the grant of bail, and, secondly, when there is violation of terms and conditions of the bail by the accused/petitioners or there is supervening circumstances warranting cancellation of bail. Addition of higher offence in the FIR or charge-sheet is one of the supervening circumstances when the Court may consider cancellation of the bail. This consideration is done by the same Court which has granted the bail to the accused/petitioners,



whereas the challenge to the bail order on merit can be entertained only by the superior Court in appropriate proceeding. In this contest, it would be appropriate to refer to leading judicial precedents as follows.

45. In Ansar Ahmad v. State of U.P., (2024) 14 SCC 779, Hon'ble Apex Court has elucidated the parameters for grant of bail in following words :

“10. There cannot be any quarrel with the submission advanced by Mr R. Basant, the learned Senior Counsel appearing for one of the private respondents that the court while granting bail is not required to give detailed reasons touching on the merits or demerits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:

- (i) The nature of the accusation weighing in the gravity and severity of the offence;
- (ii) The severity of punishment;
- (iii) The position or status of the accused i.e. whether the accused can exercise influence on the victim and the witnesses or not;
- (iv) Likelihood of accused to approach or try to approach the victims/witnesses;
- (v) Likelihood of accused absconding from proceedings;
- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail;
- (ix) The prima facie satisfaction of the court in support of the charge including frivolity of the charge; and
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence.



We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, would be required to be kept in mind while granting or refusing bail to an accused. It may be difficult to illustrate all such circumstances, for there cannot be any straitjacket formula for exercising the discretionary jurisdiction vested in a court under Sections 438 and 439, respectively, of CrPC, as the case may be.

.....”

46. Explaining the difference between cancellation of bail on merit and cancellation of bail on account of violations of the terms and conditions of the bail or supervening circumstances, Hon’ble Apex Court in **Ansar Ahmad case** (supra) held as follows :

“16.
Hence, it is not the law that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of an abuse of bail. The Court before whom the order of grant of bail is challenged is empowered to critically analyse the soundness of the bail order. The Court must be wary of a plea for cancellation of bail order versus a plea challenging the order for grant of bail. Although on the face of it, both situations seem to be the same yet, the grounds of contention for both are completely different. Let's understand the different conditions in both the situations.

17. In an application for cancellation of bail, the court ordinarily looks for supervening circumstances as discussed above. Whereas in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. The illegality of due process is questioned on account of improper or arbitrary exercise of discretion by the court while granting bail. So, the crux of the matter is that once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if there is any illegality in the order, or can apply for cancellation of bail if there is no illegality in the order but a question of misuse of bail by the accused. In *Puran v. Rambilas*, (2001) 6 SCC 338, this Court has observed: (SCC p. 345,



para 11)

The concept of setting aside as unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself, are because of some supervening circumstances warranting such cancellation.”

(Emphasis supplied)

47. In Ashok Dhankad v. State (NCT of Delhi) and Anr., as reported in **2025 SCC OnLine SC 1690**, Hon’ble Supreme Court has again explained the difference between cancellation of bail on merit and cancellation of bail on account of subsequent conduct of the accused or supervening circumstances, in the following words :

“19. (i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;

(ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;

(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: *Y v. State of Rajasthan* [(2022) 9 SCC 269]; *Jaibunisha v. Meherban* [(2022) 5 SCC 465] and *Bhagwan Singh v. Dilip Kumar @ Deepu* [(2023) 13 SCC 549].

(iv) An appeal against grant of bail may be entertained by a superior Court on grounds, such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;

(v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and

(vi) An appeal against grant of bail must not be



allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.”

(Emphasis Supplied)

48. In Mahipal v. Rajesh Kumar as reported in **(2020) 2 SCC 118**, Hon’ble Supreme Court has also elucidly explained the difference between cancellation of bail on merit and cancellation of bail on subsequent supervening circumstances, in the following words :

“**16.** The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted......”

(Emphasis Supplied)

49. In Neeru Yadav v. State of U.P. as reported in **(2014) 16 SCC 508**, Hon’ble Supreme Court has also elucidly explained the difference between cancellation of bail on merit and cancellation of bail on violation of terms and conditions or supervening circumstances, in the following words :

“**12.** It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the



relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

50. In **Imran v. Mohd. Bhava & Anr.**, as reported in **(2022) 13 SCC 70**, Hon’ble Supreme Court explained the principles of cancellation of bail, holding as follows :

“**20.** Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in *Vipan Kumar Dhir v. State of Punjab*, (2021) 15 SCC 518 has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact.”

51. In regard to cancellation of bail, Hon’ble Supreme Court in **Dolat Ram Vs. State of Haryana** as reported in **(1995) 1 SCC 349**, has also held as follows :

“**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.”

(Emphasis supplied)

52. In Ram Govind Upadhyay v. Sudarshan Singh, as reported in **(2002) 3 SCC 598**, Hon’ble Supreme Court has also held as follows :

“9. Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago.”

53. In Vipin Kumar Dhir v. State of Punjab, as reported in **(2021) 15 SCC 518**, Hon’ble Supreme Court has also held as follows in regard to cancellation of bail :

“9. At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that “cogent and overwhelming reasons” are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail.....

.....
11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has



considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.”

(Emphasis supplied)

54. In X v. State of Telangana, as reported in (2018)

16 SCC 511, Hon’ble Supreme Court has held as follows:

“8.7. Supervening circumstances, for the cancellation of bail, must be of such a nature as to lead to the conclusion that the accused does not deserve to be at liberty either by reason of a violation of the conditions of bail or due to supervening conduct which bears upon the misuse of liberty by the accused.....”

55. In State of Bihar v. Rajballav Prasad, as reported in (2017) 2 SCC 178, Hon’ble Supreme Court has emphasized that while the liberty of the subject is an important consideration, the public interest in the proper administration of criminal justice is equally important and held as follows:

“26. ... undoubtedly the courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the



accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations.”

(Emphasis supplied)

56. In CBI v. Subramani Gopalakrishnan, as reported in **(2011) 5 SCC 296**, Hon’ble Supreme Court has also held as follows :

“23. 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.”

(Emphasis supplied)

57. In Phireram v. State of U.P., as reported in **2025 SCC OnLine SC 1915**, Hon’ble Supreme Court has discussed the principles governing the cancellation of bail at length referring to various relevant judicial precedents and held as follows:



“56. This Court then summed up the principles or circumstance governing the cancellation of bail as under:

“25. Some of the circumstances where bail granted to the accused under Section 439(1) CrPC 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 unconducive to a fair trial.

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

57. The governing principle is that if the accused tampers with evidence, threatens witnesses, or attempts to subvert the trial, the indulgence of bail is to be withdrawn. It is a recognition that liberty is conditional, not absolute, and subject always to the larger interest of ensuring a fair trial. Considerations for cancellation of bail must always be on the basis of the well settled principles as discussed aforesaid. There cannot be any extraneous considerations involved that are unknown to the law of bails.

58. At the same time, emphasis has to be laid that cancellation of bail occupies a distinct space in the criminal justice machinery. Cancellation intervenes at the stage of violation, to prevent recurrence. In *State through Delhi Administration v. Sanjay Gandhi*, (1978) 2 SCC 411, this Court underscored that tampering with witnesses constitutes a cogent ground for cancellation, for the “*opportunity of being on bail cannot be permitted to be abused for the purpose of thwarting the course of justice.*”



Similarly, in *Raghubir Singh v. State of Bihar*, (1986) 4 SCC 481, it was reiterated that intimidation of witnesses is sufficient to revoke the liberty granted. It must be guided by the lodestar of preventing interference with witnesses that “strikes at the root of the rule of law.”

59. Thus, the considerations that must weigh with the court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that might have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner etc.”

(Emphasis supplied)

58. In Pradeep Ram Case (supra), Hon’ble Supreme Court has held as follows, explaining the meaning and scope of the provisions of Sections 437(5) and 439(2) Cr.PC which provide for cancellation of bail :

“23. Both Sections 437(5) and 439(2) empower the court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII. There may be numerous grounds for exercise of power under Sections 437(5) and 439(2). The principles and grounds for cancelling a bail are well settled, but in the present case, we are concerned only with one aspect of the matter i.e. a case where after accused has been granted the bail, new and serious offences are added in the case. A person against whom serious offences have been added, who is already on bail can very well be directed to be arrested and committed to custody by the court in exercise of power under Sections 437(5) and 439(2). Cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Sections 437(5) and 439(2), but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, court can direct the accused to be arrested and committed to custody. The addition of serious offences is one of such circumstances, under which the



court can direct the accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the time when bail was considered and granted.”
(Emphasis supplied)

59. Accordingly, the present petition is dismissed as not maintainable and the petitioners or the investigating agency or the informant can pursue the remedy as discussed above. If the petitioners surrender before the Court by 15th of May, 2026 and file regular bail applications, the Court concerned would be required to dispose of the regular bail applications of the petitioners on the same day, and if there is unavoidable delay in disposal of the applications, the petitioners would not be taken into custody till disposal of their applications.

60. With approval of Hon’ble the Chief Justice, circulate a copy of this judgment amongst the Judicial Officers of Bihar District Judiciary, and also send a copy of this judgment to the Director of Bihar Judicial Academy for discussion on this judgment in the training programmes for the Judicial Officers.

(Jitendra Kumar, J.)

S. Ali/Chandan/
Shoaib

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