



CRM-M-19138-2023

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

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Sukhwant Kaur and another

....Petitioners

V/s

State of Punjab and another

....Respondents

Date of decision: 25.02.2026**Date of Uploading : 25.02.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Ms. Priyanka Sorout, Advocate for
Mr. RG Singh Saini, Advocate for the petitioners.
Mr. Adhiraj Singh Thind, AAG Punjab.
None for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) read with Section 482 of Cr.P.C. seeking cancellation of regular bail granted to respondent No.2 vide order 29.03.2023 passed by this Court in FIR No.93 dated 13.06.2016 registered for offences punishable under Sections 377 of IPC and Sections 4 and 6 of POCSO Act at Police Station Sadar Amritsar, District Amritsar.

2. The gravamen of FIR reflects that the complainant - mother and her husband, both working as Medical Officers, used to leave their minor son aged about 3½ years at home under the care of his grandfather during their duty hours. It has been alleged that the accused (respondent No.2 herein), who is the paternal uncle of the child and resided in the same house had regular access to the minor in the absence of the parents. On



crying and complaining of pain in his anal region. On being asked, the child disclosed that his uncle (respondent No.2 herein) had caused the injury. The complainant noticed swelling and redness in the anal area and the child experienced pain while passing stool. The child was first taken to a private doctor and thereafter medically examined at Guru Nanak Dev Hospital, where medico-legal examination was conducted and swabs were taken for forensic analysis. On the basis of the statement of the complainant and the medical examination of the minor, the allegation against the accused is that he committed unnatural sexual assault upon the child. On these set of allegations, the present FIR came to be registered and investigation ensued.

3. Vide order dated 29.03.2023 passed by Coordinate Bench of this Court, the respondent No.2 has been granted the concession of regular bail. The relevant of the said order reads thus:

“Therefore, considering the aforesaid totality and circumstances of the present case and especially the long custody of the petitioner which is for 3½ years, this court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial court/Duty magistrate concerned.

However, nothing observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.”

4. Learned counsel for the petitioners has iterated that the impugned order granting regular bail to respondent No.2 suffers from serious factual and legal infirmities and has resulted in grave miscarriage of justice. Learned counsel has further iterated that while seeking bail, respondent No.2 has misled this Court by stating that the complainant has



complainant - mother of the minor victim was yet to be examined. According to learned counsel, this misstatement materially affected the consideration of the bail petition and vitiates the order granting bail. It has been further contended that the offences alleged against respondent No.2 are of an extremely heinous nature, involving aggravated penetrative sexual assault upon a minor child punishable under Section 377 IPC and Sections 4 and 6 of the POCSO Act. According to learned counsel, the mere fact of prolonged custody cannot be a decisive ground for grant of bail where the accused is charged with offences carrying stringent punishment and where the material witnesses are yet to be examined. Learned counsel has further contended that subsequent to release of respondent No.2 on bail, he has grossly misused the same as he has been extending threats to the petitioners and their minor son and has been pressurising them to enter into a compromise and to resile from their statements before the Court. Learned counsel has emphasized that respondent No.2 is attempting to create psychological pressure upon the family of the victim through relatives and intermediaries and is deliberately trying to derail the prosecution case before the examination of the complainant and the child victim. Learned counsel submits that such conduct amounts to a clear violation of the conditions of bail and constitutes a supervening circumstance warranting cancellation of bail. On the strength of these submissions, learned counsel has prayed that the bail granted to respondent No.2 be cancelled in order to ensure that the material witnesses, particularly the complainant and the minor victim, are able to depose freely without fear or pressure.

5. Learned State counsel has iterated that the regular bail has been

granted to respondent No. 2 by this Court after considering the fact that he



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has remained in custody for a substantial period of about three and a half years and the trial is already in progress with several prosecution witnesses having been examined. Learned State counsel has further iterated that the accused – respondent No.2 has been regularly appearing before the Court below and has not violated any of the conditions imposed while granting bail. According to learned State counsel, no material has been brought on record to show that the respondent No. 2 has attempted to tamper with prosecution evidence, influence witnesses, threaten the complainant, evade the process of law or otherwise misuse the concession of bail. It has been further submitted that the allegations made by the petitioners regarding threats and intimidation are general and unsubstantiated.

6. None has caused appearance on behalf of respondent No.2 despite service.

7. I have heard learned counsel for the parties and have gone through the available records of the case.

8. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dinesh Madan vs. State of Haryana and another*** in ***CRM-M-9029-2023***, decided on 17.05.2024; relevant whereof reads as under:-

“12. The concept of “cancellation of bail” is statutorily manifested in terms of Section 439 (2) of 1973 Code. This concept was embodied in the earlier statute i.e. 1898 Code as well albeit with difference(s). The ratio decidendi of judgment in case of ***Gurcharan Singh*** (supra) makes it clear that, in the 1898 Code, the bail granted by the High Court could be cancelled only by it & bail granted by a Sessions Court could be cancelled by such Sessions Court only. However, Section 439(2) of 1973 Code has vested power to cancel bail which has been granted “under this chapter” upon both the High Court as also the Sessions Court. The words “under this Chapter” relates to Chapter XXXIII of Cr.P.C. of 1973 & hence the unequivocal result



thereof is that the High Court as also the Sessions Court have requisite powers to cancel “any bail” granted by “any Court” by way of powers vested under this Chapter. In other words; the High Court is well empowered to cancel a bail granted by itself or by a Sessions Court or by the Court of a Magistrate while the Sessions Court is empowered to cancel a bail granted by High Court or by itself or by a Magistrate. However, a Sessions Court can cancel bail granted by High Court only on account of supervening/new circumstances or on account of misconduct of such accused or on account of violation of any condition(s) imposed by the High Court while granting bail. The Magistrate can, of course, cancel bail granted by him but he cannot cancel a bail granted by High Court or Sessions Court except when such accused has violated/contravened any condition(s) imposed upon by such High Court or Sessions Court while granting bail to such accused. This position, is indubitable, as a Magistrate has been vested with powers for cancellation of bail only in terms of Section 437(5) of 1973 Code whereas the High Court and Sessions Court have been vested with powers under Section 439 of Cr.P.C., of 1973 to cancel “any bail granted under Chapter XXXIII of 1973 Code”.

12.1 Section 439(2) of Cr.P.C., 1973 deals with “any person who has been released on bail under this Chapter” i.e. Chapter XXXIII of 1973 Code, which engirths in itself, Section 438 of the Code (provision envisaging anticipatory bail/pre-arrest bail) as well. Hence such power operates in realm of all kinds of bails, whether regular bail or anticipatory bail. Ergo, there is no conceptual difference between cancellation of regular bail and cancellation of anticipatory bail except that a Magistrate will not have statutory power to cancel an anticipatory bail granted by High Court or Sessions Court.

12.2. At this juncture, it would be profitable to consider an issue often springing up before Courts. Petition(s) labelled as plea(s) for “cancellation of bail” are filed in Court(s), more often than not, whether such applicant is actually seeking “cancellation of bail” on account of the accused misusing the grant of bail or on account of any supervening developments disintitling such accused to remain on bail OR where the plea raised is that, the bail ought not to have been granted at all vide the impugned order, in the factual conspectus of such case. The 1973 Code neither stipulates the words “cancellation of bail” nor “setting-aside of a bail order” but only stipulates the words “any person who has been released on bail be arrested and committed to custody”. There is no gainsaying that there is a foundational difference between “cancellation of bail” and “setting-aside of a bail order”; a difference which, by way of simile, can be said to be as stark as



*between chalk and cheese. The Hon'ble Supreme Court in cases of **Ranjit Singh** (supra) and **Neeru Yadav** (supra) has incontestably articulated that "cancellation of bail" is sought for on account of supervening circumstances/subsequent developments/misconduct of accused etc. whereas "setting-aside of a bail order" is sought for by laying challenge to the said bail order on ground of it being perverse or based on irrelevant material(s). The parameters for consideration of the two are, accordingly, different and contrastive.*

13. *The next aspect that craves attention is as to what are the factors relevant for considering of a plea for "cancellation of bail" or "setting-aside of a bail order." At the very outset; it deserves to be noted that, it is too far well settled a principle to be ratiocinated upon, that consideration(s) for grant of bail vis.-a-vis. cancellation/setting-aside thereof are entirely different.*

14. *In a plea seeking "cancellation of bail"; such applicant ought to show, primarily, subsequent supervening circumstances such as accused having endeavored to influence/intimidate witness(s) or accused having violated bail condition(s) or accused having committed another offence(s) or accused having secured bail by misrepresenting/concealing material fact(s) or bail having been granted in ignorance/violation of statutory provisions and factors of akin nature. The Hon'ble Supreme Court in the case of **Himanshu Sharma** (supra) has delineated the nature and kind of such factors as have been stated by this Court hereinabove.*

14.1. *Further, the Hon'ble Supreme Court in the case of **Sanjay Gandhi** (supra) has enounced regarding the nature and degree of burden upon the applicant (seeking cancellation of bail). The plea of such an applicant has to be tested on the anvil of preponderance of probabilities & such an applicant is not required to prove, beyond reasonable doubt, the facts pleaded by him in support of such a plea.*

15. *In a plea seeking "setting-aside of a bail order"; the factors required to be considered are as to whether bail has been granted on relevant consideration(s); grounds required to be evaluated for grant of bail have been duly factored into the order granting bail and other factors of akin nature. The Hon'ble Supreme Court in the case of **Jagjit Singh** (supra) has held that the High Court or Sessions Court can set-aside an order granting bail passed by an inferior Court if such order is based on irrelevant considerations, order granting bail has resulted in miscarriage of justice etc. It goes without saying that the High Court or Sessions Court; while dealing a plea for setting-aside a bail order; sits in a jurisdiction, which is akin to appellate jurisdiction & hence it can look into the veracity and propriety of*



the order (granting bail) from all the perspectives. However, a Court while dealing with such a plea, ought not to substitute its own opinion with the one expressed in the impugned order.

16. *It would not be pragmatic to even attempt to lay-down exhaustive parameters in this regard as every case, especially a criminal case, is sui generis. Such a quixotic attempt ought to be avoided as no inexorable formulae can be laid down in this regard.*

17. *As an epilogue to above discussion, the following principles emerge:*

I. (i) *There is a conceptual distinction, between “cancellation of bail” & “setting-aside of a bail order”. In a plea seeking “cancellation of bail”; the factors required to be considered are akin to supervening circumstances/events or mis-conduct of accused whereas in a plea seeking “setting-aside of a bail order”; the factors required to be considered are akin to the order in question being unjustified or illegal or not based on relevant consideration(s). In other words, a plea seeking “setting aside of a bail order” is more in the nature of laying challenge to an order granting bail before a superior Court upon merits thereof.*

(ii) *It would be pragmatic as also desirable, for the cause of ease and clarity, that a plea filed under Section 439 of Cr.P.C., 1973 clearly states as to whether the plea is for “cancellation of bail” or for “setting aside of a bail order.” or on both accounts.*

II. Plea seeking cancellation of Regular Bail.

(i) *A High Court has power to cancel regular bail granted by itself or by a Sessions Court or by a Magistrate’s Court.*

(ii) *A Sessions Court has a power to cancel regular bail granted by High Court or by itself or by a Magistrate’s Court. However, the Sessions Court can cancel regular bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel bail granted to an accused by High Court only on account of such like supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby bail was granted to such accused.)*

(iii) *A Magistrate does have the power to cancel a regular bail granted by him in terms of Section 437(5) of Cr.P.C. 1973. However, a Magistrate does not have the power to cancel regular bail granted by the High Court or*



Sessions Court except in a situation wherein the accused has violated any condition(s) imposed upon him when granted such bail by the High Court or the Sessions Court.

(iv) *In case cancellation of a regular bail granted by the Sessions Court is sought for; such plea ought to be ordinarily filed before the Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not ipso facto barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.*

(v) *The factors for consideration in a plea for cancellation of a regular bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether the accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.*

(vi) *Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.*

(vii) *The degree and nature of proof required to be shown by an applicant (seeking cancellation of regular bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.*

III. Plea seeking setting-aside of regular bail order.

(i) *A plea seeking “setting-aside of a bail order” has to be essentially filed in the Court, superior to the one which has granted bail.*

(ii) *In case setting-aside of a bail order granted by the Magistrate’s Court is sought for, such plea ought to be ordinarily filed before the Sessions Court. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not ipso facto barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.*

(iii) *For setting-aside a bail order passed by a Sessions Court; such plea, but of-course, will have to be filed before the High Court.*



IV. Plea seeking cancellation of anticipatory bail/pre-arrest order

(i) *A High Court has power to cancel an anticipatory bail granted by it or by a Sessions Court.*

(ii) *A Sessions Court has power to cancel an anticipatory bail granted by High Court or earlier granted by it. However, the Sessions Court can cancel anticipatory bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting such bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel anticipatory bail granted to an accused by High Court only on account of such likes supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby such bail was granted to such accused.)*

(iii) *In case cancellation of an anticipatory bail granted by Sessions Court is sought for; such plea ought to be filed ordinarily before Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. of 1973, the filing of such a plea straight away before the High Court is not barred. At the same time, it would be expedient that such a plea (straight away filed before High Court) must show cogent reasons for not approaching the Sessions Court in first instance.*

(iv) *The factors for consideration in a plea for cancellation of an anticipatory bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material, and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.*

(v) *Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.*

(vi) *The degree and nature of proof required to be shown by an applicant (seeking cancellation of an anticipatory bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.*



V. Plea seeking setting aside of an anticipatory bail/pre-arrest bail order

(i) A plea seeking setting aside of an anticipatory bail/pre-arrest bail order by a Sessions Court has to be essentially filed before High Court.

(ii) The factor, required to be considered in a plea seeking setting aside of an anticipatory/pre-arrest bail order; is as to whether the impugned order (granting anticipatory bail/pre-arrest bail) has objectively dealt with nature and gravity of allegations against accused, role of accused in the crime(s) alleged, need for custodial interrogation, likelihood of accused influencing the investigation/witnesses, likelihood of the accused absconding from process of justice etc.

VI. Where a plea made under Section 439(2) of Cr.P.C. 1973 raises grounds regarding “cancellation of bail” as also for “setting aside of bail order”, such plea has to be essentially made before the superior Court.

9. The factual matrix, as emerging from the record, is that the FIR in question has been registered at the instance of the petitioner No.1- mother (complainant), who alleged that the accused (respondent No.2 herein), who is the paternal uncle of the minor victim aged about 3½ years, has subjected the child to unnatural sexual assault. The child was medically examined and the matter proceeded to trial. Respondent No.2 was in custody for a considerable period and was granted the concession of regular bail by this Court vide impugned order. The present petition has been filed seeking cancellation of the said bail. The primary grievance raised by the petitioners before this Court is that accused - respondent No.2 has misrepresented before this Court that the complainant has been examined and after his release, he has been threatening the petitioners and pressurising them to compromise the matter. However, from the material placed on record, it transpires that respondent No.2 was granted the concession of regular bail mainly on account of the long period of custody and the progress of the trial.

As regards the allegation of threats, the petitioners have relied upon a



stated to be under inquiry and no material has been placed on record to show that any case has been registered against respondent No.2 or his involvement in the alleged incident has been *prima facie* established. In the absence of any substantiated material which demonstrate that respondent No.2 has misused the concession of bail or has attempted to influence the witnesses, the stringent parameters for cancellation of bail are not satisfied. It is also not the case of the petitioners that respondent No.2 has absconded, failed to appear before the trial Court or otherwise obstructed the proceedings.

10. It is well settled that the cancellation of bail stands on a different footing from the initial grant of bail. No material has been placed on record to *prima facie* establish that respondent No.2 has influenced witnesses or obstructed the course of justice in the pending trial. In the absence of any clear, cogent and convincing material showing violation of bail conditions or misuse of liberty by respondent No.2, this Court does not find any justification to exercise the extraordinary power of cancellation of anticipatory bail. Moreover, there is nothing on record to suggest that the respondent No.2 has misused the concession of bail. It is trite law that bail cannot be cancelled merely on re-appreciation of facts already considered at the time while granting the same unless there is abuse of the liberty so granted.

11. In the absence of any cogent material to show that respondent No.2 has misused the concession of regular bail, no case is made for cancellation of regular bail. The order passed by this Court is a well-reasoned speaking order and cannot be said to be suffering from vice of



the facts and circumstances of the case(s) in hand, does not find any good ground to hold that this Court, while passing the impugned order has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition in hand deserves rejection.

12. Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to set-aside the regular bail earlier granted to respondent No.2 vide the impugned order. Therefore, the petition in hand deserves rejection.

13. As a sequel to the above discussion, the present petition, seeking cancellation of regular bail passed by this Court, is dismissed.

14. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

15. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

February 25, 2026
Ajay

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