

2026:PHHC:071406



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

106

CRM-M-24002-2026

Durga Devi

...Petitioner

V/s

State of Haryana and another

...Respondent

Date of decision: 07.05.2026**Date of Uploading : 07.05.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Sankalp Gehlawat, Advocate for the petitioner.

Ms. Mahima Yashpal Singla, Senior DAG Haryana.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) of the IPC/482(2) of the BNSS seeking cancellation of anticipatory bail granted to respondent No.2 vide order dated 06.03.2026 passed by Additional Sessions Judge, Rohtak in FIR No.43 dated 25.02.2026 registered for offences punishable under Sections 115(2), 333, 351(3), 3(5) of BNS and Sections 109(1) of BNS (added later on) at Police Station Sadar Rohtak.

2. The relevant portion of the order passed by Sessions Judge, Ferozepur, reads as under:

"7. Since, no specific role of the applicant-accused has been attributed. Neither any injury has been attributed at the hand of the applicant-accused. The main accused Mohit has already been arrested. The recovery has already been effected. She is ready to join the investigation. Therefore, in view of the aforesaid observations no case is made out for custodial interrogation of the applicant-accused, being widow lady of 58 years. Accordingly, present anticipatory bail application is hereby allowed. It is directed that the applicant-accused shall join the investigation as and when directed by the Investigating

Officer and in the event of her arrest in this case she shall be released on interim bail on her furnishing bail bonds and surety bonds to the satisfaction of the Investigating officer/Arresting Officer. She, shall, however abide by the terms and conditions as envisaged under Section 482 of the Code of Criminal Procedure. A copy of this order be sent to the court of Illaka magistrate for information. File be consigned to the record room after due compliance.”

3. Learned counsel for the petitioner has iterated that the Court below has passed the said *impugned order* in a mechanical manner without appreciating the seriousness and gravity of the allegations and the specific role attributed to respondent No.2. Learned counsel has further iterated that the petitioner has suffered life-threatening injuries at the hands of respondent No.2 and other co-accused persons and the offence under Section 109(1) of BNS has been added after the opinion of the doctor regarding the nature of the injuries. It has been further contended that the respondent No.2 has actively participated in the occurrence and specific allegations regarding assault and criminal intimidation have been levelled against her in the FIR itself. According to learned counsel, despite the seriousness of the allegations, the Court below has granted the concession of anticipatory bail without considering the material aspects of the case. Learned counsel has emphasized that respondent No.2 alongwith co-accused persons is continuously extending threats to the petitioner and her family members and a complaint dated 13.03.2026 has already been submitted before the police authorities in this regard. It has been further submitted that the conduct of the respondent No.2 after grant of anticipatory bail clearly demonstrates the misuse of concession. It has been further argued that the impugned order has been passed without application of mind. Thus, keeping in view the gravity of offence, cancellation of the anticipatory bail granted to respondent No.2 is entreated for.

4. Learned State counsel has (on the strength of advance notice) has submitted that the concession of anticipatory bail was granted after due consideration of facts and circumstances. Learned State counsel has iterated that the cancellation of bail stands on a different footing from rejection of bail and unless there are supervening circumstances or misuse of concession, the bail once granted should not be ordinarily be cancelled.

5. Since the petition in hand is being adjudicate upon at the *limine* stage, this Court does not deem it necessary to issue notice to respondent No.2.

6. I have heard learned counsel for the rival parties and have perused the record.

7. 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 disentitling 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.

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xxx	xxx	xxx	xxx

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.

8. The averments made in the petition as also the arguments raised by learned counsel for the petitioner, indubitably, show that petition has been filed for cancellation of the anticipatory bail order granted to the respondent No.2 vide order dated 06.03.2026 passed by the Court below. In the present case, the petitioner has not brought on record any material to demonstrate that after the grant of anticipatory bail, respondent No.2 has attempted to influence witnesses, tamper with evidence, evade investigation or violate any condition imposed by the Court. The apprehensions expressed

material. The argument of the petitioner regarding gravity of the offence cannot be a ground for cancellation of bail once it has been granted particularly in the absence of any supervening circumstances. The allegations regarding threats are also unsupported by any substantive material showing violation of bail conditions by respondent No.2. No circumstance has been brought to the notice of this Court indicating that respondent No.2 has interfered with the investigation or attempted to influence witnesses after the grant of anticipatory bail. It is trite law that the consideration(s) for grant of bail and for cancellation of bail are distinct. Cancellation of bail already granted requires demonstration of supervening circumstances such as misuse of liberty, tampering with evidence, intimidation of witnesses or deliberate evasion of the judicial process. Mere dissatisfaction with the reasoning of the Court below which has granted the bail or the seriousness of the offence, by itself, is not sufficient to recall such an order. Learned counsel has laid much emphasis that the allegations against the respondent No.2 are serious, which according to the petitioner, ought not to have been considered by the Court below at the time of grant of anticipatory bail. In the considered opinion of this Court, the petitioner has not brought any fresh or supervening material before this Court. A mere allegation of seriousness of offence without concrete material cannot justify the cancellation of bail. Moreover, such a plea cannot, by itself, render the order granting the bail perverse. The order passed by the Court below is a well-reasoned speaking order and cannot be said to be suffering from vice of non-application of judicial mind. This Court, keeping in view the entirety of the facts and circumstances of the case(s) in hand, does not find any good ground to hold that the Sessions Court, while passing the

impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition(s) in hand deserves rejection.

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

10. As a sequel to the above discussion, the present petition seeking cancellation of anticipatory bail order dated 06.03.2026 passed by learned Additional Sessions Judge, Rohtak is dismissed.

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

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

(SUMEET GOEL)
JUDGE

May 07, 2026

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No