



CRM-M-62679-2023

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

103-1

CRM-M-62679-2023

Ashok Kumar

...Petitioner

V/s

State of Haryana and another

...Respondents

Date of decision: 12.03.2026**Date of Uploading : 12.03.2026****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Amit Kumar, Advocate for
Mr. Anshuman Dalal, Advocate for the petitioner.
Ms. Mahima Yashpal Singla, Senior DAG Haryana.
None for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) of the Cr.P.C. seeking cancellation of regular bail granted to respondent No.2 vide order dated 12.09.2023 (Annexure P-7) passed by Additional Sessions Judge, Jhajjar in FIR No.364 dated 09.10.2021 registered for offences punishable under Sections 302, 379-B, 395, 396, 397, 412, 212, 201, 120-B, 109 of IPC and Sections 25, 27, 29 of the Arms Act at Police Station Asuada, Jhajjar, District Jhajjar.
2. The relevant portion of the order passed by Additional Sessions Judge, Jhajjar, reads as under:

“5. Therefore, without commenting on the merits of the case, the application for bail filed by the petitioner-accused is allowed. He is ordered to be released on bail on executing bail bonds to the satisfaction of learned Illaqa/Duty Magistrate. Copy of this order be sent to learned Illaqa/Duty Magistrate for necessary compliance. Record of this bail application be consigned to records, after due compliance.”



3. Learned counsel for the petitioner has iterated that the impugned order passed by the Court below granting regular bail to respondent No.2 is illegal, perverse and liable to be set aside as the same has been passed without proper appreciation of the material collected during investigation. Learned counsel has further iterated that Court below has failed to appreciate the gravity of the allegations involved in the present case as the offence in question pertains to a brutal murder committed with firearms in the course of robbery and, therefore, the Court below ought not to have granted the concession of regular bail to respondent No.2. Learned counsel has emphasized that respondent No.2 is a habitual offender and as many as 09 other criminal cases are stated to be pending against him, including cases involving offences under Sections 302, 307 IPC and the Arms Act. Learned counsel has further submitted that the trial in the present case is still at a preliminary stage and the prosecution witnesses are yet to be examined. Only the complainant Ashok has been partly examined and an application under Section 319 Cr.P.C. for summoning additional accused persons is still pending before the trial Court. Considering the criminal antecedents of respondent No.2 and the stage of the trial, there exists a strong likelihood that he may influence or intimidate the prosecution witnesses. Furthermore, the Court below has ignored the settled principles governing the grant of bail and passed the impugned order in a mechanical manner. On the strength of the aforesaid submissions, learned counsel has prayed that the impugned order granting bail to respondent No.2 be set aside and the concession of bail granted to him be cancelled.



4. Learned State counsel has iterated that the impugned order granting regular bail to respondent No.2 has been passed after due consideration of the facts and circumstances of the case. Learned State counsel has further iterated that respondent No.2 has been on bail since the passing of the impugned order and there is no allegation that he has misused the concession of bail or flouted any conditions governing the bail in any manner. Furthermore, petitioner has not placed any material on record to show that respondent No.2 has attempted to influence witnesses, tamper with evidence, or hamper the investigation after being released on bail. Learned counsel has further iterated that the power under Section 439(2) Cr.P.C. is to be exercised only in cases where the accused has misused the concession of bail, interfered with the course of justice or violated the conditions of bail, none of which are alleged or established in the present case.

5. No one has caused appearance on behalf of 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 of this Court passed in **CRM-M-9029-2023**, titled as ***Dinesh Madan vs. State of Haryana and another***, decided on 17.05.2024; relevant whereof reads as under:-

“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.

xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx

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 regular bail order granted to the respondent No.2 vide order dated 12.09.2023 (Annexure P-7) passed by Additional Sessions Judge, Jhajjar. In the present case, the petitioner has not brought on record any material to demonstrate that after the grant of regular bail, respondent No.2 has attempted to influence witnesses, tamper with evidence or violate any condition imposed by the Court. The apprehensions expressed by the petitioner are largely speculative and not supported by any cogent material. The scope of consideration before this Court, however, is limited. It is trite that the parameters governing cancellation of bail are



distinct from those governing grant of bail. Once bail has been granted, it cannot be cancelled in a routine manner unless it is shown that the accused has misused the concession of bail, has attempted to tamper with evidence, has influenced witnesses, has evaded the process of law or that the order granting bail is perverse, illegal or based on wholly irrelevant considerations. A perusal of the impugned order reflects that the Court below has granted the concession of regular bail to respondent No.2 after considering the nature of allegations, the period of custody undergone by the accused and other relevant circumstances. The order cannot be said to have been passed without application of mind. Furthermore, the petitioner has failed to place any material on record to show that after being released on bail, respondent No.2 has misused the concession of bail, attempted to influence or threaten witnesses, tampered with evidence, or violated any of the conditions imposed by the Court. The grounds raised by the petitioner primarily relate to the nature and gravity of the allegations and the merits of the case, which were available at the time of consideration of the bail application and cannot be re-agitated in proceedings for cancellation of bail in the absence of any supervening circumstances. The apprehensions expressed by the petitioner are general in nature and are not supported by any specific instance of misconduct on the part of respondent No.2 after grant of regular bail. It is also not disputed by the State that respondent No.2 has joined the investigation as and when called and is available to face trial. In such circumstances, this Court does not find any cogent or overwhelming reason to cancel the regular bail granted to him. 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 regular bail. However, these aspects were already available before the Court below at the time of consideration of the bail application. The impugned order reflects that the Court below has taken into account the period of custody of the accused and the progress of the trial while granting 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.

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 Court below, 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 regular bail 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 filed under Section 439(2) of the Cr.P.C. seeking cancellation of regular bail



granted to respondent No.2 vide order dated 12.09.2023 (Annexure P-7) passed by Additional Sessions Judge, Jhajjar, 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

March 12, 2026
Ajay

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