

**(2002) 05 AHC CK 0134**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Bail Cancellation Application No. 10910 of 2000

Union of India (UOI)

APPELLANT

Vs

Subhash Chand Jain

RESPONDENT

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**Date of Decision:** May 8, 2002

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 439(2)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 22, 37, 8
- Narcotic Drugs and Psychotropic Substances Rules, 1985 - Rule 67

**Citation:** (2002) 2 ACR 1612

**Hon'ble Judges:** U.S. Tripathi, J

**Bench:** Single Bench

**Advocate:** Sanjay Kumar Singh, S.C, for the Appellant; D.S. Mishra, A.P. Srivastava and A.K. Srivastava, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

U.S. Tripathi, J.

This application has been moved u/s 439(2), Criminal Procedure Code for cancellation of bail granted to opposite party by Special Judge N.D.P.S. Act, Varanasi, vide order dated 17.6.2000 in Case Crime No. Nil of 2000, Union of India v. Subhash Chand Jain under Sections 8/22 N.D.P.S. Act read with Rule 67 of the N.D.P.S. Rules.

2. The facts of the case, briefly narrated are that on 12.10.1999, the Intelligence Officer of Narcotic Control Bureau, Varanasi, received secret information that one Oswal Associates was indulging in wide scale diversion of psychotropic substances (Tidigesic) by making dispatches of drugs to such concerns as are totally non-existent or not receiving the drugs at all. On the above information, the opposite party was summoned and appeared before the Intelligence Officer of Narcotic Control Bureau, Varanasi on 12.11.1999 and gave his reply to the queries of Intelligence Officer regarding purchase and sale of tidigesic injection. On enquiry, it

was revealed that the opposite party was the working partner of Messrs Oswal Associates and was purchasing tidigesic injection manufactured by Sun Pharmaceutical Industries Ltd. from Messrs Aditya Medisales Ltd. (C and F Agent), Das Associates, Singer Singh Estate Building, Lalbhagh, Lucknow and selling the tidigesic injections to the persons mentioned in the sale invoices. The above information was verified by the Intelligence Officer and statements of persons to whom sales were made were recorded, who denied to have received such injections from Messrs Oswal Associates. The opposite party thus deliberately violated the mandatory provisions contained in Rule 67 of N.D.P.S. Rules. He was accordingly, arrested and produced before the Magistrate on 17.5.2000. On 19.5.2000, he moved application for bail and the same was allowed by the learned special Judge, N.D.P.S. Act on 17.6.2000.

3. The applicant then moved this application on 24.7.2000 for cancellation of bail on the ground that the bail was wrongly granted ignoring the provisions of Section 37 of N.D.P.S. Act and Rule 67 of N.D.P.S. Rules.

4. Heard the learned Counsel for the applicant (N.C.B.) and the learned Counsel for the opposite party and perused the record.

5. Learned Counsel for the applicant contended that from the statement of the opposite party as well as the persons to whom he allegedly sent the consignments through invoices referred to in paragraph 5 of the affidavit, it is clear that the opposite party violated the mandatory provisions of Rule 67 of N.D.P.S. Rules, but the learned special Judge has wrongly held that there were reasonable grounds for believing that he was not guilty of such offence and he was not likely to commit any offence while on bail.

6. He further contended that the finding recorded by the trial court that no prima facie case was made out against the opposite party would affect the trial of the opposite party.

7. On the other hand, the learned Counsel for the opposite party contended that as required by Section 37 of N.D.P.S. Act, the trial court, has to record a finding that he was satisfied that there were reasonable grounds for believing that opposite party was not guilty of such offence and that he was not likely to commit any offence while on bail. That it was mandatory to record such finding before granting bail as required by Section 37 of N.D.P.S. Act. He further contended that there is no question of violation of Rule 67 of N.D.P.S. Rules and that the applicant had not shown any sufficient ground for cancellation of the bail granted to the opposite party.

8. It may be mentioned at the very outset that application for cancellation of bail has been moved u/s 439(2), Criminal Procedure Code As held by the Apex Court in Bhugdomal Gangaram and Ors. v. State of Gujarat 1984 SCC 67, very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the

bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of the Apex Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

9. In *Dolat Ram and Ors. v. State of Haryana* 1995 ACR 133 (SC) ; 1995 SCC 237, the Apex Court has held as below:

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court, it appears to us, overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

10. The said principle was approved and relied on in another decision of the Apex Court in *Subhendu Mishra v. Subrat Kumar Mishra and Anr.* 2000 SCC 1508.

11. There is nothing in the application to show that after grant of bail, the opposite party made any interference, or attempted 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. There is also nothing on record to show that there is likelihood of absconding of the above accused opposite party or he had ever tampered with the evidence or attempted to tamper with the evidence or harassed or attempted to harass the witnesses. As such grounds, which are to be taken into consideration while cancelling bail have not been established in this case.

12. Learned Counsel for the applicant contended that the trial court has wrongly held that there was no violation of Rule 67 as the statement of the opposite party and other witnesses clearly indicated about violation of said Rule. May it be so. Without making any comment on the merit of the case, it will suffice to say that this

Court is not considering the case of the opposite party for grant of bail, but is considering the cancellation of bail already granted to him and for making out a case for cancellation of bail, nothing substantial has been shown.

13. It was further contended that the finding of the learned special Judge that prima facie the opposite party had not committed any offence would affect the trial. This apprehension of the learned Counsel for the applicant is without any basis, firstly ; because the finding recorded in the bail application is not binding on the trial court in deciding the case of opposite party on the basis of evidence and secondly ; the learned special Judge had held that prima facie violation of Rule 67 has not been done by the opposite party, as it was essential requirement of Section 37 because without such finding, the trial court had no jurisdiction to grant bail.

14. In this way, the applicant has not made out any case for cancellation of bail already granted to the opposite party. The application has no force and deserves rejection.

15. The application is, accordingly, rejected.