

(2017) 01 CHH CK 0079
CHHATTISGARH HIGH COURT
Case No: 371 of 2016

Puran Bhagat Panjwani

APPELLANT

Vs

Anil Kumar Jain & ORS.

RESPONDENT

Date of Decision: Jan. 27, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 439(1), Section 439(2), Section 437(1), Section 437(2), Section 437(3), Section 437(5) - Special powers of High Court or Court of Session regarding bail - Special powers of High Court or Court of Session regarding bail - When bail may be taken in case of non-bailable offence - When bail may be taken in case of non-bailable offence - When bail may be taken in case of non-bailable offence - When bail may be taken in case of non-bailable offence
- Indian Penal Code, 1860, Section 34, Section 323, Section 506, Section 294 - Acts done by several persons in furtherance of common intention - Punishment for voluntarily causing hurt - Punishment for criminal intimidation - Obscene acts and song.-Whoever, to the annoyance of others

Hon'ble Judges: Sanjay K. Agrawal

Bench: Single Bench

Advocate: Shailesh Ahuja, P.R. Patankar, Dheeraj Kumar Wankhede

Judgement

1. The petitioner/complainant has filed this application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail granted to respondent No.1 in M.Cr.C. No.4695/2015 on 10.09.2015 and to respondent No.2 in M.Cr.C. No.5021/2015 on 22.09.2015 on the ground that they are misusing the privilege of bail granted to them which is in violation of Section 437(3) of the Code of Criminal Procedure, 1973.

2. Dr. Shailesh Ahuja, learned counsel for petitioner, would submit that respondents No.1 & 2 are misusing the privilege of bail granted to them on 10.09.2015 and

22.09.2015, respectively, as on the complaint of the petitioner on 15.01.2016, F.I.R. in Crime No.39/16 against Anil Kumar Jain and Sagar Jain under Sections 294 and 506 read with Section 34 of the IPC was registered at Mohan Nagar Police Station, Durg and also on 23.01.2006 F.I.R. in Crime No.41/16 against Anil Kumar Jain and others under Sections 294, 506 and 323 read with Section 34 IPC was registered and four F.I.Rs. have also been lodged against them on various dates, therefore it is a clear case where the bail granted to them deserves to be cancelled, in the interest of justice.

3. Mr. P.R. Patankar, learned counsel appearing for respondents No.1 & 2, would submit that the petitioner is not citizen of India and is citizen of Pakistan. Copy of his Form 5 (Annexure R-6) clearly shows that he was born in Pakistan and is citizen of Pakistan. Further, his statement (Annexure R-8) recorded before the J.M.F.C. Durg in paragraph 10 clearly proves that he is not having citizenship of India and is having citizenship of Pakistan and has prepared forged Passport for which also an F.I.R. has been registered against him under the Passport Act vide Annexure R-9. He would further submit that P.S. City Kotwali has investigated the matter and has submitted a report before the J.M.F.C. Durg on 28.11.2016 in which it is clearly mentioned in paragraph 2 that petitioner Puran Bhagat Panjwani is doing all acts for the purpose of cancellation of bail granted to respondents No.1 & 2 and certified copy of report dated 28.11.2016 has been filed to support the plea.

4. Mr. Dheeraj Kumar Wankhede, learned Government Advocate appearing on behalf of the State/respondent No.3, would submit that on complaint of the petitioner, two criminal cases for offence under Sections 294, 506 and 34 of the IPC have been registered against respondents No.1 and 2 and they have been chargesheeted before the jurisdictional criminal court and trial is pending consideration. He would further submit that on the complaint of respondents No.1 & 2 offence under Sections 294, 506 read with 34 IPC have been registered against the petitioner in two cases and he has also been charge-sheeted for the above-stated offences and on 28.11.2016, Station House Officer, P.S. Kotwali Durg has found the complaint filed by the petitioner against respondents No.1 & 2 false and frivolous.

5. I have heard learned counsel for the parties and also considered their rival submissions made therein and gone through the record with utmost circumspection.

6. Section 439(2) of the Cr.P.C. provides as under:-

"439. Special powers of High Court or Court of Session regarding bail:-

(1) *****

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

7. It is now quite well settled that rejection of bail stands on one footing, but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to and the grounds for cancellation of bail under Sections 437(5) and 439(2) of the CrPC are identical, namely, bail granted under Sections 437(1) or (2) or 439(1) of the CrPC can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity; (ii) interferes with the course of investigation; (iii) attempts to tamper with evidence or witnesses; (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation; (v) there is likelihood of his fleeing to another country; (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency; (vii) attempts to place himself beyond the reach of his survey, etc.

8. In a decision in the matter of Dolat Ram and others v. State of Haryana (1995) 1 SCC 349 , Their Lordships of the Supreme Court while highlighting the factors for consideration of bail, have held as under:-

"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. 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."

9. Further, Their Lordships of the Supreme Court in the case of *Puran v. Rambilas* and another AIR 2001 SC 2023 , has held as under:-

"9.One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected."

10. Likewise, in a decision in the matter of *Ram Govind Upadhyay v. Sudarshan Singh and others* AIR 2002 SC 1475 , Their Lordships of the Supreme Court have held as under:-

"8. While it is true that availability of over whelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. The contextual facts depict and as noticed hereinbefore that the incident occurred at the time when the election was going on and the murder was said to have been committed in the broad day light by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave having regard to the same, the High Court on 29th August, 2000 refused the application for bail.

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 nonconsideration 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. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504, IPC in which the charge-sheet have already been issued - the Court ought to take note of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not de hors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter

of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302, IPC having the punishment of death or life imprisonment - it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature."

11. Bearing in mind the principles of law laid down in the aforesaid cases if the facts of the case are examined, it is quite vivid that after grant of bail on the complaint of the petitioner two criminal cases for the offence under Sections 294, 506 and 34 of the IPC have been registered against respondents No.1 & 2 and they have been charge-sheeted. Likewise on the complaint of respondents No.1 & 2, two criminal cases have been registered against the petitioner under Sections 294 and 506 of the IPC and the petitioner as well as respondents No.1 & 2 both are facing criminal trial before the jurisdictional criminal court. However, the report submitted by the Station House Officer, Durg dated 28.11.2016 in the Court of J.M.F.C. is quite pertinent and states as under:-

"VERNACULAR MATTER OMITTED"

12. Thus, in light of the facts and circumstances of the case, case and counter case have been lodged by the petitioner as well as respondents No.1 & 2 against each other and the nature of report submitted by the Station House Officer noticed herein-above clearly indicating that the petitioner is trying to implicate respondents No.1 and 2 falsely to get the order of bail granted to them cancelled, it cannot be held that the petitioner has been able to bring his case within the parameters laid down by the Supreme Court in the matters of Dolat Ram (supra) Puran (supra) and Ram Govind Upadhyay (supra), as such there is no material to invoke jurisdiction of this Court under Section 439(2) of the Cr.P.C. Accordingly, the application filed under Section 439(2) of the Cr.P.C. deserves to be and is rejected.