

01/04/2015

Shri Vivek Mishra, Advocate for the petitioners.

Shri Vijay Sundaram, Panel Lawyer for the respondent No.1/State.

Shri Atul Gupta, Advocate for the respondent No.2.

Present criminal revision filed under Section 397 read Section 401 of the Cr.P.C. assails the order dated 14.01.2015 passed by the Second Additional Sessions Judge, Morena cancelling the bail orders granted earlier in favour of the petitioners no.1 & 2 by this Court vide order dated 2.8.2013 in M.Cr.C. No. 5676/2013 and dated 7.10. 2013 in M.Cr.C. No. 8093/2013 respectively, and bail order dated 20.08.2013, 29.08.2013 & 29.08.2013 granted by the trial court in favour of petitioners No.3 to 6.

2. Learned counsel for the rival parties are heard on the question of admission.

3. The principal contention of the learned counsel for the petitioners is two fold.

1. Impugned order so far as it relates to the petitioner No.1 Balveer and petitioner No.2 Ranveer is bad in law as the bail granted in favour of the petitioner by the High court has been cancelled by Subordinate Court (Second Additional Judge to the Court of Session Judge, Morena).

2. That qua all petitioners, subsequent offence bearing Crime No.552/2014 at Police Station Civil Line,

2 **Balveer Jatav & Ors. v. State of M.P.& Ors.** Cr.R.No.100/2015

Morena has been registered against all the six petitioners which is raised as ground for cancellation of bail, but the said subsequent offence has not resulted into framing of charges and therefore, in terms of judgment of Rajasthan High Court **State of Rajasthan v. Mubin** reported in **2011 Cr.L.J. 3850** it can not be said that the petitioners have committed another offence to mature the cause for breach of any of the conditions of bail order granted earlier by the High Court.

4. Learned counsel for the petitioners has placed reliance on the decision of the Apex Court in the case of **Vikramjit Singh v. State of MP** reported in **1992 J.L.J 229**.

5. On the other hand, learned counsel for the respondents placed reliance on the decision of the Apex court in the case of **P.K.Shaji v. State of Kerala** reported in **2005(4) Crimes 184 SC** to contend that the bail granted by the superior Court with liberty to the subordinate court to recall the same in case of breach of any of the conditions subject to which bail was granted can very well be cancelled u/S.439(2), Cr.P.C. by the subordinate court to whom the liberty is granted. Reliance is further placed by the learned counsel for the respondent/State as well as the victim upon the decisions of the Apex Court in the cases of **Prakash Kadam & etc v.**

**Ramprasad Vishwanath Gupta and Anr.** reported in **AIR 2011 SC 1945.**

6. As regards the first ground (Supra), it is indisputable from the reading of Section 439(2) Cr.P.C. that the power of cancellation of the bail granted under Section 439(1) Cr.P.C. is vested with the High Court and as well as the Sessions Court. This statutory provision is silent as to the aspect that the power of cancellation of bail u/S. 439(2) Cr.P.C. can be exercised only by the same Court which granted the bail under Section 439(1) Cr.P.C.. This Court is of the considered view that this silence can not be deemed to imply that an order of bail passed by superior court can be cancelled by a Subordinate Court. Unless the superior Court while passing the order of bail expressly empowers/grants liberty to the Subordinate Court to cancel the bail on arising of certain eventuality, the trial court cannot invoke Sec.439(2) Cr.P.C. to recall/cancel bail granted by superior court u/S. 439(1) Cr.P.C..

7. Admittedly, the order of grant of bail in favour of the petitioners No.1 Balveer and 2 Ranveer in shape of M.Cr.C.No.5676/2013 (Balveer vs. State of M.P.) and M.Cr.C.No.8093/2013 (Ranveer v. State of M.P.) was passed by the High Court.

8. It is further not disputed that the registration of

subsequent offence bearing Crime No.552/2014 under Sections 307, 147, 148, 149, 294 and 506 of IPC against all the petitioners, amounts to breach of one of the terms and conditions subject to which bail was granted by the High Court, has been made the sole basis for passing the impugned order for cancellation of bail.

9. Considering the first ground, this Court is of the view that reason may have existed giving rise to breach of any of the terms and conditions subject to which the High Court granted bail to the petitioners, but that by itself can not vest the subordinate court with the authority to cancel the bail granted by the High Court expressly empowered by the High Court in that regard.

10. A bare perusal of the order of grant of bail by this Court in favour of the petitioners No.1 and 2 passed in M.Cr.C.No.5676/2013 on 02.08.2013 and M.Cr.C.No. 8093/2013 on 07.10.2013 discloses absence of express empowerment in favour of the Subordinate Courts to cancel the bail on breach of one of the conditions.

11. Another reason for taking this view is that if a Sub-Ordinate Court is permitted to cancel orders passed by the High Court then it would lead to disturbance in the judicial discipline which is necessary to be maintained the hierarchical set up of Courts established by law. Anarchy would be let

loose, if the court of superior jurisdiction finds its orders nullified by a Court of inferior jurisdiction.

12. However, the only exception to this rule is the expressed vesting of power by the superior Court to the inferior Court to unsettle the orders passed by the High Court by arising of certain eventuality.

13. Thus, this Court has no hesitation to hold that so far as petitioners' no. 1 and 2 are concerned their orders of bail passed by this Court in MCrC No. 5476/2013 and in M.Cr.C No. 8093/2013 could not have been canceled by the impugned order. Thus to that extent impugned order is unsustainable.

14. Taking up the ground no. 2, it is seen from the decision of the Division Bench of Rajasthan High Court in case of **State of Rajasthan (supra)** that while interpreting the term "committing of an offence" for deciding as to whether bailed out accused on commission of subsequent offence has rendered himself liable for cancellation of bail or not on commission of subsequent offense, the Rajasthan High Court held that for the purpose of maturing of a cause for successfully invoking of power of cancellation of bail u/S. 439 (2) mere registration of offence subsequent to the grant of bail is not enough unless the said offence crystallizes into framing of charges. The relevant extract of para 9 and 10 of

the said decision of the Rajasthan High Court are profitably reproduced below:-

*An accused can be said to have committed an offence only when Court, after considering the material before it and hearing the parties, forms an opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of framing of charge when the concerning Court forms an opinion for presuming that the accused has committed the offence and not at any earlier point of time.*

*In such view of the matter, merely on filing of first information reports against accused applicants, it cannot be said that they had committed any offence during period of bail. Consequently, they did not breach conditions so imposed by Court while granting order of bail. Thus, issuance of warrant of arrest against accused persons on ground of breach of conditions and order for taking accused persons, in custody, not proper. Accused held entitled to bail.*

**(Paras 9, 10)**

15. From the above it is evident that unless charges are framed in an offence committed by a person after he has been bailed out in an earlier offence, ground for successfully invoking Sec.439(2) of Cr.P.C. are not made out.

16. In the instant case, it is admitted by rival parties that when the impugned order was passed, the subsequent offence ie. Crime No. 552/2014 registered on 25.10. 2014 had not matured into framing of charge against any of the petitioners. Thus this court is of the considered view that

mere registration of an offence without framing of charge against the petitioners could not have lead to cancellation of bail granted earlier. Thus impugned order is further vitiated on this count also.

17. The decision of the Apex Court in the case of **Vikram Jit Singh (supra)** lays down that the bail granted by a judge cannot be canceled by another bench of the same High Court and therefore is of no avail to the respondents in the attending facts and circumstances of this case. Moreso the decision of **Prakash Kadam (supra)** of the Apex Court is also of no assistance to the respondents since it lays down scope, ambit and extent of the power of cancellation of bail u/S. 439 (2) without touching upon the issue involved herein.

18. Consequently, this criminal revision having merit is allowed in the following terms;

1. Impugned order dated 14.1. 2015 is setaside to the extent it cancels the bail granted to the petitioners no. 1 and 2 by this court and also to the extent it cancels bail of the the petitioners no. 3 to 6 by the trial court;
2. Bail orders granted in favour of the petitioners by this court on 2.8. 2013 in M.Cr.C. No. 5676/2013 and M.Cr.C. No. 8093/2013 on 7.10. 2013 shall continue to be in operation;
3. Bail orders granted by the trial court in favour of petitioners no. 3 to 6 are restored;

**8 Balveer Jatav & Ors. v. State of M.P.& Ors. Cr.R.No.100/2015**

4. This order shall not come in way of the State and victim to seek cancellation of bail of the petitioners before the appropriate forum as and when charges are framed, in crime No. 552/2014 or any other subsequent offence.

5. No cost.

(Sheel Nagu)  
Judge

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