

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 18th OF NOVEMBER, 2022**

**MISCELLANEOUS CRIMINAL CASE NO. 46863 OF 2022**

**BETWEEN:-**

**GIRRAJ SHARMA S/O SHRI  
BALMUKUND SHARMA, R/O VILLAGE  
PIDAVALI, THANA CIVIL LINE, MORENA  
TAHSIL AND DISTRICT MORENA  
(MADHYA PRADESH)**

**.....APPLICANT**

***(BY SHRI DHARMENDRA RISHISHWAR – ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH  
THROUGH POLICE STATION –  
KOTWALI DISTRICT GUNA (MADHYA  
PRADESH)**
- 2. SAURABH SHARMA S/O RAMSUNDAR  
SHARMA, AGE 20 YEARS, R/O VILLAGE  
PIDAVALI, THANA CIVIL LINE, MORENA  
TAHSIL MORENA, DISTRICT MORENA  
(MADHYA PRADESH)**

**.....RESPONDENTS**

**(SMT. KALPANA PARMAR – PANEL LAWYER FOR  
STATE/RESPONDENT NO. 1)**

**(SHRI ANKUR MAHESHWARI – ADVOCATE FOR RESPONDENT  
NO. 2)**

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*This application coming on for hearing this day, the Court passed  
the following:*

**ORDER**

This application under Section 439(2) of CrPC has been filed for cancellation of bail to the respondent No. 2 which was granted to him by this Court by order dated 21.07.2022 passed in M.Cr.C. No.35904/2022.

Facts necessary for disposal of present application in short are that respondent No. 2 is facing trial for offence under Sections 305, 354-D, 34 of IPC and Sections 11, 12 of POCSO Act in Crime No. 116/2021. The allegations against the respondent No. 2 are that the respondent No. 2 and co-accused Virendra @ Lalu Sharma and his Bhabhi Smt. Rubi Sharma were pressurizing the minor deceased to marry respondent No. 2. It was also alleged that respondent No. 2 used to talk to the deceased and he too was pressurizing the deceased that in case, if she does not agree for marriage, then he would upload her recorded conversation as well as photographs with the respondent No. 2. It is submitted that ultimately, the minor prosecutrix committed suicide and the aforesaid offence was registered. Since the respondent No. 2 was in jail from 20.03.2021, therefore, by order dated 21.07.2022 he was granted bail.

It is submitted by the counsel for the applicant that after the release of the respondent No. 2 on bail, he and co-accused Lalu Sharma @ Virendra are constantly pressurizing the applicant to enter into a compromise and, accordingly, on 05.08.2022 at about 10 in the night, they both came in front of house of the applicant and started pressurizing him to enter into compromise and when it was refused by the applicant, then respondent No. 2 and the co-accused Lalu @ Virendra Sharma started abusing him and the co-accused Lalu @ Virendra Sharma fired two gunshots in air and threatened that today he has fired in air and in

case he does not agree for compromise, then the applicant and his family members would be killed. Accordingly, the police has registered Crime No.818/2022 for offence under Sections 195-A, 254, 336, 506, 34 of IPC. It is further submitted that respondent No. 2 after getting released on bail had made one video viral and was using abusive language and was alleging that he has stayed in a jail for one year and three months and nobody could cause any loss to him and now he would go to jail after killing lot of persons. The applicant has also made a complaint to CSP, Morena in this regard. It is also the case of the applicant that respondent No. 2 is a person of criminal in nature and one offence, i.e., Crime No.240/2020 has been registered against him in Police Station Civil Line, District Morena for offence under Sections 323, 324, 504, 34 of IPC. It is submitted that the trial arising out of Crime No.116/2021 is going on and all the material witnesses have not been examined so far. Mahendra was given up by the prosecution, but thereafter, an application under Section 311 of CrPC was filed and the same has been allowed and Mahendra has not been examined so far. Respondent No. 2 and the co-accused are pressurizing the applicant and his family members to enter into compromise.

Respondent No. 2 has filed his reply and stated that on 10.09.2022 the applicant has lodged a false FIR in Crime No.818/2022 in Police Station Civil Line District Morena for offence under Sections 195-A, 294, 536, 506 and 34 of IPC. It is further submitted that mere lodging of FIR does not mean the commission of offence and unless and until, charges are framed, it cannot be said that the allegations made in the FIR are *prima facie* true. It is further submitted that the material witnesses

have already been examined in trial arising out of Crime No.116/2021. It is submitted by the counsel for the respondent No. 2 that even prior to lodging a false FIR in Crime No.818/2022, respondent No. 2 had already given representation to the police authorities, in which he had specifically alleged that the complainant and his family members are giving threats to the respondent No. 2 and they are threatening that they would rope him in false cases so that somehow he may be sent behind the bar. Since the complaints were made by the respondent No. 2 prior to lodging FIR in question, i.e., Crime No.818/2022, therefore, the subsequent FIR is a product of malafide intention so that the respondent No. 2 can be sent behind the bar. It is also submitted that so far as the video which went viral, respondent No. 2 has not stated anything against the complainant and his family members and on the strength of the video, the bail order of the respondent No. 2 may not be cancelled.

Heard the learned counsel for the parties.

Since one of the ground raised by the respondent No. 2 is that even prior to lodging of FIR in Crime No. 818/2022 he had given certain applications / complaints to the different police authorities of District Morena with regard to possibility of his false implication, therefore, the State counsel was directed to call for the inward and outward register of the concerning police station / office, in order to verify as to whether respondent No. 2 had ever made any complaint to the police authorities or not and, accordingly, the case was passed over.

The case was again taken up at 04:30 PM. Shri Atul Singh, Dy. S.P., Morena appeared along with inward and outward register and submitted that the complaints were made by the respondent No. 2

expressing his apprehension of false implication and, accordingly, an enquiry was conducted on those complaints and every complaint made by respondent No.2 was found to be false.

In view of the specific submission made by Shri Atul Singh, it is clear that after getting released on bail, respondent No. 2 started making false complaints against the applicant and his family members. If the statement of Shri Atul Singh, Dy. S.P., Morena, is considered in the light of the allegations made in the FIR in Crime No.818/2022, then it is clear that there are specific allegations against the respondent No. 2 as well as co-accused Lalu @ Virendra that, on 05.08.2022 both of them went to house of the applicant at about 10 in the night and started abusing the applicant and his family members and also threatened that in case, if they do not enter into compromise, then they would be killed. In order to create fear in the mind of the witnesses, it was alleged in the FIR that the co-accused Lalu @ Virendra had also fired two gunshots in air with clear threatening that in case, if the applicant and his family members refuse to enter into compromise, then they would be killed.

It is contended by the counsel for the respondent No. 2 that he has filed copies of the deposition-sheet of some of the witnesses which clearly indicates that those witnesses were examined much prior to 05.08.2022, therefore, now there is no possibility of threatening or making an attempt to win over the witnesses. Thus, the allegations made against the respondent No. 2 with regard to extending threat is false.

Considered the submissions made by the counsel for the respondent No. 2.

On the face of the arguments of the counsel for the respondent No.

2, it appeared to be very convincing but on a deeper scrutiny, the same is found to be misconceived. Prosecution witnesses PW-1 and PW-2 were examined on 13.12.2021. PW-3 was examined on 04.01.2022. PW-4 was examined on 13.06.2022. PW-5 and PW-6 were examined on 14.06.2022. PW-7 and PW-8 were examined on 20.07.2022. Respondent No. 2 was granted bail by order dated 21.07.2022, that means when the prosecution witnesses No. 1 to 8 were examined, respondent No. 2 was in jail. Immediately, after coming out of the jail, i.e., after 21.07.2022 the allegations are that on 05.08.2022, he and co-accused Virendra @ Lalu Sharma went to the house of the applicant / complainant and not only, threatened him and his family members, but co-accused Virendra @ Lalu Sharma also fired two gunshots in air in order to create fear in the mind of the witnesses.

Now the only question for consideration is as to whether threat to enter into compromise after the examination of the witnesses will have any legal consequences or not.

It is true that neither the offence under Section 305 of IPC is compoundable nor offence under Section 354-D of IPC is compoundable. Similarly, offence under Sections 11 and 12 of the POCSO Act are also not compoundable. However, this Court cannot lose sight of the fact that even in a case of non-compoundable offence, the High Court in the light of the judgments passed by the Supreme Court in the case of **Gian Singh Vs. State of Punjab** reported in (2012) 10 SCC 303 and **Narinder Singh and others Vs. State of Punjab** reported in (2014) 6 SCC 466 can quash the proceedings. Even otherwise, compromise in a non-compoundable offence can always be considered while assessing the quantum of

sentence. Thus, it cannot be said that merely because witnesses have already been examined prior to release of the respondent No. 2, he cannot pressurize them to enter into compromise. Further, one of the co-accused is still in jail and her bail application has been dismissed. It is the case of the applicant that earlier Mahendra was given up by the prosecution, but subsequently an application under Section 311 of CrPC was filed which has been allowed and Mahendra has not been examined so far, therefore, it is the case of the applicant that even today, respondent No. 2 has every reason to pressurize the witnesses to turn hostile. Thus, it is held that even today respondent No. 2 has every reason to pressurize / threat to the witnesses. The counsel for the respondent No.2 has relied upon the judgment passed in the case of **Bhuri Bai Vs. State of M.P. and others by judgment dated 11.11.2022 passed in Criminal Appeal No.1972/2022** in which the Supreme Court has held as under:-

**20.** It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial

Court in its order granting bail.

However, the facts of the present case are distinguishable and application for cancellation has been moved on the ground of misuse of liberty.

The Supreme Court in the case of **Mandata Singh v. State of Rajasthan and another** reported in **(2004) 9 SCC 428** has held as under:-

5. The respondent State filed Crl. MP No. 714 of 2004 in the instant special leave petition for cancellation of the temporary bail given to the petitioner on the ground that he had misused the liberty granted to him. It was alleged that he had grossly abused his liberty by entering in a conspiracy and getting one Rajendra Kumar Jain assaulted who had bought shops/properties from the petitioner and his family. In this regard FIR No. 451 of 2003 dated 27-11-2003 under Sections 341, 323, 308 and 120-B IPC has been registered at Police Station Bajaj Nagar, Jaipur. As per medical report, apart from the simple injury Rajendra Kumar Jain had received two grievous injuries as well.

6. Crl. MP No. 714 of 2004 is taken up with the special leave petition for disposal.

7. On the asking of the Court the learned counsel for the respondent State produced the case diaries in FIR No. 451 of 2003. On a perusal of the contents of FIR No. 451 of 2003 and the extracts from the case diaries, we are prima facie satisfied that the petitioner has misused the liberty granted to him by this Court on 6-10-2003. Without expressing any opinion on the merits we deem it appropriate to cancel the temporary bail granted to the petitioner on 6-10-2003. He is directed to surrender to the authorities concerned forthwith.

8. Accordingly, Crl. MP No. 714 of 2004 is allowed and temporary bail granted to the petitioner is cancelled. The petitioner shall be rearrested forthwith. As a consequence thereof the special leave petitions are

dismissed.

The Supreme Court in the case of **Jayaben Vs. Tejas Kanubhai Zala and another** reported in (2022) 3 SCC 230 has held that there are different considerations while considering the application for cancellation of bail for breach of conditions etc. and on the ground of misuse of liberty, therefore, it is clear that the bail granted to the accused can be cancelled either on the ground of misuse of liberty / breach of condition or bail has been granted by ignoring material facts.

In the present case, ground for cancellation of bail is that the respondent No. 2 has misused his liberty / breached the condition of bail.

As already held, not only the respondent No. 2 is alleged to have threatened the applicant by accompanying co-accused Virendra @ Lalu Sharma who fired two gunshots in air as well as by extending a threat to enter into compromise, but the respondent No. 2 and the co-accused have gone to the extent of making false complaint against the complainant party / applicant and his family members. If both the situations are considered together, then it is clear that respondent No. 2 has misused his liberty granted to him by order dated 21.07.2022 passed in M.Cr.C. No.35904/2022.

There is one more aspect of the matter. It is the case of the applicant that certain video of the respondent No. 2 went viral in which he was using objectionable words. Although the applicant has not filed a compact disc or pen-drive containing the said video, but the respondent No. 2 in his reply has admitted that some video went viral, but he claimed that he has not used any objectionable word against the complainant and his family members.

Under these circumstances, this Court is of the considered opinion that bail granted to the respondent No. 2 by order dated 21.07.2022 in M.Cr.C. No.35904/2022 is liable to be cancelled / recalled and, accordingly, it is hereby **recalled**.

Respondent No. 2 is directed to surrender before the Trial Court within a period of one month from today.

The application succeeds and is hereby **allowed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

Abhi