IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 5th OF AUGUST, 2025

MISC. CRIMINAL CASE No. 198 of 2024

THE STATE OF MADHYA PRADESH

Versus

VIVEK

Appearance:

Shri A P S Tomar - Public Prosecutor for State.

ORDER

The present application under Section 439 (2) of Cr.P.C. has been filed for cancellation of bail granted to the respondent by the Coordinate Bench of this Court vide order dated 28.04.2023 passed in M.Cr.C. No.12669/2023.

Learned counsel for the applicant argued that after getting the benefit of bail, respondent breached the conditions mentioned in Section 437 (3) of Cr.P.C as an FIR has been lodged against him bearing Crime No. 182/2023 at Police Station Bahadurpur District Ashoknagar for offence under 363of IPC. Under these circumstances, since the respondent has breached the conditions mentioned in Section 437 (3) of Cr.P.C., therefore, the present application under Section 439(2) of Cr.P.C. be allowed and bail granted to respondent be canceled.

Heard learned counsel for the State and perused the material available on record.

The grounds on which bail can be cancelled is no more res integra. The Hon'ble Supreme Court in case the case of **Dolat Ram Vs. State of Haryana [(1995) 1 SCC 349 : 1995 SCC (Cri) 237]** has held as under:

> *"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"*

In the case of **Bhuri Bai vs. The State of Madhya Pradesh: 2022 LiveLaw (SC) 956**, the Apex Court has held as under:

> *"19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439 (2) CrPC.*
> *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."

In the case of **State of Rajasthan Vs. Mubin and Ors.; 2011 Crl. L.J. 3850**, the Court has held as under:-

"9. The primary question which is to be considered by us in this case is a s to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other words, can it be said that a person has committed an offence when a first information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be leveled against the accused person at the stage. As a matter of fact, the question as to whether an offence has been prim-facie committed or not is considered when an opinion is formed by the Court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provisions under Section 228, Cr. P.C. and the terminology used at the stages prior to it. The relevant provisions of the Code of criminal procedure is as under:-
"228. – Framing of charge – (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –
(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First Class, on such date as he deems fit, and thereupon such Magistrate) shall try the of ence i n accordance with the procedure for the trial of warrant-cases instituted on a police report;
(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused." In other words, an accused can be said to have committed an offence only when a 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 earlier point of time. The word 'commit' as per Johnson Dictionary means 'to be guilty of a crime."

While examining this case, in the light of the abovementioned settled principle of law, it is found that there is nothing on record to show that after registration of FIR, charge-sheet has been filed against respondent and cognizance has been taken against him. Merely lodging of FIR does not amount to commission of offence, it is only the acquisition / allegation. An accused can be said to have committed the offence only when the Court after considering the material before it and hearing the parties forms an opinion to that effect at the time of framing of charge.

In view of the above discussion and in the light of the settled principle of law, as discussed above, there is no reason to recall the order granting bail to respondent.

Consequently, present application seeking cancellation of bail granted to respondent vide impugned order, sans merits and is hereby **dismissed.**

(MILIND RAMESH PHADKE)
JUDGE

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