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

**BEFORE  
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**MISC. CRIMINAL CASE No. 35605 of 2023**

**BETWEEN:-**

**SUNNY WADHWANI S/O SHRI MURLIDHAR  
WADHWANI,  
AGED ABOUT 40 YEARS,  
OCCUPATION: BUSINESS  
R/O. 9-A RADHA NAGAR, INDORE  
(MADHYA PRADESH)**

**.....APPLICANT**

***(SHRI HARSHWARDHAN SHARMA - ADVOCATE)***

**AND**

- 1. MAYANK S/O JAWAHAR CHANDWANI  
AGED ABOUT 34 YEARS,  
OCCUPATION: BUSINESS  
R/O. D-601, SAHAJ RESIDENCY, SCHEME NO.103,  
RAJENDRA NAGAR, INDORE  
(MADHYA PRADESH)**
- 2. STATE OF MADHYA PRADESH  
THROUGH STATION HOUSE OFFICER  
P.S. RAJENDRA NAGAR,  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(MS. ANITA SINGH - PANEL LAWYER FOR RES./STATE)  
(SHRI LUCKY BIJOLIA - ADVOCATE /RESPONDENT [R-1].)***

.....  
***Reserved on: 13.12.2023***

***Delivered on: 19.12.2023***  
.....

*This application having been heard and reserved for orders,  
coming on for pronouncement this day, the court passed the following:*

**ORDER**

Heard and perused the record.

This order shall govern the disposal of the applicant's application filed under Section 439(2) of Cr.P.C for cancellation of bail.

2 . The present application has been filed under Section 439(2) of Cr.P.C. being aggrieved by the order dated 03.08.2023 passed by Eighth Additional Sessions & Special Judge (OAW), Indore in ST No.436/2023 in connection with FIR Number/Crime No.272/2023 of Police Station Rajendra Nagar, District Indore for the offence punishable under section 304-B of IPC, 1860 and Section 3&4 of Dowry Prohibition Act, 1961, whereby respondent No.1 has been granted bail.

3. In brief, the contentions of the application are that the respondent no.1 is the husband of the deceased, and due to his cruelty and harassment the deceased committed suicide. Hence, the police has registered the FIR against the respondent and co-accused. Learned counsel for the applicant has submitted that the learned trial Court by its impugned order, ignoring the legal pronouncements and other facts & circumstances of the case, granted bail to respondent no.1 on the basis of parity with co-accused Jawahar S/o Goral Das Chandawani, whereas the bail of co-accused Jawahar was granted on the very specific ground that there are only general and omnibus allegations against him. It is also submitted that the main allegations are against respondent no.1, the husband of the deceased, and this Court has also assumed him as the main accused.

4. Counsel further contended that in the order dated 24.0.2023 passed in M.Cr.C. No.30234/2023, the primary allegations are directly against respondent no.1, hence there is no ground of parity. It is also submitted that after being released from the jail the respondent would try to influence the trial by

threatening the present applicant and would misuse his liberty. In view of the aforesaid, it is a fit case for cancellation of bail, therefore, counsel requested to set aside the bail order in the interest of justice.

5. Learned counsel appearing on behalf of respondent no.2 opposing the contentions of the counsel for the petitioner submitted that the bail order cannot be cancelled only on superficial and mechanical reasons and there should be some specific grounds to cancel the bail application. Respondent No.2 has neither misused the liberty nor tried to influence the prosecution witnesses. He has been granted bail by the trial Court not only on the basis of parity but also on other grounds. Therefore, counsel prayed for rejection of the present application.

6. In the backdrop of the aforesaid pleadings and rival contentions the question for determination is as to whether order passed by the learned trial Court regarding grant of bail is liable to be cancelled.

7. Before dwelling upon the contentions, here it is pertinent to mention that after filing of this application, this Court has called for explanations from the learned Sessions Judge with regard to parity in granting bail. In reply, learned Sessions Judge, explaining her bail order, submitted that in this case after completing investigation, chargesheet was filed, the respondent no.1 has already completed sufficient period in custody and he was not required for any other proceedings after filing of charge sheet, therefore in view of the aforesaid facts and circumstances, bail has been granted in favour of respondent no.1 and as such the bail has not been granted on account of parity.

8. In this regard learned counsel for the applicant has placed reliance upon some of the verdicts of Hon'ble Supreme Court and Co-ordinate Bench

of this Court. He has relied upon the case of *Deepak Yadav vs. State of U.P.* reported as *(2022) 8 SCC 559* wherein it has been held that the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. Section 439 Cr.P.C is the guiding principle for adjudicating a regular bail application wherein the Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.

9. Learned counsel in the course of arguments submitted that there are specific allegations against respondent no.2 for harassing and causing cruelty. Despite that learned trial Court misinterpreted the order of this Court and released the applicant on the basis of parity. Criticizing the impugned order, learned counsel based his arguments on para 33 of the judgment passed in the case of *Deepak Yadav (Supra)*, wherein the Hon'ble Supreme Court has held as under:-

31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

- d) Where bail has been granted on untenable grounds.
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

10. So also paragraphs 39 to 42 of the aforesaid judgment, are relevant to quote here under:-

"37. There is certainly **no straight jacket formula which exists for courts to assess an application for grant or rejection of bail** but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. This Court does not, normally interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with basic principles laid down in a catena of judgments by this Court.

38. However having said that, in the case at hand, it is manifestly incorrect on the part of the High Court to have granted bail to the Respondent No.2/Accused without taking into consideration the relevant facts and circumstances and appropriate evidence which proves that the Respondent No.2/Accused has been charged with a serious offence.

39. Grant of bail to the Respondent No.2/Accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. **The High Court has not taken into consideration the criminal history of the Respondent No.2/Accused, nature of crime, material evidences available, involvement of Respondent No.2/Accused in the said crime and recovery of weapon from his possession.**

40. **Having considered the aforesaid facts of the present**

**case** in juxtaposition with the judgments referred to above, we are of the opinion that the impugned order passed by the High Court is not liable to be sustained and is hereby set aside."

11. In view of the aforesaid principles laid down by Hon'ble Apex Court the matter has been examined, in the case of *Deepak Yadav (Supra)*, the crime was registered under Section 302 of IPC and Hon'ble Supreme Court has taken into consideration the nature of crime/ criminal history of the concerning respondent/accused of that case. Whereas in the case at hand **no criminal history** has been shown against respondent no.2 and the gravity of offence committed by the respondent no.2 is also comparatively lesser than that respondent of *Deepak Yadav (Supra)* case.

12. Further considering the reliance placed by learned counsel for the applicant in the case of *Suresh Kumar vs. Rajendra Kukshwah & Anr. (M.Cr.C. No.26249/2022)* passed by co-ordinate Bench of this Court, wherein the crime is related to demand of Rs.3.00 lakhs and the deceased has died under suspicious circumstances, by hanging herself within a period of one year and four months of her marriage. The case is related to the grant of **anticipatory bail** whereas this case is related to **regular bail**, hence the factual matrix of the aforesaid case is distinguishable and the applicant cannot be benefitted from that case.

13. Learned counsel has also relied upon another case of cancellation of bail order dated 05.09.2023, passed by co-ordinate Bench of this Court in *Anand Kumar Mishra vs. The State of M.P. and Anr. (M.Cr.C. No.27252/2023)*. This case is in relation with offence under Section 408, 409, 420, 46, 468, 471, 120-B, 34 of IPC, and in this case the embezzlement was made regarding the larger amount i.e. **to the tune of Rs.2,75,12,450/-** which

was overlooked by the trial court, hence the co-ordinate Bench of this Court, after considering the principles settled in the case of *Deepak Yadav (Supra)* allowed the application for cancellation of bail. While the case at hand is not related to offence regarding embezzlement therefore this case is distinguishable from the case of *Anand Kumar Mishra (Supra)*

14. Further taking into consideration, the judgment relied upon by counsel for the applicant passed by Hon'ble Apex Court in the case of *Vipin Kumar Dhir vs. State of Punjab and Ors.* reported as *(2021) 15 SCC 518*, wherein Hon'ble Apex Court cancelled the bail order passed by High Court of Punjab as the principle of parity was not applied in accordance with law. In that case, the allegation made against the accused was materially different and the respondent whose bail was cancelled has remained **absconding for more than two years** without any justifiable reasons, while in the case at hand no such allegation of absconsion has been levelled against the applicant. Hence, the applicant cannot be benefitted by the aforesaid verdict on account of distinguishable facts.

15. Now coming to facts of the present case certainly the bail of co-accused Jawahar, who happens to be father of respondent no.1, was allowed by this Court vide order dated 24.07.2023 passed in M.Cr.C. No.30234/2023 and on that basis learned trial Court has passed the order of the husband, there are some whatsapp messages available on record against the main accused. But now the question is as to whether only on the basis of these WhatsApp messages the order passed by learned trial Court can be cancelled.

16. In the present case, this Court may have a different view regarding grant of bail passed by the trial Court. However, since the trial Court is a Court of fact, the bail order passed by the trial Court cannot be cancelled only on the

basis of the different view of this Court. In criminal jurisprudence, it is time honoured principle that when two views are possible, in which one is in favour of the accused and the second one is against the accused, then the view which is in favour of the accused will be taken into consideration. In the land mark judgment passed by Hon'ble Supreme Court in the case of *State through Delhi vs. Sanjay Gandhi, [AIR 1978 SC 961]* it has been held as under:

" Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case"

17. In the case at hand, a chargesheet has been filed and the accused has completed near about four months in custody. Further, there are no other allegations available against the respondent that he has misused the liberty granted to him or tried to influence the prosecution witnesses, therefore, the bail order passed by the learned trial Court after considering the factual matrix as well as the circumstances of the case, cannot be cancelled.

18. On this aspect it would be relevant to quote the following extract from the case of *Deepak Yadav (Supra)*, which reads as under:-

**C. Cancellation of bail:-**

31. This Court has reiterated in several instances that 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. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

19. In this case where the trial Court, after hearing both the parties, considering the facts and circumstances of the case i.e. the custody period, the

bail order of this Court passed in the case of co-accused Jawahar, granted regular bail to the respondent no.1. The applicant is unable to bring forth any supervening circumstances or extraordinary and overwhelming situations against the respondent no.1/accused. In addition to that, taking the risk of repetition, it is worth mentioning that after passing the impugned bail order on 03.08.2023, nothing can be produced against the applicant with regard to misuse of liberty during the bail period.

20. In view of these facts and circumstances and the law laid down by Hon'ble Apex Court, I do not deem it fit to cancel the bail order dated 03.08.2023 passed by Eighth Additional Sessions and Special Judge, Indore in S.T. No.436/2023.

21. Accordingly, the application under Section 439(2) of CrPC for cancellation of bail is liable to be and is hereby dismissed.

22. A copy of this order be sent to the concerned trial Court for necessary information.

Certified copy, as per Rules.

**(PREM NARAYAN SINGH)**  
**JUDGE**