

(1)

**THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**(Single Bench – Rajendra Mahajan J.)**

**M.Cr.C No.10080/2016**

**1.** Dharmendra Dubey S/o Kanhaiya Lal Dubey aged about 28 years, R/o village Dobhi, Tehsil Tendukheda, Police Station Tendukheda, District Narsinghpur (M.P.).

**2.** Vineet Sudele S/o Sharda Prasad Sudele aged about 40 years R/o village Chawarpatha, Police Station Tendukehda, District Narsinghpur (M.P.)

**Applicants**

**VERSUS**

**1.** The State of Madhya Pradesh through the P.S. Tendukheda, District Narsinghpur (M.P.).

**2.** Prakhar @ Chhotu Sthapak S/o Chandra Kumar Sthapak aged about 30 years R/o near Sansthakrit Pathshala, Pithehara, P.S. and Tehsil Gadarwara, District Narsinghpur (M.P.).

**3.** Ashish Badal S/o Sudarshan Baldal (Bramhan) aged about 26 years R/o Near School, Main Road Umardha, Tehsil and P.S. Badai Bankhedi, District Hoshangabad (M.P.)

**4.** Raja Gujar S/o Sitaram Gujar aged about 30 years R/o Main Road Mandir Ganjai, P.S.

(2)

and Tehsil Sohagpur, District Hoshangabad.

**5.** Sachin Jaat S/o Rajendra Jaat aged about 26 years R/o In front of Primary School Deori Kala P.S. and Tehsil Narsinghpur, District Narsinghpur (M.P.).

**6.** Sahab Pal S/o Girdhar Pal aged about 22 years R/o Saikheda.

**7.** Raja @ Chhotu S/o Akhad Singh Rajpur R/o Near Barak School, Tehsil Udaypura, District Raisen (M.P.).

**8.** Laxmi Prasad S/o Dalchandra Yadav aged about 30 years R/o Pithera, P.S. Gadarwara, District Narsinghpur (M.P.).

**9.** Vikesh Rajput S/o Narmada Prasad Rajput aged about 22 years R/o Main Road Deori P.S. Udaypura, District Raisen.

**10.** Rajesh S/o Omprakash Thakur aged about 22 years R/o Galcha Tehsil Sohagpur, District Hoshangabad (M.P.).

**Respondents**

.....  
For applicants : Shri Shayam Narayan Viswakarma, learned counsel.  
  
For respondent : Shri R.N. Yadav, learned Panel Lawyer.  
No.1/State  
For respondent : Shri Manish Kumar Tiwari, learned counsel.  
Nos. 2 to 10  
.....

(3)

**O R D E R**

(Passed on 1<sup>st</sup> day of February, 2017)

The applicants have preferred the application under Section 439(2) of the Cr.P.C. for cancellation of bail granted to respondent Nos. 2 to 10 under Section 439 Cr.P.C. in Crime No.204/2016 registered at Police Station Tendukheda, District Narsinghpur vide order dated 6.6.2016 passed by the Third Additional Sessions Judge Gadarwara, District Narsinghpur.

**2.** Short facts of the case are that in the night of 28.05.2016 applicant-complainant Dharmendra and applicant Vineet were standing at the Tendukheda Bus Stand. At about 11:00 p.m., respondent Nos. 2 to 10 namely Chotu @ Prakhar, Ashish, Raja, Sachin, Sahabpal, Raja @ Chhotu, Laxmi, Vivek and Rajesh came in three vehicles at the bus stand. They started abusing applicant-complainant Dharmendra. Moments later, respondent Chhotu @ Prakhar opened fire from his rifle at him. Applicant-complainant Dharmendra bowed down in order to save himself from the gun shots. However, a bullet hit his chin. The remaining respondents physically assaulted with dandas to the persons standing at the bus stand. In the course of which, applicant Vineet also sustained injuries. Upon the FIR of applicant-complainant Dharmendra, the police of Police Station Tendukheda registered a case at Crime No.204/2016 against respondent Nos.2 to 10 under Sections 307, 147, 148, 149, 294 and 323 of the IPC and 27 of the Arms Act.

**3.** Respondent Nos. 2 to 10 filed a joint application under Section 439

**(4)**

Cr.P.C. for grant of bail in the case. Vide order dated 6.6.2016, which is impugned herein, the Third Additional Sessions Judge Gadarwada granted bail to them upon their furnishing a personal bond in the sum of Rs.25,000/- with two solvent sureties of the same amount each with certain conditions.

**4.** Being aggrieved by the grant of bail to respondent Nos. 2 to 10, the applicants have filed the application under Section 439(2) Cr.P.C. for cancellation of their bail on the grounds that at the time of consideration of their bail application, the injury reports of the applicants were not available in the case diary, therefore, the learned ASJ ought to have called for their injury reports; that at the relevant time, applicant-complainant Dharmendra had been undergoing the treatment of the gun shot injury and other injuries, which he suffered in the course of the incident, in the National Hospital Jabalpur and thereafter the Dr. Balabhai Nanawati Hospital Mumbai, where he remained hospitalized from the date of incident i.e. 28.5.2016 to 21.6.2016; that at the same time applicant Vineet had been undergoing the treatment for the injuries in the said National Hospital; that their periods of hospitalization show the seriousness of the injuries they sustained and the motive and intention of respondent Nos. 2 to 10 behind the incident; and that test identification parade of respondent Nos. 2 to 10 were necessary before the grant of bail. These aforesaid material facts were not considered by the learned ASJ at the time of deciding their bail application. After the release on bail, respondent Nos. 2 to 10 have been continuously threatening them to

(5)

enter into a compromise in the case.

5. Respondent Nos. 2 to 10 have filed a joint written reply to the application. They have stated in their reply that applicant-complainant Dharmendra has lodged the false F.I.R. against them; that they were arrested on 29.5.2016 and their bail application was decided by the learned ASJ on 06.06.2016; that both the applicants were treated at first in the Government Hospital Gadarwada and thereafter in the said National Hospital and the Dr. Balabhai Nanawati Hospital; that at the time of consideration of the bail applications the treating doctors of the said hospitals have not opined on the nature of injuries sustained by the applicants; but the injury reports given by the doctors of the Government Hospital Gadarwada were available in the case diary; that applicant-complainant Dharmendra lodged the F.I.R. against them by names, therefore, their test identification parade was not necessary before deciding the bail application; that the police recovered empty cartridge of a bullet from the place of occurrence and as per the FSL report, the recovered cartridge was not fired from the rifle seized from the possession of respondent No.2 Chhotu @ Prakhar, thus the F.S.L. report belies the version of applicant-complainant Dharmendra as stated in the F.I.R; that both the applicants are presently hale and hearty; that the police had filed the charge-sheet and after the committal proceedings, the case is at the stage of framing of the charge(s); and that the applicants anyhow want to delay the trial, therefore, they have filed the application making false allegations. They have also stated in the application that one Arunkir

**(6)**

Thakur lodged the report at Tendukheda Police Station stating that on 28.05.2016 at about 10:00 p.m. at bus stand Tendukheda, both the applicants committed marpeet with him. However, under the political pressure the police had not registered a case against both the applicants, on the other hand, the police registered the case upon his F.I.R. against two unknown persons at Crime No.203/2016 under Sections 294, 324 and 506 IPC. They have asserted in the reply that they and the applicants are in the business of selling liquor in the concerned area. On account of the business rivalries between them, the applicants have lodged the absolute false F.I.R. against them.

**6.** Learned counsel for the applicants and learned counsel for the respondent Nos. 2 to 10 have exchanged arguments on the basis of the averments made in the application and the reply thereof respectively.

**7.** Learned Panel Lawyer has left the matter at the discretion of this court.

**8.** I have considered the rival submissions, perused the impugned order, the case diary and material on record.

**9.** Before entering into the merits of the case, it will be useful to refer to the case-laws when the bail granted under Chapter XXXIII Cr.P.C. may be cancelled under the provisions of Section 439(2) Cr.P.C. The following citations are worthy of noticing.

**9.1** In the State through the Delhi Administration Vs. Sanjay Gandhi (AIR 1978 SC 961) the Supreme Court has observed thus in paras 13 and 24:

(7)

Para 13-

“Rejection of bail when bail is applied for is one thing and 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. Cancellation of bail necessarily involves the review of a decision already made and can by large be permitted only if by reason of supervening circumstances”

Para 24-

“The power to take back in custody an accused (under the provisions of Section 439(2) of the Cr.P.C.) who has been enlarged on bail has to be exercised with care and circumspection.”

**9.2** In Daulatram and others Vs. State of Haryana (1994 (3)

Crimes 1013 = 1995(1) SCC 349), the Supreme court has held as under:

“Very cogent and overwhelming circumstances are necessary for cancellation of bail. Bail once granted should not be cancelled in a mechanical manner ”

**9.3** In Prakash Kadam and others Vs. Ram Prasad Vishwanath

Gupta and another (2011 (6) SCC 189), the Supreme Court has observed thus:-

“In considering whether to cancel the bail, the Court has also to consider the gravity and nature of the offence, prima-facie case against the accused, the position and standing of the accused, if there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him.”

**9.4** In Puran Vs. Ram Bilas and another (2001 (6) SCC

338), the Supreme Court has observed thus:-

“An order granting bail passed by ignoring material and evidence on record and without giving reasons would be perverse and contrary to principles of law. Such an order would itself provide

(8)

a ground for moving an application for cancellation of bail. Such ground for cancellation is different from the ground that the accused misconducted himself or some new facts call for cancellation."

**9.5** In Ash Mohammed Vs. Shiv Raj Singh @ Lalla Babu and another [2012 (4) Crimes 144(SC)], the Supreme Court has stated as under:-

"There is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail"

**9.6** In Subodh Kumar Yadav Vs. State of Bihar (2009) 14 SCC 638, the Supreme Court has observed in Para-16 thus:-

"If a superior court finds that court granting bail had acted on irrelevant material, or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety e.g. failure to hear Public Prosecutor/complainant where required, order for cancellation of bail can be made."

**9.7** In Bhagirathsingh Vs. State of Gujarat 1984 (1) SCC 284, the Supreme Court has held as under:-

"Cancellation should not be by way of punishment even if prima facie case against the accused is established."

**9.8** In Nityanand Rai Vs. State of Bihar (2005) 4 SCC 178, the Supreme Court has stated in following words as to the grounds when the bail may be cancelled.

"Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail."

**9.9** In Ramcharan Vs. State of M.P (2004) 13 SCC 617) the Supreme Court has held on the point of reappreciation of facts while considering an application for cancellation of bail thus:-



**(9)**

“Bail can be cancelled on existence of cogent and overwhelming circumstances but not on reappraisal of the facts of the case.”

**10.** Upon the touch-stone of the aforesaid propositions of law, I shall consider the application for cancellation of bail. At the outset, I would say that learned counsel for the applicants could not point out that the impugned bail order suffers from any gross illegality, impropriety and perversity. Thus, the impugned bail order is free from the aforesaid infirmities. The applicants have not produced any cogent evidence in support of the allegations that respondent Nos. 2 to 10 have been exerting pressure upon them to enter into a compromise in the case. They have not produced any believable evidence that respondent Nos.2 to 10 are making attempts to win over the prosecution witnesses of the case. They have also not produced any documentary evidence on the point that respondent Nos. 2 to 10 have not been co-operating with the trial court in the trial of the case. As per the medical evidence available on record, both the applicants suffered grievous injuries in the alleged incident. However, they are presently recovered from their injuries without any adverse side-effects on their persons. There is no evidence in general on record worth the name against respondent Nos.2 to 10 that they have so far misconducted themselves or misused their liberties granted them vide the impugned bail order. Furthermore, I have not found any other cogent and convincing ground or supervening circumstances for cancellation of bail of respondent Nos.2 to 10.

**11.** For the aforesaid reasons, I find that the application for

**(10)**

cancellation of bail is completely devoid of merits and substance.  
Consequently, it is dismissed.

**12.** Accordingly, this M.Cr.C. is finally disposed of.

haider

(Rajendra Mahajan)  
Judge