

**HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH : JABALPUR**

Case No.	M.Cr.C. No.2708/2021
Parties Name	Mrs. Prachi <u>Vs.</u> The State of Madhya Pradesh and others
Date of order	16.11.2021
Bench Constituted	Justice Vivek Agarwal
Order passed by	Justice Vivek Agarwal
Whether approved for reporting	Yes
Name of counsel for parties	Shri K.K. Pandey, learned counsel for the applicant. Shri Vishal Daniel, learned Counsel for the respondent Nos.2 to 5.
Law laid down	<ol style="list-style-type: none">1. <i>Very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail, already granted.</i>2. <i>The concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation.</i>3. <i>Applicant should first move the Court concerned for cancellation of bail bringing out the circumstances as have been mentioned in Annexure A-8 and should not have approached this Court directly.</i>

Significant paragraph numbers	6 & 7
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ORDER
(16.11.2021)

This M.Cr.C. under Section 439(2) of Cr.P.C. has been filed seeking cancellation of bail order dated 16.12.2020 passed by the learned Judicial Magistrate First Class, Lakhnadon District- Seoni (M.P.).

2. Learned counsel for the applicant submits that applicant had moved an application to the Superintendent of Police and SHO Police Station Aadegaon, Tehsil Lakhnadon as is contained in Annexure-A/8 reporting that after being released on bail, non-applicants are threatening coercing her to take back her cases but no steps have been taken by the Superintendent of Police or the SHO, therefore, this application before the High Court for cancellation of bail.

3. Learned counsel for respondent Shri Vishal Daniel in his turn submits that words used in Section 439(2) of Cr.P.C. are High Court or Sessions Court and applicant should have in the first instance approached the Sessions Court instead of directly approaching the High Court.

4. It is also submitted that Annexure A/8, does not contain

signatures of the applicant and it appears to have been prepared as an after thought in as much as, though date of complaint is mentioned as 04.01.2021 but the postal receipt reveals that it was dispatched from the High Court post office on 12.01.2021 which demonstrates that there was no sense of urgency and a document has been prepared just to seek cancellation of bail.

5. Shri Vishal Daniel further submits that applicant has thereafter participated in mediation proceedings and never complained of any threat before the mediator, therefore, the application for cancellation of bail be dismissed.

6. After hearing learned counsel for the parties and going through the record, it is evident that in case of *Subhendu Mishra Vs. Subrat Kumar Mishra and Another AIR 1999 SC 3026*, Hon'ble Supreme Court has placed reliance on its earlier judgments of *Dolat Ram Vs. State of Haryana (1995) 1 SCC 349* while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, it is opined by the Court 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.”

7. Similarly, in case of ***Puran Vs. Rambilas AIR 2001 SC 2023***, it is held that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. It is further held that generally speaking the grounds for cancellation of bail broadly 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. In para-10 Hon'ble Supreme Court has held as under :

“ 10.
“If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”

Thus, it is evident that applicant should have first moved the Court concerned for cancellation of bail bringing out the circumstances as have been mentioned in Annexure A-8 and should not have approach this Court directly.

8. In case of *State of Rajasthan Vs. Mubeen and others (2011) Criminal Law Journal 3850*, a Division Bench of

Rajasthan High Court has held that mere filing of FIR against accused persons does not mean that accused committed any offence while on bail and committed breach of conditions of bail. It is only when the Court forms opinion to that effect at time of framing of charge then only aspect of cancellation of bail can be considered as to whether there were grounds of breach of conditions requiring consequent cancellation of bail.

9. Thus, when examined the legal position in the above factual backdrop, it is evident that there are no such circumstances calling for cancellation of bail already granted in favour of the respondents merely on the asking of the applicant specially when applicant's own conduct as has been pointed out by Shri Vishal Daniel in dispatching an application dated 04.01.2021 on 12.01.2021 becomes suspect.

10. Thus, in my opinion, this M.Cr.C. when tested on the aforesaid legal propositions, is devoid of merits, hence, deserves to be dismissed and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

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