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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 13<sup>th</sup> OF FEBRUARY, 2023**

**MISC. CRIMINAL CASE No. 59807 of 2022**

**BETWEEN:-**

**VICTIM A D/O NOT KNOWN THROUGH POLICE  
STATION GORABAZA JABALPUR (MADHYA PRADESH)**

**.....APPLICANT**

**(BY SHRI ANIL KHARE - SENIOR ADVOCATE WITH MS. TANVI KHARE -  
ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
POLICE STATION GORABAZAR JABALPUR  
(MADHYA PRADESH)**
- 2. SAMAN BASOOR S/O SHRI PARAMJEET SINGH  
BASOOR, AGED ABOUT 29 YEARS, OCCUPATION:  
BUSINESSMAN R/O ANANTARA TILHARI,  
DISTRICT JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI C.P. SINGH PARMAR - GOVERNMENT ADVOCATE AND SHRI  
MANISH DATT - SENIOR ADVOCATE WITH SHRI KUMAL DUBEY -  
ADVOCATE FOR RESPONDENT NO.2.)**

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*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

Applicant has filed this application under Section 439 (2) of the Code of Criminal Procedure for cancellation of bail of respondent No.2, namely Saman Basoor who was enlarged on anticipatory bail vide order dated 17.08.2022 passed in MCRC No.38693/2022.

2. Learned Senior Counsel appearing for applicant relied on paragraph-33

of judgment passed by Apex Court in case of *Deepak Yadav Vs. State of Uttar Pradesh and Another* reported in (2022) 8 SCC 559. Paragraph-33 is quoted as under:-

*"33. 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:-*

*33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

*33.2. 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.*

*33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

*33.4. Where bail has been granted on untenable grounds.*

*33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

*33.6. 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.*

*33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case."*

3. Learned Senior Counsel placed reliance on Clause-33.2 and submitted that while granting bail, Court overlooked influential position of accused in comparison to the victim of abuse. It is submitted that written complaint against respondent No.2 was made by complainant, however, police did not take any action against him and FIR which was registered was against unknown person. This shows influence and power wielded by respondent No.2. Said fact was not taken into consideration while granting bail to respondent No.2. It is further argued that respondent No.2 had executed an affidavit and same was filed before concerned police station and also before Court stating therein that he is

ready to marry the prosecutrix. Respondent No.2 is marrying another girl on 18.02.2023. Attention of this Court was drawn towards wedding invitation card placed on record. It is submitted that respondent No.2 made false promise to marry which is clear from aforesaid supervening circumstances. Respondent No.2 was never sincere in his promise to marry the prosecutrix. Respondent No.2 gave an affidavit that he is ready to marry prosecutrix but as soon as he was granted anticipatory bail, he is getting married to some another girl which shows that there was false promise to marry and not merely breach of promise. Learned counsel appearing for applicant has also relied on judgment passed in case of *State of Bihar Vs. Rajballav Prasad* reported in (2017) 2 SCC 178. Considering aforesaid supervening circumstances and grounds mentioned in paragraph-33.2, anticipatory bail granted to respondent No.2 be cancelled.

4. Learned Senior Counsel appearing for respondent No.2 opposed the prayer of applicant and relied in case of *Uday Vs. State of Karnataka* reported in (2003) 4 SCC 46. In said case, it has been held that consent given by prosecutrix to sexual intercourse with person with whom she is deeply in love on promise that he would marry her on later date cannot be said to be given under misconception of fact. A false promise is not a fact within the meaning of Code. Reliance is also placed on part of *paragraph-16* in case of *Gurcharan Singh and Others Vs. State (Delhi Administration)* reported in (1978) 1 SCC 118. Part of paragraph-16 is quoted as under:-

*"16. ....under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. 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 leave copied 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."*

In view of same, prayer is made for dismissal of application for cancellation of bail

5. Heard the counsel for the parties.

6. On perusal of FIR dated 29.12.2019 registered in connection with Crime No.313/2019, it is found that police had made allegation against respondent No.2 namely Saman Basoor, though in column-07 of FIR, it has been mentioned that FIR is against unknown person. In column-12 of FIR, complete details of complaint as has been given by complainant is mentioned which clearly points towards the accused person, therefore, it cannot be said that police is trying to cover up the case because of influential position of respondent No.2. Further respondent No.2 has executed an affidavit to be presented before Superintendent of Police dated 20.12.2019 wherein it has been stated that respondent No.2 has promised on proposal of prosecutrix to marry her. Subsequently, prosecutrix thereafter has given an application to *Thana* In-charge (TI) for withdrawal of FIR. In application which was filed for bail before High Court in 'column-O' of paragraph-6, respondent No.2 has stated that *Khatma* was submitted and he is ready to marry the prosecutrix.

7. Learned Senior Counsel appearing for applicant submitted that factum of marriage weighed heavily in the mind of Court and therefore, application of

anticipatory bail was considered and allowed.

8. In order dated 17.08.2022, it was mentioned that respondent No.2 was in relationship with prosecutrix for last two years. Prosecutrix even after coming to knowledge that respondent No.2 had given false promise of marriage and cheated her by saying that he is Law Graduate from Jindal University continued with his relationship with respondent No.2. Prosecutrix was not under misconception of fact has also been stated in order dated 17.08.2022.

9. It has been argued on behalf of respondent No.2 that case is not of rape but of breakdown of relationship between applicant and respondent No.2. Prosecutrix is a woman with sufficient understanding and aged about 30 years. She was having long term relationship with respondent No.2. Said facts were mentioned in the bail order. Prosecutrix wants to marry respondent No.2 and as respondent No.2 is about to marry another girl, this application for cancellation of bail has been filed. In case of *Uday (supra)* in *paragraph-25* it has been held as under:-

*"25. ....In such circumstances the promise loses all significance, particularly when they are over come with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it."*

10. In case of *Gurcharan (supra)*, laid down that when State is aggrieved by order of Sessions Court granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for State to move to Sessions Judge again and it is competent in law to move High Court for cancellation of bail. In case of *Deepak (supra)*, Supreme Court has held in paragraph-33 of its judgment that Supreme Court has inherent power

and discretion to cancel bail of an accused even in absence of supervening circumstances and illustrating circumstances were mentioned in paragraph-33. High Court has inherent powers under Section 482 of the Code of Criminal Procedure for doing justice. High Court is also vested with power under Section 439(2) of the Code of Criminal Procedure to cancel bail. Bail can be cancelled on occurrence of supervening circumstances but High Court can also exercise power in cases as has been illustrated by Supreme Court in paragraph-33 of the judgment. High Court can cancel bail orders in circumstances which has been illustrated by Supreme Court and other circumstances can also be taken into consideration to secure ends of justice and to prevent abuse of process of law by a party.

11. In present case, this Court has considered the position of applicant *vis-a-vis* respondent No.2 and argument of Senior Counsel that respondent No.2 is using his influential position and power to influence the police is not accepted. Further false promise to marry was considered in order of anticipatory bail. Supervening circumstances that applicant is marrying another girl is not breaching any conditions of bail order. Anticipatory bail was granted considering the age of applicant, her level of understanding, maturity and the economic statuses of applicant as well as respondent No.2.

12. In view of aforesaid facts and circumstances of the case, application for cancellation of bail, is ***dismissed***.

(VISHAL DHAGAT)  
JUDGE