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

**BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 22nd OF AUGUST, 2023**

MISC. CRIMINAL CASE No. 14423 of 2023

BETWEEN:-

SONU KUSHWAHA S/O HARCHARAN KUSHWAHA, AGED ABOUT 34 YEARS, OCCUPATION: AGRICULTURE R/O PATARE KA SIRAK, POLICE STATION CHANDERA, TIKAMGARH (MADHYA PRADESH).

.....APPLICANT

(BY SHRI AHADULLA USMANI - ADVOCATE FOR APPLICANT)

AND

- 1. STATE OF MADHYA PRADESH THROUGH POLICE STATION CHANDERA, DISTRICT TIKAMGARH (MADHYA PRADESH).**
- 2. DHRAMENDRA S/O RAGHUVAR DAYAL KUSHWAHA, AGED ABOUT 23 YEARS, R/O PATARE KA SIRAK PATHARI, POLICE STATION CHANDERA, DISTRICT TIKAMGARH (MADHYA PRADESH).**
- 3. HARNARAYAN S/O KALU KUSHWAHA, AGED ABOUT 55 YEARS, AGED ABOUT 55 YEARS, R/O PATARE KA SIRAK PATHARI, POLICE STATION CHANDERA, DISTRICT TIKAMGARH (MADHYA PRADESH).**
- 4. ASHARAM S/O KALU KUSHWAHA, AGED ABOUT 50 YEARS R/O PATARE KA SIRAK PATHARI, POLICE STATION CHANDERA, DISTRICT TIKAMGARH (MADHYA PRADESH).**
- 5. SUNIL @ SHAILU S/O HARNARAYAN KUSHWAHA, AGED ABOUT 28 YEARS, R/O PATARE KA SIRAK PATHARI, POLICE STATION CHANDERA, DISTRICT TIKAMGARH (MADHYA PRADESH).**

.....RESPONDENTS

(BY MS. SHWETA YADAV - GOVERNMENT ADVOCATE FOR RESPONDENT NO.1/STATE AND SHRI ANURAG PRAJAPATI - ADVOCATE FOR RESPONDENTS NO. 2 TO 5)

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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 Code of Criminal Procedure for cancellation of bail orders dated 23.02.2023 and 28.02.2023, contained in Annexure A/1 and A/2.

2. Respondent No.2 Dharmendra, respondent No.3 Harnarayan, respondent No.4 Asharam and respondent No. 5 Sunil @ Shailu had filed applications under Section 439 of Cr.P.C. before trial Court. Said applications were allowed vide order dated 23.02.2023 and 28.02.2023 by trial Court. Trial Court in its orders mentioned that respondent No.2 Dharmendra is said to have assaulted Sonu Kushwaha from blunt side of an axe. Doctor has not mentioned in its report dated 08.02.2023 that injury was dangerous to life. However, in query, Doctor has mentioned that injury was dangerous to life and further advice was made to obtain X-ray report. Court held that Doctor has mentioned in its report that injury was dangerous to life without there being any X-ray on record. District Hospital at Tikamgarh has not given any opinion regarding nature of injury. In CT scan report done in private hospital at Jhansi mention is made of soft tissues on head. No allegation has been made that injury is grievous or dangerous to life. Respondent No.2 Dharmendra is working in Indian Army and was on leave. Considering totality of aforesaid circumstances, he was granted bail. Similarly, bail application of respondent No.3 to 5 was considered on grounds of parity. Said accused persons were released on bail on parity as they were holding lathi and have not used any sharp cutting weapon

for causing injuries.

3. It is submitted by counsel appearing for the applicant that respondents are convicted offenders. Their sentence has been suspended by High Court and they were released on bail. After being released, they have committed present crime. In these circumstances, they had violated the conditions of bail order and they may not have been released on bail. Court below did not consider the objections as copies of bail order was not produced before Court in which condition has been imposed that they will not engage themselves in any other offence. Learned counsel appearing for applicant submitted that Court had committed an error in allowing bail applications filed by respondents No. 2 to 5. Sentence of respondent No. 2 to 5 was suspended in Criminal Appeal No. 386/2007 vide order dated 25.07.2007 and they were released on bail. After being released on bail, respondent No.2 again committed an offence. It has wrongly been mentioned by trial Court that injury was not dangerous to life. Court has wrongly appreciated the evidence regarding injury suffered by victim. Injury was dangerous to life and offence is punishable upto life imprisonment. Therefore, trial Court ought to have rejected the application.

4. Counsel appearing for respondents submitted that respondent No.2 Dharmendra is a government servant working in Indian Army therefore, he has falsely been implicated so that he may have its implication on his service record. Respondents No. 2 to 5 are innocent. There is no condition in the bail order that they will not commit any offence in future. In these circumstances, no interference is call for and application be dismissed.

5. Heard the counsel for the parties.

6 . There is no allegation that respondent No.2 had breached the conditions of bail order. Prayer was made for cancellation of bail on grounds

that Court has not appreciated the facts correctly and order was challenged on merits. Court cannot consider application for cancellation of bail as if Court is sitting as an appellate authority. Court has to consider supervening circumstances and may also consider fact regarding misrepresentation of facts by accused claiming bail or not placing correct facts before the Court. Court has considered the case on merits and has passed order granting bail to the accused persons. I do not find any error in the order passed by the trial Court in granting bail to respondent No.2 Dharmendra in the case and prayer for rejection of his bail is dismissed.

7. So far as the case of respondent No. 3 Harnarayan, respondent No.4 Asharam and respondent No.5 Sunil is concerned, allegations are made that they had committed offence after being released on bail after suspension of their sentence in criminal appeal. On going through the cause title of criminal appeal No.386/2007, it is found that respondent No. 3 and 4 were party, however, respondent No.5 was not a party in said criminal appeal. Respondent No.5-Sunil @ Shailu has not committed any offence after being granted bail by High Court. Therefore, prayer for rejection of bail application of respondent No.5-Sunil @ Shailu is also dismissed.

8. Now question before this Court is for cancellation of bail of respondents No. 3 Harnarayan and respondent No. 4 Asharam as they have committed offence after being released on bail by High Court. Trial Court has considered the said ground raised by applicant and held that no order of High Court is placed on record, in which condition has been imposed that accused will not engage themselves in similar offence in future. In absence of same in bail order, said ground raised by applicant was not considered by trial Court.

9. Counsel appearing for applicant submitted that respondent No. 3 and 4 have been convicted and sentenced to 10 years of imprisonment for committing offences under Sections 342 and 304 Part I of Indian Penal Code and fine of Rs. 1000/-.

10. On going through order dated 25.07.2007, it is found that conditions as enumerated in Section 437 has not been mentioned in order, suspending operation of jail sentence and release of appellants Harnarayan and Asharam on bail. An accused is released on bail by the Court so that he may not suffer jail until proved guilty in trial and he can effectively defend himself before the trial Court. Such accused person is required to follow the conditions which has been mentioned in 437(3) of Code of Criminal Procedure. Said conditions are fundamental to grant of bail. If any person is granted bail then he has to attend the Court with conditions mentioned in bond executed under Chapter 33 of Code of Criminal Procedure. Such person shall not commit any offence similar to the offence of which he is accused or suspected and he shall not influence the witnesses of the case directly or indirectly. Even if such conditions are not mentioned in bail order, then also such conditions are implicit in bail order as they are fundamental to delivery of justice and fair trial before the trial Court. If conditions laid down in Section 437(3) of Code of Criminal Procedure are not mentioned in bail order that will not mean that accused who is released on bail can go out and commit offences. He is required to follow said conditions even if the same are not mentioned in bail order. Court can however impose additional conditions on accused as per fact and circumstances of the case. In view of same, trial Court has misdirected itself in not considering the said document for cancellation of bail of Harnarayan and Asharam. Conditions mentioned in Section 437(3) of Code of Criminal Procedure is to be read in the

bail order automatically.

11. In view of same, matter is remanded back to trial Court in respect of respondent No.3 Harnarayan and respondent No.4 Asharam to reconsider the prayer of applicant for cancellation of bail to said respondents as they had committed an offence after their sentence is suspended and they are released on bail by High Court in Criminal Appeal No. 386/2007.

12. With aforesaid direction, application is **disposed off**.

13. C.C. as per rules.

vkt



(VISHAL DHAGAT)
JUDGE