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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 5<sup>th</sup> OF SEPTEMBER, 2023**

**MISC. CRIMINAL CASE No. 27252 of 2023**

**BETWEEN:-**

**ANAND KUMAR MISHRA S/O LATE RAGHUNATH  
MISHRA, AGED ABOUT 50 YEARS, OCCUPATION:  
PRESIDENT COD KARMACHARI SAHKARI SAMITI  
(MARYADIT) DISTRICT JABALPUR (MADHYA PRADESH)**

**.....APPLICANT**

***(BY SHRI ANOOP NAIR - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH P.S.  
RANJHI DISTRICT JABALPUR (MADHYA  
PRADESH)**
- 2. PK TIWARI( PREM KISHORE TIWARI) S/O N.P.  
TIWARI, AGED ABOUT 56 YEARS, R/O SAMIKSHA  
COLONY BEHIND CENTRAL JAIL JABALPUR  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI V.V.R. DANIEL - ADVOCATE FOR RESPONDENT NO.2 AND SHRI  
NARENDRA CHOURASIA - GOVERNMENT ADVOCATE)***

*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 granted to respondent No.2 by trial Court vide order dated 31.03.2023 (Annexure-A/1) in connection with Crime No.144/2023 registered at Police Station-Ranjhi, District-Jabalpur (MP) for committing offence under Sections 408, 409, 420, 467, 468, 471, 120-B, 34 of

the IPC.

2. Learned counsel appearing for the applicant submitted that applicant is President of COD Karmachari Sahakari Samiti (Maryadit) Jabalpur (MP). Respondent No.2 was Ex-president of society. Respondent No.2 along with cashier Suresh Shah and Manager Umesh Katare committed fraud by embezzling money from society. Loan was given by society to various members. On investigation it was found that loan was sanctioned in name of members who have never applied for loan and they were not given loan amount. Deputy Registrar Co-operative Society found that in financial year 2021-2022 accused persons have embezzled an amount of Rs.02,75,12,450/-. Investigation is going on in the case. It is submitted that trial Court has granted bail to respondent No.2 on condition of deposit of Rs.14,75,000/-. In FIR allegations were made regarding said amount and complaint at that time was made only by four employees. Correct facts were not brought before trial Court and report of Deputy Registrar, Cooperative Society was not considered. In these circumstances, prayer is made for cancellation of bail granted to respondent No.2.

3. Learned counsel appearing for respondent No.2 submitted that application for cancellation of bail under Section 439(2) of the Cr.P.C. is not maintainable as no supervening circumstances was mentioned by applicant. It is submitted that as per applicant's case trial Court granted bail considering the amount of defalcation only to be Rs.14,75,000/- but embezzlement was of much larger amount which was overlooked. It is submitted that such submissions of applicant are incorrect. Report of Registrar Narendra Sonkar is dated 27.02.2023 and was prior to registration of FIR. Sessions Judge has given categorical finding and has referred to audit report given by Narendra

Sonkar. Overleaf of audit report categorically states entire amount of defalcation to be Rs.02,75,12,450/-, therefore, entire facts has been considered by trial Court. It is further submitted that present applicant is not having any locus to file application for cancellation of bail. Applicant before this Court is not victim.

4. Definition of 'victim' as per Section 2 (wa) of the Cr.P.C. is quoted as under:-

*"Section 2 (wa): Definition of victim. "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."*

As per said provision, applicant does not fall within the definition of victim. Applicant is settling personal score with respondent No.2. Reliance is placed on *paragraph No.10* of the judgment reported in *(2020) 2 SCC 743 {Myakala Dharmarajam Vs. State of Telangana}*, which is quoted as under:-

*"10. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State*

*that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence."*

5. In these circumstances prayer is made for dismissal of application for cancellation of bail.

6. Heard the counsel for the parties.

7. Question before this Court is whether trial Court has granted bail to respondent No.2 is perverse and suffers from infirmity which may result in miscarriage of justice.

8. Trial Court vide its order dated 31.03.2023 allowed the application of respondent No.2 for grant of bail. Complainant is Madan Kumar Tiwari. Earlier President was respondent No.2. Loan is sanctioned by President. Members of society files application for grant of loan. After sanction of loan cheques are issued which are credited into account of borrower if amount is more than Rs.10,000/- and up to amount of Rs.10,000/- is given in cash to borrower. Complainant has not applied for loan. He received an information from society on 04.11.2022 that he has taken following loan:-

On 14.10.2020 - Rs.3,50,000/-, 01.11.2021 - Rs.3,75,000/-,  
28.04.2022 - Rs.4,00,000/-, 04.04.2022 - Rs.3,50,000/- total  
amount of Rs.14,75,000/-.

9. On receiving said information from peon of society, complainant has filed complaint on 11.11.2022. Narendra Sonkar on 29.12.2022 has issued a notice for recovery of said amount with interest. Ex-president/respondent No.2

namely P.K. Tiwari, V.M. Nair, earlier Manager (dead) and cashier Suresh Shah has embezzled the amount. It was also stated that other victims namely Ganesh, Umesh Kumar, Mukesh Vishwakarma too had not filed any application for grant of loan but loan was sanctioned and amount has been embezzled. Trial Court held that allegation against respondent No.2 is for embezzlement of Rs.14,75,000/-. Respondent No.2 has been sent to central jail on 02.03.2023 and respondent No.2 has offered to deposit an amount of Rs.14,75,000/-. In these circumstances, respondent No.2 was released on bail.

10. On examining order granting bail to respondent No.2, it is found that Court considered that amount of embezzlement is to be Rs.14,75,000/- and when accused person submitted for deposit of same, he was enlarged on bail. Trial Court has referred to letter dated 29.12.2022 of Auditor Narendra Sonkar. Trial Court was under belief that total loan amount embezzled was Rs.14,75,000/-. Nowhere in its order it has been mentioned that embezzlement was in respect of Rs.2,75,12,450/-. Audit report which was part of complaint for registration of FIR was not taken into consideration by trial Court. Some entries made in register was referred to by Auditor Narendra Sonkar by trial Court and letter dated 29.12.2022 was for recovery of an amount of Rs.7,75,000/-. Trial Court failed to take into consideration that embezzlement was done in case of as many as 47 members of the society and liability has been fixed upon respondent No.2 P.K. Tiwari, Cashier Suresh Shah and In-charge Manager Umesh Katare. Trial Court proceeded on basis that amount embezzled is Rs.14,75,000/- and accused is ready to deposit the same, therefore, he was granted bail. Additional Sessions Judge failed to take into consideration report of Auditor Narendra Sonkar which was annexed along with letter dated 24.02.2023.

11. Now question before this Court is regarding locus of applicant for filing application under Section 439(2) of the Cr.P.C.

12. From aforesaid definition it is clear that Madan Kumar Tiwari was informed by President of Cooperative Society Namely Anand Kumar Mishra regarding his dues to cooperative society on basis of which Madan Kumar Tiwari has filed complaint and later on FIR which shows that applicant is not victim as per Section 2 (wa) of the Cr.P.C.

13. Section 439 (2) of the Code of Criminal Procedure is quoted as under:-

***"439. Special powers of High Court or Court of Session regarding bail.***

*(1) A High Court or Court of Session may direct-*

*(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that subsection;*

*(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:*

*Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not*

*practicable to give such notice.*

*(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."*

14. Aforesaid Section lays down that High Court or Court of Sessions may direct that any person who has been released on bail be arrested and committed to custody. Section does not lay down that application is to be filed before High Court or Court of Sessions. High Court or Court of Session has power to direct cancellation of bail and arrest of a person. Supreme Court in *paragraph No.33* in case of ***Deepak Yadav Vs. State of Uttar Pradesh and Another reported in (2022) 8 SCC 559***, which 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."*

15. On going through the provision of Section 439 (2) of the Code of Criminal Procedure and judgment passed by Apex Court, it is clear that High Court has inherent jurisdiction to cancel the bail which has wrongly been granted to an accused person. High Court has ample power of inherent jurisdiction to correct wrong done in an order in the interest of justice. High Court can take suo motu cognizance on any illegality which has been committed in grant of bail when same has been brought to its notice and appropriate orders could be passed after giving an opportunity of hearing to accused. Question of locus of applicant will not come in way of High Court for cancellation of bail order. High Court exercising its inherent power can cancel the bail granted to an accused person if illegality or impropriety is brought to its notice.

16. In the present case, relevant material i.e. audit report available on record has been ignored. Bail has been granted on ground that accused is ready to deposit an amount of Rs.14,75,000/- which is amount embezzled but actual amount embezzled was Rs.02,75,12,450/-. Offence committed by respondent No.2 is serious in nature and punishable up to imprisonment of life or with ten years of imprisonment.



17. In view of aforesaid facts and circumstances of the case, bail granted to respondent No.2 is cancelled. Bail bonds/surety furnished by him are cancelled. Respondent No.2 be arrested immediately in connection with aforementioned crime number and be sent to the jail.

18. This MCRC is *allowed* and *disposed of*.

19. A copy of this order be sent to the trial Court for information and necessary compliance.

shabana



**(VISHAL DHAGAT)**  
**JUDGE**