

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945
CRL.MC NO. 3730 OF 2023

AGAINST CMP NO.1499/2022 ON THE FILES OF THE SPECIAL COURT
SC/ST (POA) ACT & NDPS ACT CASES, MANJERI

PETITIONER/RESPONDENT :

NAVAS
AGED 32 YEARS
S/O MUHAMMEDKUTTY, THOTTIVALAPPIL HOUSE,
MUTTANUR, MALAPPURAM DISTRICT, PIN - 676561

BY ADVS.
P.MOHAMED SABAH
LIBIN STANLEY
SAIPOOJA
SADIK ISMAYIL
R.GAYATHRI
M.MAHIN HAMZA
ALWIN JOSEPH

RESPONDENTS/STATE & PETITIONER :

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE EXCISE INSPECTOR
EXCISE RANGE OFFICE, TIRUR,
MALAPPURAM DISTRICT, PIN - 676101

SRI VIPIN NARAYAN, SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
01.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

ORDER

This petition is filed invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for the sake of brevity), seeking to quash Annexure-6 order by which the bail granted to the petitioner in Crime No.11 of 2021 of Excise Range Office, Tirur was cancelled on account of his involvement in a subsequent crime.

2. Short facts are as under:

The petitioner was arrayed as the 1st accused in Crime No. 11 of 2021 of the Tirur Excise Range Office registered by the Excise Inspector under Section 20(b)(ii)(C) and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The facts which led to the registration of the Crime is that on 02.06.2021, at about 9.55 pm., the petitioner was found having concealed 40.5kgs of Ganja in the building bearing No. XV/332 H of Thrippangode Panchayat. As the petitioner was involved in another crime, his arrest was recorded on 18.11.2021. After having undergone custody till 17.05.2022, the petitioner approached this Court, and by Order dated 24.05.2022 in B.A.No.2289

of 2022, he was granted statutory bail. While granting bail, this Court, in addition to other conditions, ordered that the involvement in any other crime while on bail will entitle the investigating officer to file an application before the jurisdictional court for cancellation of bail.

3. It appears that thereafter, on 13.10.2022, at about 11 pm, based on secret information, the Police Sub Inspector, Tirur Police Station, reached a lodge situated at Chennara NOC padi, and it was found that the petitioner, along with three others had kept in their possession 14.250 kgs of Ganja and 850 gms of Hashish oil in the lodge room as well as in the car bearing Reg. No.KL-78-6539. It is also alleged that the petitioner, as well as the other accused, were armed with weapons. Based on the detection carried out as above, Crime No. 1024 of 2022 was registered for offence under Section 20(b)(ii)B r/w Section 29 of the NDPS Act and under Section 27 of the Arms Act, 1959.

4. As the investigating officer found that the condition imposed by this Court while granting statutory bail was violated by involving in another crime registered under the NDPS Act, that too, within a short span of under five months, he approached the jurisdictional court and filed an application for cancellation of bail.

5. The learned Special Judge, after carefully evaluating the facts and

circumstances and the settled precedents, came to the conclusion that there are prima facie materials to show that the petitioner had misused the liberty granted and, by a considered order, came to the conclusion that the bail granted to the petitioner in Crime No.11 of 2021 of Excise Range Office, Tirur was liable to be cancelled. The above order is under challenge.

6. Miss Sai Pooja, the learned counsel appearing for the petitioner, submitted that mere registration of a subsequent crime against the accused by itself cannot be a circumstance for cancellation of the bail already granted to the accused. It is contended that though the petitioner got involved in a subsequent crime, the fact remains that the bail was cancelled only by order dated 11.04.2023. According to the learned counsel, there is no link between the impugned order and the prejudicial activity which led to the passing of the order. It is urged that a perusal of the records in respect of the subsequent crime would disclose that the mandatory formalities with regard to search and seizure were complied with more by its breach than by compliance. Reliance is placed on the law laid down by this Court in **Godson v. State of Kerala**¹, and it is argued that this Court has held that mere violation of bail conditions is not sufficient to cancel the bail, but the satisfaction of the court that it is necessary to do so based on

¹ 2022 (2) KLD 447

various factors. Reliance is also placed on the judgment rendered by a learned Single Judge in **Renjith v. State of Kerala**², and it was argued that bail, once granted ought not to be cancelled for the mere asking.

7. The learned Public Prosecutor has opposed the submissions. It is submitted that the Hon'ble Supreme Court in **P. v. Madhya Pradesh and Another**³ has enumerated the circumstances when bail could be cancelled and one of the conditions stated therein is the misuse of the liberty granted to the petitioner by the court by involving in subsequent crimes. It is further urged that the petitioner was initially involved in a case involving commercial quantity of narcotic drugs, and after being enlarged on bail, he was again found in possession of Ganja Hashish oil. The learned Public Prosecutor has also relied on the law laid down by a learned Single Judge in **Edwin Thomas v. State of Kerala**⁴, and it was argued that if the accused continuously misuses his liberty and gets involved in subsequent crimes, that is sufficient reason to cancel the bail.

8. I have considered the submissions advanced.

9. The issue to be decided is whether the learned Special Judge was

² [2023 (2) KHC 310]

³ (2022 SCC Online SC 552)

⁴ [2023 KHC Online 206]

justified in revoking the bail granted to the petitioner for abusing the freedom granted to him.

10. While granting statutory bail in Crime No. 11/2021 of the Excise Range Office, Tirur, this Court imposed various conditions. Condition No. 4 reads as under:

“(4) The petitioner shall not involve in any other crime while on bail.”

11. Admittedly, the petitioner got himself involved in Crime No.1024/2022 of the Tirur Police Station registered under Section 20(b) (ii) (C) and under Section 29 of the NDPS Act, 1985. The learned Special Judge took note of the fact that the petitioner, in violation of the bail condition, got involved in a similar crime.

12. In this context, it would be apposite to note the subtle difference between the setting aside of an unjustified, illegal, or perverse order by a superior court and the concept of canceling the bail by the court granting bail on the ground that the accused has misconducted himself or because of some new facts requiring such intervention. In **Gurcharan Singh and Ors. v. State (Delhi Administration.)**⁵, the Apex Court had occasion to observe that the concept of setting aside the unjustified, illegal, or perverse order is totally

⁵ (1978) 1 SCC 118]

different from the concept of canceling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. It was observed as follows in paragraph No.16 of the judgment as under:

16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498 CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). 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 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.

It was held that the State has two options when the accused has been granted bail by the Court of Session. It may move the same Special Judge if certain new circumstances have arisen which were not earlier known to the State. The State may as well approach the High Court being the superior Court under Section 439(2) of the Code, to commit the accused to custody. However, when the State is aggrieved by the order of the Special 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 Special Judge again, and it is competent in law to move the High Court for cancellation of the bail.

13. The same view was reiterated by the Apex Court in **Puran v. Rambilas and Another**⁶. It was held as follows in paragraph No. 11 of the judgment:

11. Further, it is to be kept in mind 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 the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118: In that case, the Court observed as under:

⁶ [(2001) 6 SCC 338]

"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 existing, 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-à-vis the High Court."

14. In **Abdul Basit alias Raju and Ors. v. Mohd. Abdul Kadir Cahudhary and Another**⁷, the Apex Court relying on the observations in **Gurcharan Singh** (supra) and **Puran** (supra), had observed as follows in paragraph No. 19 of the judgment:

19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

15. In **Ranjit Singh v. State of M.P.**⁸, the Apex Court had occasion to reiterate the position as regards the distinction between the parameters for

⁷ (2014) 10 SCC 754

⁸ (2013) 16 SCC 797

grant of bail and cancellation of bail and also the distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. It was held as follows in paragraph No. 19 of the judgment.

19. It needs no special emphasis to state that there is distinction between the parameters for grant of bail and cancellation of bail. There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court. We have already referred to various paragraphs of the order passed by the High Court. We have already held that the learned trial Judge has misconstrued the order passed by the High Court. However, we may hasten to add that the learned Single Judge has taken note of certain supervening circumstances to cancel the bail, but we are of the opinion that in the obtaining factual matrix the said exercise was not necessary as the grant of bail was absolutely illegal and unjustified as the court below had enlarged the accused on bail on the strength of the order passed in *Ranjeet Singh v. State of M.P.* [*Ranjeet Singh v. State of M.P.*, MCRC No. 701 of 2013, order dated 1-2-2013 (MP)] remaining oblivious of the parameters for grant of bail under Section 439 CrPC. It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course.

16. In the light of the law laid down by the Apex Court as above, the courts are to bear in mind that there is a distinction between the concept of setting aside an unjustified, illegal, or perverse order and cancellation of an order

of bail on the ground that the accused has misconducted himself or due to the happening of certain supervening circumstances warranting such cancellation. Insofar as the cancellation of bail by the superior court on the ground that the order passed by the court granting bail is unjustified, illegal, or perverse, the principles laid down by the Apex Court in **Dolat Ram and Ors. v. State of Haryana**⁹ shall govern the same. It was observed therein that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted have to be considered and dealt with on a different basis. 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 canceled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to

⁹ (1995) 1 SCC 349

allow the accused to retain his freedom by enjoying the concession of bail during the trial. Insofar as the cases in which the application for cancellation of bail is filed for misusing liberty, the fact to be taken note of by the court is whether the conditions have been violated and that the supervening circumstances warrant the cancellation of bail (See **CBI v. Subramani Gopalakrishnan**, [(2011) 5 SCC 296]).

17. In **P. v Madhyapradesh** (supra), the Hon'ble Apex Court has adverted to all the past precedents and has encapsulated the circumstances under which bail granted to the accused under S.439 (1) of the Cr. P. C. can be revoked. They are

- a) If he misuses his liberty by indulging in similar/other criminal activity;
- b) If he interferes with the course of the investigation;
- c) If he attempts to tamper with the evidence;
- d) If he attempts to influence/threaten the witnesses;
- e) If he evades or attempts to evade court proceedings;
- f) If he indulges in activities which would hamper smooth investigation;
- g) If he is likely to flee from the country;
- h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;

- i) If he attempts to place himself beyond the reach of his surety.
- j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial

18. The Apex Court has emphatically stated that misuse of the liberty granted is sufficient enough ground to cancel the bail once granted.

19. As the petitioner has misused the liberty granted to him, the learned Special Judge was well justified in canceling the bail. In that view of the matter, the impugned order does not warrant any interference. However, it is made clear that the above order shall not stand in the way of the petitioner surrendering before the jurisdictional court and seeking regular bail. If any such application is filed, the same shall be considered in the light of the principles governing the grant of bail under the NDPS Act and also as reiterated in **Deepak Yadav v. State of U.P.**,¹⁰ which lays down that the relevant conditions for grant of bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;

¹⁰ (2022) 8 SCC 559)

- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offense being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

Appropriate orders shall be passed on its merits, untrammled by any of the observations above.

Crl.M.C. is dismissed.

Sd/-

**RAJA VIJAYARAGHAVAN V.,
JUDGE**

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APPENDIX OF CRL.MC 3730/2023

PETITIONER ANNEXURES :

- Annexure 1 TRUE COPY OF THE CHARGE SHEET FILED BY THE RESPONDENT NO.2 IN NDPS CRIME NO.11/2021 OF EXCISE RANGE OFFICE, TIRUR, MALAPPURAM DISTRICT
- Annexure 2 TRUE COPY OF THE SEIZURE MAHAZAR FILED BY THE RESPONDENT NO.2 IN NDPS CRIME NO.11/2021 OF EXCISE RANGE OFFICE, TIRUR, MALAPPURAM DISTRICT
- Annexure 3 TRUE COPY THE ORDER DATED 24.05.2022 IN B.A.NO.2289/2022 PASSED BY THIS HON'BLE COURT
- Annexure 4 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 1024/2022 OF TIRUR POLICE STATION, MALAPPURAM DISTRICT
- Annexure 5 TRUE COPY OF THE OBJECTION DATED 30.11.2022 FILED BY THE PETITIONER BEFORE THE HONOURABLE SPECIAL COURT FOR SC/ST POA ACT/NDPS ACT CASES, MANJERI
- Annexure 6 TRUE COPY OF THE ORDER DATED 11.04.2023 IN C.M.P. NO. 1499/2022 PASSED BY THE SPECIAL COURT FOR SC/ST POA ACT/NDPS ACT CASES, MANJERI