IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12th DAY OF DECEMBER, 2019

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BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL REVISION PETITION No.1364/2019

BETWEEN:

Khajim @ Khajimulla Khan
S/o Jiaulla Khan
Aged about 28 years
R/at No.555, 3rd Cross,
III Stage, Kalyanagiri Nagar,
Mysuru-577 005.

...Petitioner

(By Sri B.Lethif, Advocate)

AND:

The State of Karnataka
by Udayagiri Police Station, Mysuru District,
Represented by State Public Prosecutor
High Court Building
Bengaluru-560 001.

...Respondent

(By Sri M.Divakar Maddur, HCGP)

This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C praying to set aside the order dated 27.09.2019 in Cr..Misc.No.779/2019 on the file of the III Additional District and Sessions Judge, Mysuru and to confirm the order dated 15.11.2017 passed in Crl.Misc.No.2300/2017 on the file of the III Additional Sessions Judge, Mysuru.

This Criminal Revision Petition coming on for Admission, this day the Court made the following:-

O R D E R

The present revision petition has been filed by the petitioner-accused No.3 challenging the order passed by III Additional District and Sessions Judge, Mysuru, in Crl.Misc.No.779/2019 dated 27.9.2019.

2. I have heard the learned counsel appearing for the petitioner-accused No.3 and the learned High Court Government Pleader for respondent-State.

3. The case made out before the Court below is that accused No.3 has approached the III Additional District and Sessions Judge, Mysuru, for grant of anticipatory bail in Crime No.178/2015 for the offences punishable under Sections 302, 392, 201 r/w Section 34 of IPC. The learned Sessions Judge by order dated 15.11.2017 allowed the petition and released the petitioner-accused on anticipatory bail by imposing certain conditions. The 3rd

condition was that the petitioner was not indulged in similar or any offence. As there is a breach of 3rd condition, the State has filed the petition for cancellation of the bail contending that the petitioner-accused has been involved in a case in Crime Nos.84/2019 and 95/2019 of Udayagiri Police Station. The learned Magistrate after hearing both sides has passed the impugned order of cancellation of the anticipatory bail vide order dated 15.11.2017. Challenging the legality and correctness of the impugned order, the petitioner-accused No.3 is before this Court.

4. It is the submission of the learned counsel for petitioner-accused No.3 that in the earlier bail petition the learned Sessions Judge has appreciated the same and granted the anticipatory bail as the allegations are baseless and when a petition has been filed for cancellation by the State, without application of mind, the learned Sessions Judge has cancelled the bail. It is his further submission that the case in which the bail has been granted, trial has already been commenced and many witnesses have been

examined and the petitioner-accused is regularly attending before the trial judge and there is no allegation to the effect that he is not attending the trial and intervening in the smooth trial of the case. It is his further submission that once the bail has been granted, without there being any substantial material to the effect that the act of the accused has come in the way of the trial in which the bail has been granted, the Court can not cancel the bail. It is his further submission that the cancellation of the bail automatically and mechanically should not be done. The Court has to apply its mind and the Court has to give a finding on merits of the case. Without giving any finding on the merits of the case, the impugned order has been passed. It is his further submission that while canceling the bail, the Court should exercise the said act with caution and it has to keep in mind that the grant of bail has to be exercised as if it should not be punishment before the trial. In order to substantiate the said contention he has relied upon the decision in the case of **Subhendu**

Mishra Vs. Subrat Kumar Mishra and another reported in **AIR 1999 SC 3026.** Yet another decision in the case of **State of Rajasthan Vs. Mubin and Others** reported in 2011 Crl.L.J. 3850 and another decision in the case of **Samarendra Nath Bhattacharjee Vs. State of West Bengal and another** reported in **AIR 2004 SC 4207** and the decision of this Court in **Criminal Petition No.8787/2018 c/w Criminal Petition No.687/2019 dated 25.2.2019.** On these grounds he prayed to allow the petition and to set aside the impugned order. However he submitted that if this Court comes to the conclusion that the accused may abscond or curtail the trial, then reasonable conditions may be imposed and accused may be released on bail.

5 *Per contra,* the learned High Court Government Pleader vehemently argued and submitted that the facts and circumstances of the case clearly go to show that earlier the petitioner-accused has involved in a case punishable under Section 302, 392, 201 of IPC and now

the accused has involved in similar type of offences and he has committed two more offences and there is clear cut breach of the condition which has been imposed. It is his further submission that the liberty which has been granted has misused by accused No.3. In that light, an application has been filed. The learned Sessions Judge after considering the facts that two more cases have been registered and there is clear breach of condition imposed by the said Court, has cancelled the anticipatory bail. There are no good grounds to interfere with the impugned order. On these grounds he prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

7. It is not in dispute that earlier petitioner-accused has approached the learned III Additional Sessions Judge, Mysuru in Crl. Mis.No.2300/2017 and after giving opportunity to the Public Prosecutor the matter was heard

and by order dated 15.11.2017 anticipatory bail was granted by imposing certain conditions and it is also admitted fact that 3rd condition is that the petitioner shall not indulged in similar or any offence. It is also not in dispute that subsequently two more cases have been registered in Crime Nos.84/2019 and 95/2019.

8. The only question which arises before this Court is that merely because there is a breach of condition the Court below is justified in canceling the bail. When the Court below has considered the material facts and has granted the anticipatory bail on 15.11.2017 and it is not the case of the respondent-State that he is not regular in attending the trial and it is also not alleged that the accused has threatened the witnesses and he is coming in the way of the trial, but the only question which has been raised is that two more cases have been registered against him and there is a breach of condition. It is the duty of the Court to satisfy itself on the basis of the material placed on record that whether the said breach of condition goes to

the root of the trial in question. It is also well settled proposition of law that once the bail has been granted, it 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. This proposition of law has been laid down by the Hon'ble Apex Court in the case of **Subhendu Mishra** *quoted supra,* wherein at paragraph No.4 it has been observed as under:

> *4. In Dolat Ram v. State of Haryana [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] 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 was opined by this Court: (SCC pp. 350-51, para 4)*
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> *"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."

9. It is noticed from the facts that two cases have been registered in Crime Nos.84/2019 and 95/2019. Merely on filing of the complaint and registration of the case against the accused, cannot be said that he had committed any offence mentioned therein during the bail period. It is also well settled proposition of law that until the trial is held and the accused is held guilty, he is said to be innocent. When once a case has been registered as against the accused, then under such circumstances, it cannot be treated as a breach of condition imposed by the Court while granting the order of bail. This proposition of law has been laid down in the case of **State of Rajasthan** *quoted supra,* wherein at paragraphs 9 and 10 it has been observed as under:

> *9. The primary question which is to be considered by us in this case is as to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other words, can it be said that a person has committed an offence when a first*

information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be levelled against the accused person at that stage. As a matter of fact, the question as to whether an offence has been prima facie committed or not is considered when an opinion is formed by the Court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provisions under Section 228 Cr. P.C. and the terminology used at the stages prior to it. The relevant provision of the Code of Criminal Procedure is as under:—

"228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against

the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused."

In other words, an accused can be said to have committed an offence only when a Court, after considering the material before it and hearing the parties, forms an opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of

framing of charge when the concerning court forms an opinion for presuming that the accused has committed the offence and not at any earlier point of time. The word 'commit' as perJohnson Dictionary means"to be guilty of a crime".

In such view of the matter, merely on filing of first information reports against the accused applicants, it cannot be said that they had committed any offence during the period of bail. Consequently, they did not breach the conditions so imposed by the Court while granting order of bail on 12.9.2006

10. For the aforesaid reasons, we are of the view that the accused applicants had not committed any breach of conditions imposed on them on 12.9.2006. Moreover, the accused applicants were awarded acquittal by the learned trial Court on 5.5.2006 and it is against the said judgment that the prosecution had preferred the present appeal in which they were given the benefit of bail, during the pendency of the same. The

accused applicants are in custody since 12.6.2008.

10. Even as could be seen from the allegations made, no good grounds have been made. The only ground which has been made out is that two criminal cases have been registered. In what way the said cases registered have come in the way of the trial, has also not been made out. Under such circumstances, cancellation of the bail by the impugned order is not sustainable in law.

11. It has also been held in the case of **Samarendra Nath Bhattacharjee** *quoted supra* that when already the bail has been granted by exercising powers vested with the Court, then sparingly the same has to be reviewed and cancelled. It is further held that the powers exercised by the Court should be exercised with caution and the Court has to keep in mind that grant of bail has to be exercised as if it should not be a punishment before trial. The same yardstick has to be made applicable at the time of cancellation of bail. This proposition of law has been laid

down in the case of **Abdul Basit Alias Raju and Others Vs. Mohd. Abdul Kadir Chaudhary and another** reported in **(2014) 10 SCC 754.**

After going through the ratio laid down in the above catena of decisions *quoted supra,* the Hon'ble Apex Court has clearly stated what are the criteria which are to be looked into while considering the application for cancellation of bail. By going through the order of the trial Court, no cogent and justifiable reasons have been stated as to how the registration of the case has come in the way of trial in which the bail has been granted.

12. Taking into consideration the above said facts and circumstances, I am of the considered opinion that the lengthy order has been returned for the purpose of cancellation of the bail, it is going to satisfy the main ingredients which are to be considered at the time of cancellation of bail.

13. Merely because condition has been imposed while granting the anticipatory bail, then automatically it should not be cancelled on technical grounds. Be that as it may. Even the material facts indicates that the accused has granted anticipatory bail and thereafter he has appeared before the Court and regally he is attending the Court and already many more witnesses have been examined and when there is no hurdle or misuse of the liberty granted by the accused in the said case wherein the bail has been granted, merely because some other cases have been registered and in that light if the bail is cancelled, then automatically it is going to affect the liberty of a particular person which is granted under Article 21 of the Constitution. The Court while dealing with liberty of a person under Article 21 of the Constitution has to keep in mind all the above facts and if any reasonable apprehension that the liberty granted is going to be misused, then under such circumstances the Court can exercise its power and cancelled the bail. Taking into

consideration the above said facts the petitioner has made out a case so as to allow the petition.

14. In that light, the petition is ***allowed*** and the order passed by the III Additional District and Sessions Judge, Mysuru, in Crl.Misc.No.779/2019 dated 27.9.2019 is set aside.

However, the accused is directed to appear before the Court below regularly without fail and he should not tamper with the prosecution evidence and he should not treat it as liberty granted to do any further offences.

In view of disposal of the main petition, IA No.1/2019 does not survive for consideration and the same is accordingly disposed of.

Sd/-
JUDGE

*AP/-