Himanshu Sharma vs The State Of Madhya Pradesh on 20 February, 2024

Author: B.R. Gavai

Bench: B.R. Gavai

2024 INSC 139

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2024
(Arising out of SLP(Crl.) No(s). 786 of 2024)

HIMANSHU SHARMA ….APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH ..RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). OF 2024
(Arising out of SLP(Crl.) No(s). 2032 of 2024)

ORDER

1. Leave granted.

2. The instant appeals are directed against the orders of even date, i.e., 12th December, 2023 passed by the learned Single Judge of High Court of Madhya Pradesh Bench at Gwalior in Miscellaneous Criminal Case Nos. 43154 of 2023 and 43149 of 2023, whereby the bail granted to the appellants was cancelled on applications filed by the State under Section 439(2) of Code of Reason:

Criminal Procedure, 1973 (hereinafter being referred to as ‘CrPC’).

3. The appellants herein were arrested in connection with the FIR being Crime No. 21/2022 registered at P.S. Dinara District, Shivpuri for offences punishable under Sections 419, 420, 467, 468, 470 and 471 of the Indian Penal Code, 1960 (hereinafter being referred to as ‘IPC’) and Section 25/27 of the Arms Act.

4. Learned Single Judge sitting at Gwalior Bench of High Court of Madhya Pradesh accepted the bail applications being Miscellaneous Criminal Case Nos. 42299/2022 and 44360/2022 preferred by the appellants under Section 439 CrPC vide orders dated 8th September, 2022 and 14th November, 2022.

5. It may be stated here that the appellants herein were not apprehended at the time of registration of the FIR and were not named therein. They were implicated in the case solely on the basis of confessional statements made by the co□accused persons. Charge□sheet had been filed by the time the appellants were granted bail by the learned Single Judge vide order dated 8 th September, 2022 and 14th September, 2022.

6. The State preferred applications under Section 439(2) CrPC seeking cancellation of regular bail granted to the appellants herein.

7. Surprisingly, the applications for cancellation of bail came to be listed before learned Single Judge of the Gwalior Bench of High Court of Madhya Pradesh(other than the learned Single Judge who had granted bail who had granted bail to the accused) who accepted the same vide impugned orders of the same date, i.e. 12th December, 2023 adverting to the merits of the case and by observing that the independent role of the accused may vary but collectively their role appears to be challenging and has wider ramifications in respect of national security and cyber crime. The Aadhar cards and some copies recovered from the accused could be used in NDPS offences, terrorism related activities, cyber frauds, kidnapping, ransom purposes and for offences of grievous denominations.

8. Accordingly, the learned Single Judge after referring to the judgment rendered by this Court in the case of Abdul Basit @ Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another1, cancelled the bail granted to the appellants by a 1 (2014)10 SCC 754 coordinate Single Bench of the Gwalior Bench of the Madhya Pradesh High Court, in the following manner:□“7. Police is required to investigate thoroughly and therefore, when they intend to further investigate the case, those accused are required to cooperate in this regard. Therefore, in the considered opinion of this Court, bail application is required to be recalled and present accused is required to go in custody again.

8. So far as judgment relied upon by the petitioner is concerned in the judgment of Abdul Basit (supra) itself if new adverse facts come to the knowledge of the Court, then Court can certainly look into it for cancellation of bail. Here facts which brought to the notice of this Court are such glaring in nature that Court finds it a suitable case for cancellation of bail. Two accused persons are still absconding, this is the one aspect which is also noted by the Court.

9. In the cumulative analysis, application for cancellation of bail preferred by the State Government is hereby allowed and respondent/accused is directed to surrender before the trial court immediately within fifteen days from the date of passing of this order. In case, respondent/accused did not surrender before himself before the trial Court then trial Court is free to secure his presence in accordance with law.”

9. The accused are in appeal against the above orders.

10. Having heard and considered the submissions advanced by learned counsel for the parties and after going through the impugned orders dated 12th December, 2023 and so also the orders granting bail dated 8th September, 2022 and 14th September, 2022, we are of the firm opinion that the exercise of jurisdiction by the learned Single Judge of High Court of Madhya Pradesh in cancelling the bail granted to the appellants by another Single Judge of the same High Court and that too, by examining the merits of the allegations was totally uncalled for and tantamounts to judicial impropriety/indiscipline.

11. While cancelling the bail granted to the appellants, the learned Single Judge referred to this Court's judgment in the case of Abdul Basit (supra). However, we are compelled to note that the ratio of the above judgment favours the case of the appellants. That apart, the judgment deals with the powers of the High Court to review its own order within the limited scope of Section 362 CrPC. Relevant observations from the above judgment are reproduced below :-"14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last-mentioned case, one would expect very strong grounds indeed. (Raghubir Singh v. State of Bihar [(1986) 4 SCC 481)

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118]

16.In Gurcharan Singh case [(1978) 1 SCC 118] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short "the old Code") and elucidated the position of law vis-a-vis powers of the courts granting and cancelling the bail. This Court observed as under:

> "16. Section 439 of the new Code confers special powers on the 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." (emphasis supplied)

17. In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas [(2001) 6 SCC 338]. In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Narendra K. Amin v. State of Gujarat [(2008) 13 SCC 584] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in Puran case [(2001) 6 SCC 338] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

18. Reverberating the aforesaid principle, this Court in the recent decision in Ranjit Singh v. State of M.P. [(2013) 16 SCC 797] has observed that:

> "19. ... 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."

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.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner□accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."

12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud. In the present case, none of these situations existed.

13. We fail to understand how the application seeking cancellation of bail came to be listed before a Single Judge other than the learned Single Judge who had granted bail to the appellants.

14. Under normal circumstances, the application for cancellation of bail filed on merits as opposed to violation of the conditions of the bail order should have been placed before the same learned Single Judge who had granted bail to the accused. The learned Single Judge, while passing the impugned orders dated 12th December, 2023 has virtually reviewed the orders granting bail to the appellants dated 8 th September, 2022 and 14th September, 2022 by another Single Judge of the same High Court. We feel that such exercise of jurisdiction tantamounted to gross impropriety.

15. It may further be noted that the learned Single Judge while cancelling the bail granted to the appellants did not even consider the fact that charges had been framed against the appellants on 28th May, 2022 and the trial had commenced and thus there could not have been any requirement of the appellants for further investigation as observed in para 7 of the impugned order. This Court is informed that by now, seven witnesses have been examined at the trial. Thus, we are of the considered opinion that the impugned orders dated 12th December, 2023 whereby the bail granted to the appellants by the learned Single Judge of High Court of Madhya Pradesh vide orders dated 8 th September, 2022 and 14th September, 2022 was cancelled, are grossly illegal and do not stand to scrutiny. Resultantly, the same are hereby quashed and set aside.

16. The appeals are accordingly allowed.

17. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI) .....J. (SANDEEP MEHTA) New Delhi;

20th February, 2024