

2025 LiveLaw (SC) 242

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DIPANKAR DATTA; J., MANMOHAN; J.**

February 20, 2025

CRIMINAL APPEAL NO.861/2025

(Arising out of SPECIAL LEAVE PETITION (Crl.) No.713/2025)

KAILASH KUMAR VERSUS STATE OF HIMACHAL PRADESH & ANR.

Bail - Cancellation of - Held, Personal liberty is a fundamental constitutional right, and courts must exercise caution before restricting it. No evidence was found of the accused misusing bail, influencing witnesses, tampering with evidence, or causing undue delay. The High Court's cancellation of bail was unjustified, as it erroneously conducted a mini-trial. Bail restored, with a direction for the appellant to appear before the Trial Court, failing which the bail may be cancelled. Appeal allowed. [Referred: *Ajwar v. Waseem*, [2024 LiveLaw \(SC\) 392](#); Para 12, 13]

Petitioner: Mr. Rajiv Rai, Adv. Mr. Subhash Chandran K.R., AOR Ms. Krishna L R, Adv.

Respondent: Mr. Vaibhav Srivastava, A.A.G. Ms. Sugandha Anand, AOR Mr. Amrinder Singh Rana, Adv. Mr. Vivek R. Mohanty, Adv. Mr. Ankit Anandraj Shah, AOR, Mr. Rahul Yadav, Adv. Mr. Vishwam Dwivedi, Adv.

ORDER

1. Leave granted.
2. The High Court by the impugned judgment and order dated 03rd January, 2025 has cancelled the bail granted to the appellant by the Sessions Court by its order dated 28th August, 2024.
3. It is not in dispute that the appellant, figuring as an accused in FIR No.51 dated 04th June, 2022 registered at Police Station Kot-Kehloor, District Bilaspur, Himachal Pradesh for alleged commission of offences punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860, was arrested on 04th June, 2022. 4 The allegation against the appellant appears to be that he had given an axe blow on the head of the complainant-PW1.
5. After framing of charges, the trial has commenced. The prosecution proposes to examine 43 witnesses of whom evidence of 17 witnesses has been recorded till date.
6. Having suffered incarceration for two years, the appellant had applied for bail before the Sessions Court. Recording reasons in paragraphs 9 and 11 of its order dated 28th August, 2024, the Sessions Court granted the appellant bail on terms and conditions mentioned therein.
7. The complainant-PW1 thereafter successfully moved the High Court seeking cancellation of bail.
8. We have heard learned counsel appearing for the parties and perused the impugned judgment.
9. The High Court has not referred to any single act of the appellant, post grant of bail, which could give rise to formation of an opinion that any of the terms and conditions of bail have been violated by the appellant and, therefore, grant of bail warrants revocation/cancellation.

10. The decision of this Court in ***Ajwar v. Waseem and Anr.***¹, relied on by the High Court, has been perused. In terms of such decision, while seized of an application for cancellation/revocation of bail, the considerations (illustrative, not exhaustive) which ought to weigh with the courts are whether: (i) the accused has misused the concession of liberty; (ii) he has been delaying the trial; (iii) he has been influencing/threatening the witnesses; (iv) he has been tampering evidence in any manner; and (v) there has been any supervening circumstance after grant of bail warranting a relook. The decision also lays down that orders granting bail could be interfered with if the same are found to be perverse or illegal in the sense that the Court's conscience is shocked or extraneous material has been considered.
11. Despite quoting relevant passages from the decision in ***Ajwar*** (supra), the High Court does not appear to have adverted to any of the relevant considerations in the present case; hence, the question of recording a satisfaction that bail granted should be cancelled does not arise.
12. Instead, what the High Court did was to embark upon conducting sort of a mini-trial at the stage of considering whether the bail should be cancelled or not. According to the High Court, presence of the appellant and the co-accused at the scene of occurrence and causing of injury to the complainant-PW1 by the appellant being undisputed and notwithstanding that the injury caused by him is simple, there was common intention for which Section 34 of the IPC is attracted. There are also other observations in the impugned judgment having the potential of affecting the trial and sounding the death knell for the appellant, which we do not consider necessary to refer at this stage.
13. Suffice to observe, liberty of an individual being a precious right under the Constitution, the Courts ought to be wary that such liberty is not lightly interfered. We are satisfied that there was no valid reason for the High Court to cancel the bail without there being any material to show, even *prima facie*, that conduct of the appellant post grant of bail has been such that he should be deprived of his liberty. There are also no allegations of influence being exerted or threat extended to the witnesses or of tampering the evidence. Material to demonstrate that dilatory tactics have been adopted to procrastinate the trial is also conspicuous by its absence.
14. In such view of the matter, we are of the considered opinion that the High Court was completely in error and unjustified in cancelling the bail of the appellant.
15. The impugned judgment and order is, accordingly, set aside and the order dated 28th August, 2024 of the Sessions Court is restored.
16. The appellant shall be released on bail, subject to the same terms and conditions as were imposed by the Sessions Court earlier.
17. We clarify that the observations made in this order and grant of bail will not be treated as findings on the merits of the case.
18. The appellant shall, however, appear before the trial court on the dates fixed, unless exempted; and should the appellant fail to appear on any date without justifiable cause or breach any of the terms and conditions for grant of bail, the trial court shall be at liberty to cancel the bail.
19. The appeal is, accordingly, allowed on the aforesaid terms.
20. Pending application(s), if any, stand disposed of.

¹ (2024) 10 SCC 768