



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 4168/2024



- 1. Dinesh S/o Harisingh, R/o Karili, Police Station Nadbai, District Bharatpur
- 2. Rajpal S/o Harisingh, R/o Karili, Police Station Nadbai, District Bharatpur
- 3. Satveer S/o Girraj, R/o Karili, Police Station Nadbai, District Bharatpur
- 4. Mahaveer S/o Girraj, R/o Karili, Police Station Nadbai, District Bharatpur

----Petitioners

Versus

State Of Rajasthan, Through P.P.

----Respondent

For Petitioner(s)	:	Mr. Jagmodhan Bhardwaj
For Respondent(s)	:	Mr. Amit Punia-PP
		Mr. Rajeev Kumar Sogarwal

JUSTICE ANOOP KUMAR DHAND

Order

21/11/2025

- 1. By way of filing this criminal misc. petition, a challenge has been led to the impugned order dated 29.06.2024 passed by the Special Judge (Dacoity Affected Area), Bharatpur by which the application submitted by the State through Public Prosecutor under Section 439(2) Cr.P.C. has been allowed and the bail granted to the accused petitioners by the Investigating Officer on 30.08.2023 has been cancelled.
- 2. Counsel for the petitioners submits that the alleged incident occurred on 20.11.2022 wherein three persons have sustained injuries and none of the injured persons have sustained any



grievous injuries. Counsel submits that when the injury suffered by the injured Mohan Singh was examined, no fracture was found even in the CT Scan Report, hence, under these circumstances, the police filed the crime under Sections 143, 323, 324, 341, 325 and 504 IPC read with Section 34 IPC. Since all the offences were bailable, hence the bail bonds of the accused were accepted by the Investigating Agency on 30.08.2023 and the petitioners were enlarged on bail. Counsel submits that subsequently, X-ray of the injured was done wherein fracture was found and this fact was disputed by the petitioners by way of filing an application before the trial Court making a request for re-medical examination of the injured Mohan Singh. Counsel submits that said application submitted by the petitioners was allowed by the learned Additional Chief Judicial Magistrate, Nadbai, Bharatpur vide order dated 21.04.2023 and a direction was issued for constitution of a medical board to re-examine the injuries sustained by the injured Mohan Singh.

3. Aggrieved by the aforesaid order, the complainant- Netrapal submitted a revision petition before the Additional Sessions Judge No. 2, Bharatpur, however the same was rejected vide order dated 09.05.2023 and the order passed by the learned Magistrate was upheld. Counsel submits that aggrieved by the aforesaid order, again complainant-Netrapal approached this Court by way of filing S.B. Criminal Misc. Petition No. 2986/2023, however the same was also rejected, hence, the order passed by the learned Magistrate for re-examination of the injured by the medical board was once again upheld. Counsel submits that inspite of above, the injured Mohan Singh did not appear before medical board for his re-exam-



ination and in the meantime, the Investigating Officer changed his opinion and Section 308 IPC was added to the registered crime. Counsel submits that once looking to the injuries sustained by the injured, it was found by the Investigating Officer that all the offences are bailable, hence under these circumstances, there was no reason or occasion available with the Investigating Officer to add a cognizable offence under Section 308 IPC. Counsel submits that without considering the factual aspect of the matter, the learned Special Judge has seriously erred in accepting the application submitted by the State under Section 439(2) Cr.P.C and has erred in rejecting the bail granted by the Investigating Officer on 30.08.2023, vide impugned order dated 29.06.2024, hence under these circumstances, the impugned order passed by the learned Special Judge is not sustainable in the eyes of law and the same is liable to be quashed and set aside.

4. Per contra, learned Public Prosecutor as well as counsel for the complainant opposed the arguments raised by counsel for the petitioners and submitted that the injured Gopal has sustained multiple injuries including three incise wounds on his head i.e. vital part of the body. Counsel submits that though initially the offences were found to be bailable but subsequently, the matter was re-examined and it was found that looking to the injury suffered by the injured and gravity of the incident, Section 308 IPC was added to the registered crime. Therefore, an application was submitted for cancellation of bail granted to the petitioners before the Court of special Judge. Counsel submits that the learned Special Judge has not committed any error in canceling the bail granted to the accused petitioners. Learned Public Prosecutor submits that



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pursuant to the order dated 21.04.2023 passed by the learned Magistrate, a medical board was constituted to re-examine the injured- Mohan Singh and his injuries but inspite of several notices and reminders, he failed to appear before the medical Board. Counsel submits that looking to the injuries suffered by the injured, it was found that the offence under Section 308 IPC is made out, hence the Court below has not committed any error in canceling the bail granted to the petitioners. In support of their contentions, they have placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in the case **Mohan Singh Vs. State of Rajasthan and Ors.** (S.B. Criminal Misc. Bail Cancellation Application No. 158/2022, decided on 02.01.2023).

5. Heard and considered the submissions made at Bar and perused the material available on record.

6. Perusal of the record indicates that initially the Investigating Officer was of the opinion that the injured has not sustained any grievous injury, hence a decision was taken to submit charge-sheet against the accused persons for the offence under Sections 323, 341, 324, 325 and 504 IPC read with Section 34 IPC but subsequently, when the injury report was examined again by the Higher Rank Officer at the level of Inspector General of Police and when the matter was transferred to the Additional Superintendent of Police and the injuries suffered by the injured person was re-examined it was found that the injured-Mohan Singh has sustained in all seven injuries on different parts of his body, out of which three injuries given by a sharpened weapon, were found on his parietal region but looking to the fact that there were repeated blows on the vital part i.e. head of the injured, the Investigating Officer



was of the opinion that offence under Section 308 IPC was made out and accordingly, Section 308 IPC was added and a decision was taken by the State through Public Prosecutor to submit an application under Section 439(2) Cr.P.C for cancellation of bail granted to the petitioners by the Investigating Officer on 30.08.2023. The learned Special Judge after taking into account the entire facts and circumstances of the case and more particularly, the injuries suffered by the injured Mohan Singh on his vital parts of the body has cancelled the bail granted to the accused persons. The law in this regard is well settled by a Co-ordinate Bench of this Court in the case of **Abdul Gafoor Vs. State of Rajasthan**, while deciding the S.B. Criminal Misc. Petition No. 1290/2012, on 14.06.2012, wherein it has been held as under:-

“In view of the aforesaid, the settled position of law which emerges is that the benefit of bail granted to an accused under bailable offences, cannot continue and shall stand cancelled on addition of graver and non-bailable offence. In these circumstance, the order dated 24.10.2016 passed by the learned Additional Sessions Judge No. 19, Sanganer, Jaipur Metropolitan, rejecting the Criminal Misc. Application No. 437/2016 seeking cancellation of bail to the accused-non-petitioners no.2 to 4 cannot be countenanced and deserves to be quashed.”

7. It is the settled proposition of law that the benefit of bail granted by the Investigating Officer to the accused persons deserves to be cancelled on addition of graver and non-bailable offence during the course of investigation, hence under these circumstances, this Court finds no error in the impugned order passed by the Court below, which warrants any interference of this Court and accordingly, the instant criminal misc. petition stands rejected.



8 At this stage, the learned counsel appearing on behalf of the petitioners submits that there is a marriage in the family of the petitioners which is scheduled to be fixed on 15.12.2025, therefore some time be granted to the petitioners to surrender.

9. The aforesaid prayer of the counsel for the petitioners appears to be genuine and this prayer has not been opposed by the counsel appearing on behalf of the complainant as well as by the learned Public Prosecutor.

10 Since there would be a winter break in between 21.12.2025 till 01.01.2026, hence the petitioners are directed to surrender before the Court below on or before 02.01.2026. In case, the petitioners surrender before the trial Court and apply for regular bail, the same would be considered by the learned trial Court strictly in accordance with law expeditiously as early as possible.

11. Stay application and all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

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