



2024:KER:80213

CrI.R.P.No.1110 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 28TH DAY OF OCTOBER 2024 / 6TH KARTHIKA, 1946

CRL.REV.PET NO. 1110 OF 2024

**CRIME NO.325/2022 OF Vellarada Police Station,
Thiruvananthapuram**

**AGAINST THE ORDER DATED 04.09.2024 IN
CrI.M.A.No.15216 of 2023 IN SC NO.2291 OF 2022 OF
ADDITIONAL DISTRICT COURT-II, THIRUVANANTHAPURAM**

REVISION PETITIONER/PETITIONER/ACCUSED+:

**VISAKH, AGED 30 YEARS,
S/O VIJAYAKUMAR,KGS BHAVAN,
ANAPPARA, VELLARADA VILLAGE,
THIRUVANANTHAPURAM, PIN - 695505**

**BY ADV
SRI.GOKUL D. SUDHAKARAN**

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031**
- 2 THE SUB INSPECTOR OF POLICE,
VELLARAD POLICE STATION, VELLARADA,
THIRUVANANTHAPURAM, PIN - 695505**

**BY ADV.
SRI.G.SUDHEER,PP**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
28.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



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K.BABU, J.

Crl.R.P. No.1110 of 2024

Dated this the 28th day of October, 2024

ORDER

The challenge in this revision petition is to the order dated 04.09.2024 in Crl.M.P. No.15216 of 2023 in S.C.No. 2291 of 2022 on the file of the Additional Sessions Court (Adhoc-II), Thiruvananthapuram.

2. The petitioner is the accused in Crime No.325/2022 of Vellarada Police Station. He is alleged to have committed the offence punishable under Section 20(b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. On 18.04.2022 around 5.00 p.m., the petitioner was found in possession of 2.045 Kgs of Ganja. The Sessions Court granted bail to the petitioner as per the order dated 23.07.2022 on conditions. The Sessions Court imposed the



following conditions while granting bail to the petitioner in
Crime No.325/2022 of Vellarada Police Station:-

".. Therefore, the petition is allowed to release the petitioner on bail, on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties, each for the like amount, on the following conditions:

(1)The petitioner is directed to co operate with the investigation.

(2) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of this case, so as to dissuade such persons from disclosing such facts to the court or to any police officer.

(3) The petitioner shall surrender his passport, if any, within 7 days form the date of his release. If he has no passport, he shall file an affidavit within 7 days after his release.

(4) The petitioner shall not involve in any other offence while on bail."

4. The police submitted the final report on 30.07.2022 before the Sessions Court. In response to the summons, the petitioner appeared before the Sessions Court. The Court released him on bail on his executing a bond.

5. On 31.08.2023, Vellarada Police registered another crime (Crime No.1100/2023) against the petitioner, alleging offences punishable under Sections 324, 326, 323, 294(b), 506 and 34 of the IPC. The petitioner obtained



regular bail in that case. Thereafter, the Investigating Officer in the former crime (Crime No.325/2022) submitted an application as CrI.M.P. No.15216 of 2023 before the Additional Sessions Court-II, Thiruvananthapuram seeking cancellation of bail on the ground that the petitioner violated condition No.4 in the order granting bail in Crime No.325/2022. The learned Sessions Judge allowed the application and cancelled his bail. This order is under challenge in this revision petition.

6. I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

7. The learned counsel for the revision petitioner submitted that the conditions imposed by the learned Sessions Judge while granting bail in Crime No.325/2022 were not in force while he was implicated in another crime. The learned counsel submitted that the prosecution failed to produce any cogent materials to establish that the petitioner has committed any offences as alleged in the subsequent crime. The learned counsel further submitted



that, even if it is assumed that he was involved in another crime after the submission of the final report on the previous crime, it cannot be concluded that he interfered with the administration of justice, as far as the trial or any proceedings in respect of the previous crime.

8. The learned Public Prosecutor submitted that the prosecution has produced convincing materials to establish the involvement of the petitioner in the subsequent crime. The learned Public Prosecutor contended that the condition imposed by the Sessions Court while granting bail in the former crime continues even after the submission of the final report.

9. It is settled law that the cancellation of the bail is to be dealt with on a different footing in comparison to a proceeding for grant of bail. There shall be cogent and overwhelming reasons for the cancellation of bail granted to an accused. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to a fair trial, making it necessary to



cancel the bail. In **Dolat Ram v. State of Haryana, [(1995) 1 SCC 349]**, the Supreme Court laid down grounds for cancellation of bail as:

- (i) interference or attempt to interfere with the due course of administration of justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

10. The Supreme Court in ***Dolat Ram v. State of Haryana (supra)*** observed thus:

“4. 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 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 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.”

11. In **X v. State of Telangana [(2018) 16 SCC 511]**, Three-Judge Bench of the Supreme Court reiterated the principles laid down above.

12. In **Deepak Yadav v. State of Uttar Pradesh [(2022) 8 SCC 559]**, the Supreme Court described the following illustrative circumstances where the Court can cancel the bail:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.



33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

13. In **Shivani Tyagi v. State of U.P. and Another (2024 SCC OnLine SC 842)**, the Supreme Court reiterated the above principles.

14. This Court in **Godson and Another v. State of Kerala (2022 KHC 672)**, observed that while a Court exercises the jurisdiction to cancel bail on the ground that



the accused violated a condition imposed at the time of granting bail, it has to satisfy that the alleged violation amounts to an attempt to interfere with the administration of justice or as to whether it affects the trial of the case in which the accused is implicated. If the Court is satisfied that the subsequent crime has been committed by the accused with the intention to influence or intimidate the witnesses or to interfere with the trial, the Court may exercise the jurisdiction to cancel the bail.

15. In the present case, during the crime stage, the petitioner was granted bail by the Sessions Court. Conditions were imposed by the Sessions Court for the smooth completion of the trial. The Investigating Agency completed the investigation and submitted the final report. The prosecution has no case that he ever interfered with the investigation. One year after the submission of the final report, the police registered another crime alleging that he was involved in Crime No.1100 of 2023. The prosecution has not produced any material to show that the alleged



involvement of the petitioner in the subsequent crime has any nexus with the trial or any of the proceedings in the case. There is nothing to show that he had an intention to interfere with the administration of justice as far as the trial of the first case is concerned. The learned Sessions Judge mechanically invoked the jurisdiction to cancel the bail. The learned Sessions Judge has not gone into any of the merits of the allegations levelled against him in the subsequent crime. The Sessions Judge has, in fact, failed to discharge his solemn duty concerning the liberty of an individual.

16. The principle that bail is the rule and jail is the exception has been well recognised by judicial pronouncements. This is the principle underlined in Article 21 of the Constitution of India.

17. The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. Personal liberty, deprived when bail is refused, is too precious a value of our



constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with a lively concern for the cost to the individual and the community. After all, the personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law” {Vide: **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P. [(1978) 1 SCC 240]**}.

18. The consequence of the impugned order cancelling the bail resulted in a substitute for preventive detention. This Court in **Godson and Another** (Supra) held that the stipulations contained in Sections 437(5) and 439(2) of Cr.P.C. cannot be treated as a substitute for preventive detention laws. The Sessions Judge, while granting bail to the petitioner, never perceived the condition that he shall not be involved in any other offence to continue throughout the trial. The Sessions Judge only wanted or intended for the investigation to be completed smoothly without any interference on the part of the



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accused. The impugned order is liable to be set aside.

Therefore, the order dated 04.09.2024 in Crl.M.P.No.15216/2023 in S.C.No.2291/2022 on the file of the Additional Sessions Court-II, Thiruvananthapuram, cancelling the bail of the accused stands set aside. The Criminal Revision Petition is allowed as above.

**Sd/-
K. BABU
JUDGE**

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APPENDIX OF CRL.REV.PET 1110/2024

PETITIONER ANNEXURES

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| Annexure 1 | TRUE COPY OF THE F.I.R IN CRIME NO.
325/2022 OF VELLARADA POLICE STATION
DATED 18-04-2022 |
| Annexure 2 | TRUE COPY OF THE ORDER IN CRL.M.P NO.
1785/2022 DATED 23-07-2022 OF THE
HON'BLE ADDITIONAL SESSIONS JUDGE I,
THIRUVANANTHAPURAM |
| Annexure 3 | TRUE COPY OF THE FINAL REPORT IN CRIME
NO. 325/2022 OF VELLARADA POLICE
STATION DATED 30-07-2022 |
| Annexure 4 | TRUE COPY OF THE F.I.R IN CRIME NO.
1100/2023 DATED 31-08-2023 OF VELLARADA
POLICE STATION |
| Annexure 5 | TRUE COPY OF THE PETITION FILED BY THE
PUBLIC PROSECUTOR FOR CANCELLATION OF
BAIL |
| Annexure 6 | FREE COPY OF THE ORDER DATED 04-09-2024
IN CRLM.P NO. 15216/2023 IN S.C NO.
2291/2022 |