



2024/KER/34054

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946

CRL.MC NO. 4830 OF 2022

AGAINST THE ORDER IN CRL.M.P 1769/2022 IN CRL.M.C.NO.1805 OF
2018 OF SESSIONS COURT, THALASSERY

PETITIONER/RESPONDENT/ACCUSED:

SOBHIN SUNNY

AGED 38 YEARS

S/O.SUNNY, KIZHAKKOMBIL HOUSE, THIMIRI AMSOM,
VADAKUMPOYIL, THIMIRI.P.O, KANNUR DISTRICT, PIN -
670581.

BY ADVS.

V.A.SATHEESH

V.T.MADHAVANUNNI

ANAND V.S

RESPONDENT/PETITIONER/RESPONDENT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

SENIOR PUBLIC PROSECUTOR RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
20.05.2024, THE COURT ON 24.05.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

Crl.M.C No.4830 of 2022-C

*Dated this the 24th day of May, 2024****O R D E R***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (‘Cr.P.C’ for short) by the 1st accused in Crime No.725/2018 of Alakkode Police Station, to quash Annexure-A4 order.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused Annexure-A4 order and the decision placed by the learned counsel for the petitioner.

3. The precis of the case is as follows:- The petitioner, who is the accused in Crime No.725/2018 of Alakkode Police



Station, was granted bail as per Annexure-A4 order in Crl.M.C.No.1805/2018 dated 05.01.2019 by the Special Court, where the accused is alleged to have committed offence punishable under Section 27(b) of the under the Narcotic Drugs and Psychotropic Substances Act ('NDPS Act' for short) and Section 77 of the Juvenile Justice Act.

4. While granting bail, the Special Court imposed certain conditions and condition No.(iv) is that "the petitioner shall not involve in any other crime during the bail period". Since the petitioner subsequently involved in Crime No.100/2022 of Alakkode Police Station alleging commission of offence punishable under Section 20(b)(ii)(A) of the NDPS Act, prosecution filed a petition to cancel the bail contending that the fourth condition in the bail order dated 05.01.2019 in Crl.M.C.No.1805/2018 was violated.

5. The learned Special Judge addressed the contention



raised by the prosecution and the objection raised by the petitioner in this regard. Finally the learned Special Judge found that the petitioner, who had been continuing on bail granted in Crl.M.C.No.1805/2018, again committed offence punishable under Section 20(b)(ii)(A) of the NDPS Act as per Crime No.100/2022 of Alakkode Police Station and thereby the petitioner had violated the fourth condition imposed by the Special Court in the bail order. Accordingly, for the said reason bail granted in Crime No.725/2018 has been cancelled.

6. While impeaching the veracity of the order, the point argued by the learned counsel for the petitioner is that bail granted by the court during crime stage cannot be cancelled after filing final report for violating conditions in the bail order. It is argued that the High Court also cannot cancel the order of bail granted by it, at crime stage, after final report has been filed, and after Sessions Court granted regular bail to the accused, on the ground that the petitioner violated the conditions in the order passed by the High Court.



According to the learned counsel for the petitioner, this legal position is discussed in the decision reported in [2012 (1) KLT 203], *State of Kerala v. Moidheen Kunji*. Therefore, it is zealously argued that, Annexure-A4 order passed by the learned Special Judge is illegal and the same deserves interference.

7. Supporting Annexure-A4 order, the learned Public Prosecutor submitted that the decision in *Moideen Kunji*'s case (*supra*) is on a different footing and the same was rendered when considering cancellation of bail granted by the High Court when the accused was granted bail by the Sessions Court after filing of the final report.

8. In so far as the legal question as to whether what are the contingencies under which bail can be cancelled the law is well settled. In the decision reported in [2022 (7) KHC 109 : 2022 KHC OnLine 883 : 2022(6) KLT OnLine 1129], *Sreeja Mannangath v. State of Kerala*, this Court considered the parameters governing



cancellation of bail referring the decisions of the Apex Court and observed in paragraphs 8 to 15 as under:

*“8. In the latest decision of the Apex Court reported in (2022 KHC 6496: 2022 (2) KLD 49 : 2022 KHC OnLine 6496 : 2022 SCC OnLine SC 552 : 2022 (7) SCALE 411 : AIR 2022 SC 2183), **P. v. State of Madhya Pradesh and Another**, three bench decision of the Apex Court considered some of the circumstances where bail granted to the accused can be cancelled under S.439(1) of the Cr.P.C.. It has been held as under:*

- a) If he misuses his liberty by indulging in similar / other criminal activity;*
- b) If he interferes with the course of investigation;*
- c) If he attempts to tamper with the evidence;*
- d) If he attempts to influence / threaten the witnesses;*
- e) If he evades or attempts to evade Court proceedings.*
- f) If he indulges in activities which would hamper smooth investigation;*
- g) If he is likely to flee from the country;*
- h) If he attempts to make himself scarce by going underground and / or becoming unavailable to the investigating agency;*
- i) If he attempts to place himself beyond the reach of his surety;*
- j) If any facts may emerge after the grant of bail which are*



considered uncondusive to a fair trial.

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

9. *The learned counsel for the second respondent placed a decision of this Court reported in (2022 (4) KLJ 150), Godson (Represented by, M. H. Hanis (Adv.) v. State of Kerala (Represented by, Prasanth M. P. (Sr.PP) & C. S. Hrithwik (Sr.PP), to contend that mere violation of the condition of bail not to involve in similar offences during the period of bail is not sufficient to cancel the bail granted by the Court. In Godson's case (supra), this Court considered the decision of the Apex Court in Dolat Ram and Others v. State of Haryana, 1995 (1) SCC 349 : 1994 ICO 4306, Dataram Singh v. State of Uttar Pradesh, 2018 (3) SCC 22 : 2018 ICO 103 and in XI, Victim SC No.211 of 2018 of POCSO Court v. State of Kerala and Others, 2019 (3) KHC 26 : 2019 ICO 809.*

10. *In Dolat Ram's case (supra), the Apex Court has observed as follows:*

“Rejection of bail in a non -ailable 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. 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.”

Thus, it is clear that abuse of concessions granted to the accused in any manner is a ground to cancel the bail.

11. In **Dataram Singh's** case (*supra*), it was observed by the Apex Court in the manner as follows:

It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally



speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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.

*12. In **Dataram Singh's** case (supra) also, abuse of concessions granted to an accused in any manner is a ground to cancel the bail.*

13. In XI's case (supra), it was observed as under:

“9. But in a case where the victim or the witnesses specifically complains of threat and intimidation and the said aspects are projected either by victim or by the prosecution before the Bail Court through an application as referred to in Ext P5, then it is bounden duty of the Bail Court to consider the correctness or otherwise of the allegations in a summary manner after affording an opportunity of being heard to the prosecution as well as to the affected accused concerned whose bail is ought to be cancelled



and if possible to the victim as well, in a case like this. In such process of enquiry, the Bail Court could call for the records if any in relation to those allegations and if a separate crime has been registered in that regard, the records in those crimes should also be perused by the Bail Court in order to make an enquiry in a summary manner as to the truth or otherwise of the allegations therein, and after affording reasonable opportunity of being heard to the prosecution, accused and the victim, the Bail Court is expected to discharge its solemn duty and function to decide on the correctness or otherwise of the allegations in such a summary manner and the evidentiary assessment thereof could be on the basis of the overall attendant circumstances as well as the attendant balance of probabilities of the case. Based on such a process, the Bail Court is obliged to take a decision whether the bail conditions have been so violated and if it is so found that the bail conditions has been violated then it is the duty of the Bail Court to cancel the bail, but certainly after hearing the affected party as aforestated. So also, if the said enquiry process reveals that the truth of the above said allegations has not been established in a convincing manner in such enquiry process, then the Bail Court is to dismiss the application to cancel the bail. But the Bail Court cannot evade from the responsibility by taking up the specious plea that since the very same allegations also form subject matter of a distinct crime then the truth or otherwise of the



allegations is to be decided by the Criminal Court which is seisin of that crime through the process of finalisation of said impugned criminal proceedings by the conduct and completion of trial therein.”

14. In **P. v. State of Madhya Pradesh's** case (supra), the Apex Court referred the earlier decisions inclusive of **Dolat Ram's** case (supra). But the said decision in **Dataram Singh's** case (supra) was not considered. In fact, the judgment in **Dataram Singh's** case (supra) was rendered by a two Bench of the Apex Court. Similarly, the judgment in **Dolat Ram's** case (supra) also was rendered by two Bench of the Apex Court.

15. When the three Bench decision of the Apex Court in **P. v. State of Madhya Pradesh's** case (supra) held that misuse of liberty by the accused by indulging in similar / other criminal activity is a reason for cancellation of bail, the said ratio shall be the binding precedent. It is true that in **Godson's** case (supra), the judgment was rendered by this Court on 10/08/2022 and during the relevant time also, the decision in **P. v. State of Madhya Pradesh's** case (supra) rendered on 05/05/2022 would hold the field. Therefore, the ratio in **P. v. State of Madhya Pradesh's** case (supra) rendered by the three Bench of the Apex Court shall govern the principles regarding cancellation of bail. The ratio has been followed in another three Bench decision reported in (2022 KHC 6591), **Deepak Yadav v. State of Uttar Pradesh and Another.**



Since the law is settled as discussed above, it has to be held that, if the accused misuses his liberty by indulging in similar/other criminal activity violating condition/conditions imposed in the bail order, the same is a supervening circumstances to cancel the bail.”

9. Recently, in the decision reported in 2024 KHC OnLine 6302 : 2024 INSC 438 : 2024 LiveLaw (SC) 392], **Ajwar v. Waseem**, the Apex Court considered this question after referring its earlier judgments and affirmed the principles in paragraphs 27 and 28 as under:

*“27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In **P v. State of Madhya Pradesh and Another**(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under S.439(1) of the CrPC in the*



following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, 1995 (1) SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

28. CONSIDERATIONS FOR SETTING ASIDE BAIL ORDERS

The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been



considered by the Court for granting relief to the accused.”

10. Thus the legal position is well settled. When a Court grants bail after imposing conditions, violation of any of the conditions in a bail order would lead to cancellation of bail by invoking power under Section 439 (2) of Cr.P.C. Section 439 (2) Cr.P.C reads as under:

“439. Special powers of High Court or Court of Session regarding bail.

xxxx xxxx xxxx

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody. ”

11. In fact the case dealt with by the High Court in ***Moideen Kunji***’s case (*supra*) is different from the case at hand. That is to say, in ***Moideen Kunji***’s case (*supra*), this Court cancelled bail earlier granted in crime stage, after change in the Investigating Agency and after grant of regular bail by the Special Court in substitution of the bail order granted during crime stage. Therefore,



in the said case, the accused is bound by the terms of the subsequent bail order and not the bail order during crime stage, which, in fact, came to an end in view of the subsequent order of bail. Per contra, in the instant case, the petitioner has been continuing in the bail granted by the Special Court and, therefore, he is bound to obey the conditions, to continue on bail granted without fail. If he violates any conditions imposed in the bail order, that is akin to misuse of the liberty bestowed by the court and the same is a ground for cancellation of bail.

12. Here, evidently as borne out from the records and found by the learned Special Judge, the petitioner while continuing on bail in Crime No.725/2018 of Alakkode Police Station, involved in Crime No.100/2022 of the same Police Station and thereby he violated condition No.(iv) warranting cancellation of bail. Thus it is held that Annexure-A4 order passed by the Special Judge finding that the petitioner had willfully violated condition No.(iv), as borne



out from the records, doesn't require any interference.

Therefore, this petition is dismissed with direction to the petitioner to surrender before the police forthwith, or else the police is directed to arrest and produce the petitioner before the Special Court.

Registry shall forward a copy of this order to the Special Court forthwith for information and further action.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.MC 4830/2022**PETITIONER' S ANNEXURES**

Annexure-A1	TRUE COPY OF THE ORDER IN CRL.M.C.NO.1805/2018 OF THE SESSIONS COURT, THALASSERY, DATED 5.1.2019.
Annexure-A2	TRUE COPY OF THE PETITION DATED 9.5.2022 FILED BY PUBLIC PROSECUTOR IN CRL.M.P.NO.1769/2022 IN CRL.M.C.NO.1805/2018 AT SESSIONS COURT, THALASSERY.
Annexure-A3	TRUE COPY OF THE COUNTER OBJECTION DATED 10.6.2022 FILED BY THE PETITIONER IN CRL.M.P.NO.1769/2022 IN CRL.M.C.NO.1805/2018 AT SESSIONS COURT, THALASSERY.
Annexure-A4	CERTIFIED COPY OF THE ORDER IN CRL.M.P.NO.1769/2022 IN CRL.M.C.NO.1805/2018 OF THE SESSIONS COURT, THALASSERY, DATED 4.7.2022.