

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

Tuesday, the 8th day of November 2022 / 17th Karthika, 1944

CRL.M.APPL.NO.3/2022 IN BAIL APPL. NO. 3513 OF 2022

CRIME NO.385/2022 OF KALAMASSERY POLICE STATION, ERNAKULAM

PETITIONERS/DEFACTO COMPLAINANT:

- SREEJA MANNANGATH, AGED 29 YEARS D/O SREEDHARAN, HOUSE. NO.1538/A1, SRREEDHAVAN, SANSKRITHI GARDEN, OPP CHOICE PARK, POTTAKUZHAY, ELAMAKKARA, ERNAKULAM-682026 .

RESPONDENTS/STATE & ACCUSED:

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, COCHIN, PIN - 682031
2. JUNAID V.T, AGED 26 YEARS, S/O RESEELA, V.P HOUSE, CHALIN, TEMPLE GATE, THALASSERY, KANNUR DISTRICT-670101, NOW RESIDING AT A RENTED HOUSE OF SERABI, NEAR MUSLIM CHURCH, MUCHAKKAL ROAD, MAHI-673310.

Petition praying that in the circumstances stated therein the High Court be pleased to cancel the bail granted to the accused in Crime No.385/2022 of Kalamassery Police Station in B.A 3513/2022, in the interest of justice.

This petition coming on for orders on this day upon perusing the application and this court's Final order dated 13/05/2022 and upon hearing the arguments of THOMAS J ANAKKALLUNKAL, Advocate for the petitioner/R2 in BA and the Public Prosecutor for the R1/ R1 in BA and of M/S P.A.MUJEEB, RESHMA R., DONEESHYA KITHU C.V., ROSHNI MANUEL, JAYARAMAN S., ABISHEK JOHNY, NIRMAL CHERIYAN VARGHESE, Advocates for the R2/Petitioner in BA, the court passed the following:

'C.R.'

A.BADHARUDEEN, J.

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Dated this the 8th day of November, 2022

ORDER

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This is a petition filed by the defacto complainant in Crime No.385 of 2022 of Kalamasssery Police Station to cancel the bail granted to the accused in the above crime. The accused is the second respondent in this petition.

2. Heard the learned counsel for the petitioner, the learned Public Prosecutor as well as the learned counsel appearing for the second respondent.

3. In this case, it is submitted by the learned counsel for the petitioner that, as per order dated 13.05.2022 in B.A.No.3513 of 2022, this Court

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granted bail to the second respondent/accused in Crime No.385 of 2022 of Kalamasssery Police Station, subject to certain conditions. Condition No.vii is that "it is specifically directed that the petitioner shall not disturb the defacto complainant in any manner and any such occurrence, if reported or came to the notice of this Court, the same shall be a reason to cancel the bail to the petitioner."

4. Thereafter, violating Condition No.vii, the second respondent, on 22.03.2022 and 26.06.2022, followed the defacto complainant and outraged her modesty. Accordingly, the defacto complainant violated Condition No.vii and therefore, his bail is liable to be cancelled.

5. The learned Public Prosecutor also conceded that the second respondent herein involved in two other crimes, after releasing him on bail and

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therefore, the second respondent had violated Condition No.vii in the bail order.

6. While opposing cancellation of bail, the learned counsel for the accused/second respondent submitted that the second respondent did not violate any of the conditions imposed by this Court. The contentions raised by the second respondent as could be read out from his objection filed in this matter is as under:

"4. *Crime No.791/2021 was a case registered against the 2nd respondent prior to the registration of Crime No.385/2022 of Kalamassery Police Station.*

5. *This 2nd respondent was implicated as accused in Crime No.355/2022 of Elamakara Police Station. The offences alleged are under Section 354(d)(i)(ii) of IPC, 120(o) of KP Act. The 2nd respondent is innocent of the offences alleged in that case. On a mere perusal of the FIS given by the defacto complainant it is clear that it was one Altaf who send message through Instagram. The accused is*

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not using any Instagram account. This 2nd respondent can prove his innocence during trial. It was with an intention to wreak vengeance against the 2nd respondent that he was implicated in the said case.

6. *The allegation in Crime No.741/2022 of Kalamassery Police Station is a false allegation. This respondent was not present in the alleged place of occurrence during the relevant time. The respondent is residing in Thalassery. He is at present working as a waiter in Hotel at Thalassery. As there is a condition in the bail order that this respondent shall not enter the limits of Kanayannur Taluk he did not enter Kanayannur Taluk. It is with an intention to harass the respondent and for cancelling the bail that the respondent was implicated in the said case.*

7. *The present petition discloses no ground so as to cancel the bail. It is humbly submitted that the accused is strictly complying all the conditions imposed by this Hon'ble Court and undertake that he will comply the same in its letter and spirit. The further Judicial Custody of the accused is not at all*

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warranted as the final report has already been filed and there is no circumstances to cancel the bail already granted in favour of the accused. In that circumstances it is not a ground to cancel the bail already granted to the accused.

8. *It is settled position of law that cancellation of bail is a harsh order because it takes away the liberty of an individual granted and was not to be likely resorted to. It is held that normally very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted. The accused has not misused the liberty in any manner. This Hon'ble Court may be pleased to consider the fact that the accused are enjoying their liberty for a considerable period after the release by duly complying all the conditions imposed. The object of cancellation of bail is not punitive but to protect the interest of justice and to prevent it from being tampered in any manner."*

7. The crucial question to be considered

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herein is whether the second respondent herein violated the bail conditions so as to cancel his bail. It is true that cancellation of bail is a harsh order and therefore, the same cannot be done in a casual manner. 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. To put it differently, in ordinary circumstances, this Court would be loath 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.

8. In the latest decision of the Apex Court reported in [2022 KHC 6496]: [2022 (2) KLD 49] : [2022

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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 Section 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

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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 X1, **Victim SC No.211 of 2018 of POCSO Court v. State of Kerala and Others**,

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[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- 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. These principles, it appears, were lost sight of by the High Court when it decided

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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

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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 X1'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 P-5, 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

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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 aforesaid. 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

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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)

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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

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criminal activity violating condition/conditions imposed in the bail order, the same is a supervening circumstances to cancel the bail.

16. Coming to the facts of this case, this Court granted bail to the second respondent, who is the accused in Crime No.385 of 2022 of Kalamassery Police Station where he alleged to have committed under Sections 354, 354(A)(1)(i) and 354D of the Indian Penal Code. The prosecution allegation therein runs on the premise that the second respondent herein followed the defacto complainant through online from 2021 onwards and in continuation of the same on 21.01.2022, he entered into the car of the defacto complainant and attempted to disrobe her with intention to outrage her modesty. Annexure-A1 is the FIR in Crime No.385 of 2022. Though this Court granted bail to the accused by

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imposing conditions inclusive of Condition No.vii which runs as "it is specifically directed that the petitioner shall not disturb the defacto complainant in any manner and any such occurrence, if reported or came to the notice of this Court, the same shall be a reason to cancel the bail to the petitioner."

17. It is to be noted that, after release of the accused on bail by this Court, on 26.06.2022 also, he again started harassing the defacto complainant through Instagram by sending obscene messages and also threatening her by contacting through various accounts in Instagram and accordingly, Crime No.355 of 2022 of Elamakara Police Station was registered alleging commission of offence under Section 354D(1)(ii) of IPC, 120(o) of the Kerala Police Act. Annexure-A4 is the copy of the above FIR.

18. Subsequently, on 29.07.2022 at about

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6.40 p.m., when the defacto complainant returned from her work, the accused followed her and tried to attack her. Accordingly, the defacto complainant filed a complaint regarding this incident before the Kalamassery Police Station and on the basis of the said complaint, Crime No.741 of 2022 of Kalamassery Police Station alleging commission of offence under Section 354D of IPC was registered and copy of the FIR is Annexure-A5.

19. It is relevant to note that before registering Crime No.385 of 2022 where, this Court granted bail, which is sought to be cancelled, another crime was registered against the accused on recording the statement of the defacto complainant herein, vide Crime No.791 of 2021 of Elamakkara Police Station on the basis of an occurrence on 23.11.2021 and the offences alleged therein are under Sections 354D of IPC and 119(b) and 120(o) of KP Act. Annexure-A3 is the copy of

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the FIR in the said crime.

20. Thus, it appears that this Court granted bail to the accused by imposing conditions inclusive of Condition No.vii with specific direction that the accused shall not disturb the defacto complainant in any manner, but violating the said condition, the accused had disturbed the complainant with an attempt to outrage her modesty and the overt acts led to registration of two crimes on the basis of the statement given by the defacto complainant and therefore, he had wilfully violated the condition of bail imposed by this Court. Thus, it has to be held that the accused herein has no respect to the Court order and he has been repeatedly disturbing the defacto complainant in violation of the condition imposed by this Court. Therefore, these are supervening circumstances which would tempt this Court to exercise the power of cancellation of bail.

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21. Therefore, I am inclined to cancel the bail to the accused.

Accordingly, the bail granted to the second respondent as per order in B.A.No.3513 of 2022 dated 13.05.2022 stands cancelled with direction to him to surrender before the Court.

On failure to do so, the Police is at liberty to arrest him and proceed in accordance with law.



Sd/-

**A. BADHARUDEEN
JUDGE**

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APPENDIX OF BAIL APPL. 3513/2022

ANNEXURE A1:- TRUE COPY OF THE FIR IN CRIME NO.385/2022 OF KALAMASSERY POLICE STATION.

ANNEXURE A3:- TRUE COPY OF THE FIR IN CRIME NO.791/2021 OF ELAMAKKARA POLICE STATION.

ANNEXURE A4:- TRUE COPY OF THE FIR IN CRIME NO.355/2022 OF ELAMAKKARA POLICE STATION.

ANNEXURE A5:- TRUE COPY OF THE FIR IN CRIME NO.741/2022 OF KALAMASSERY POLICE STATION.

