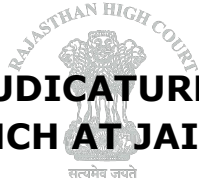




RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 213/2023

1. Arun Singh S/o Sardar Singh, R/o Village Nam, Police Station Nadbai, District Bharatpur (Raj).
2. Digambar S/o Rajnarayan, R/o Village Nam, Police Station Nadbai, District Bharatpur (Raj).

----Petitioners

Versus

1. State of Rajasthan, through P.P.
2. Niranjn Singh S/o Karan Singh, R/o Village Nam, P.S. Nadbai, District Bharatpur.

----Respondents

---

For Petitioner(s) : Mr.Yogesh Kumar Sharma  
For Respondent(s) : Mr.Jitendra Rathore, PP with  
Mr.Gaurav Gupta, Asst. GA.

---

**JUSTICE ANOOP KUMAR DHAND**

**Order**

**25/05/2026**

1. By way of filing the instant misc. petition, a challenge has been led to the impugned order dated 04.01.2023, passed by the Special Judge, SC/ST Cases, Bharatpur, by which the application submitted by the respondent under Section 439(2) Cr.P.C. has been allowed and the bail granted to the petitioners has been cancelled on account of addition of graver/non-bailable offences.
2. The impugned F.I.R. No.217/2020 was registered with Police Station Nadbai, District Bharatpur for the offences punishable under Sections 143, 452, 323, 341, 354, 336 & 427 IPC, wherein after investigation, the Police only found bailable offences under Sections 323, 336, 341, 427 & 34 IPC to be proved against the





petitioners and on the basis of the same, bail bonds were furnished by the petitioners under Section 436 Cr.P.C. and bail was granted to them by the Investigating Agency. However, at a later stage, the offence under Section 452 IPC was added, which is a graver offence and non-bailable, hence, under these circumstances, an application was submitted by the State-respondent for cancellation of the bail of the petitioner. The said application has been allowed vide impugned order dated 04.01.2023. Aggrieved by the aforesaid, the petitioners have approached this Court by way of filing the instant petition.

3. Learned counsel for the petitioners submits that in spite of addition of graver offence/ non-bailable offence, bail granted to the petitioner for bailable offence is liable to be continued and the same cannot be cancelled. Hence, the impugned order passed by the Court below is not sustainable and is liable to be quashed and set-aside.

4. Per contra, learned Public Prosecutor as well as the counsel appearing on behalf of the complainant opposes the prayer and submits that after addition of the graver/non-bailable offence under Section 452 IPC, the bail granted to the accused for bailable offence cannot be allowed to continue and the same is liable to be quashed. Hence, the order impugned does not suffer from any illegality and the instant petition is liable to be rejected.

5. In support of their contention, they have placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in the case of **Sharwan Lal Jat Vs. State of Rajasthan & Ors.** while deciding **S.B. Criminal Bail Cancellation Application No.123/2018** on 05.02.2020.





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

7. The Hon'ble Apex Court has, in **Prahlad Singh Bhati vs. NCT, Delhi & Anr.** reported in **(2001) 4 SCC 280**, held in para 9 as under:

"9. In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed an irregularity by holding that "I do not agree with the submission made by the Ld. Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not in the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of





referring to the grounds which entitled the respondent- accused the grant of bail, the Magistrate adopted a wrong approach to confer on him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail."



8. A coordinate bench of this Court at Principal Seat, Jodhpur has, relying upon the dictum in the case of **Prahlad Singh Bhati** (supra), held in **Abdul Gafoor vs. State of Rajasthan** while deciding S.B. Cr. Misc. Petition No.1290/2012 on 14.06.2020 as under:

"In view of the decision of the Supreme Court in Prahlad Singh Bhati's case and the Single Bench decision of this Court in the case of Mool Chand's case referred supra, the argument advanced by the learned counsel for the petitioner that once the petitioner had been granted bail for lesser offences by the Investigating Officer himself, the learned Sessions Judge was not competent to cancel the bail granted to the accused does not hold water. The view expressed by the Single Bench of this Court earlier in the cases of Gheesya (supra) and Chandra Pal Singh (supra) cannot be said to be laying down the correct law. The learned Sessions Judge while accepting the application for cancellation of bail filed under section 439(2) Cr.P.C. on the ground that graver and non bailable offences were added to the case on a further investigation has thus committed no error, illegality or abuse of the process of Court in cancelling the bail granted to the petitioner by the police u/s. 436 Cr.P.C. at the stage when only a bailable offence was being disclosed during the course of investigation."



9. Similarly, the Hon'ble Apex court has, in the case of **Pradeep Ram vs. the State of Jharkhand & Anr.** reported in **(2019) 17 SCC 326**, held in para 29 as under:

"29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and nonbailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and noncognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the





accused from the Court which had granted the bail.”

In view of 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.

10. Considering the proposition of law as laid down by the Hon'ble Apex Court in the case of **Prahlad Singh Bhati** (supra) and the judgment of the Co-ordinate Bench of this Court in the case of **Sharwan Lal Jat** (supra), this Court is of the considered opinion that the law in this regard is well-settled and the benefit of bail granted to the accused for bailable offences cannot be allowed to continue and the same is liable to be cancelled on addition of graver/non-bailable offence.

11. This Court finds no error in the impugned order passed by the Court below, which warrants any interference of this Court. Hence, the instant petition stands dismissed.

12. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma/61