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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944

CRL.MC NO. 2807 OF 2022

[AGAINST THE ORDER DATED 24.2.2022 IN CRL.M.P.NO.247/2022 IN
CRL.M.C.NO.197/2018 ON THE FILE OF THE IIND ADDITIONAL SESSIONS
COURT, ERNAKULAM]

[CRIME NO.160/2018 OF KALADY POLICE STATION]

PETITIONER/ACCUSED NO.2:

GODSON, S/O. GEORGE,
AGED 22 YEARS
CHELATTU HOUSE, COMPANYPADI, NEELESWARAM,
KALADY, ERNAKULAM DISTRICT
PIN - 683574

BY ADV M.H.HANIS

RESPONDENT/S:

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

BY SRI.M.P.PRASANTH, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08.07.2022, ALONG WITH Cr1.MC.2814/2022, THE COURT ON 10.08.2022
PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 10TH DAY OF AUGUST 2022 / 19TH SRAVANA, 1944

CRL.MC NO. 2814 OF 2022

[AGAINST THE ORDER DATED 24.2.2022 IN CRL.M.P.NO.249/2022 IN
CRL.M.C.NO.197/2018 ON THE FILE OF THE IIND ADDITIONAL SESSIONS

COURT, ERNAKULAM]

[CRIME NO.160/2018 OF KALADY POLICE STATION]

PETITIONER/ACCUSED NO.1:

DENSIL, S/O. GEORGE,
AGED 23 YEARS
CHELATTU HOUSE, COMPANYPADY, NEELESWARAM, KALADY ,
PIN - 683574

BY ADV M.H.HANIS

RESPONDENT/S:

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

BY SRI. C.S.HRITHWIK, SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08.07.2022, ALONG WITH Crl.MC.2807/2022, THE COURT ON 10.08.2022
PASSED THE FOLLOWING:

O R D E R

[Crl.MC Nos.2807/2022, 2814/2022]

....

The petitioners are the accused in Crime No.160/2018 of Kalady Police Station. The petitioner in Crl.M.C No.2814/2022 is the 1st accused and the petitioner in Crl.M.C. No.2807/22 is the 2nd accused in the said crime. The aforesaid crime was registered alleging offences punishable under Sections 341,308 and 324 r/w. Section 34 of the Indian Penal Code (IPC).

2. The petitioners were arrested in connection with the said case and later, as per order dated 9.2.2018 in Crl.M.C.No.197/2018, the 2nd Additional Sessions Court, Ernakulam, granted bail to them subject to certain conditions. One of the conditions was that they should not involve in any other crime of similar nature during the bail

period. Subsequently, the investigation in the said case is completed, and the final report has been submitted.

3. Later, Crl.M.P.Nos.249/2022 and 247/2022 were submitted by the Public Prosecutor for cancellation of their bail. The sole reason highlighted in the said petition is that both the petitioners are subsequently involved in Crime No.1159/2021 of Kuruppampady Police Station, which was registered for the offences punishable under Sections 143,147,308,324,506(ii)and 294(b) r/w. Section 149 of IPC. The learned Sessions Judge, as per orders dated 24.2.2022 allowed the said applications after hearing the petitioners and thereby, the bail granted to them was cancelled. These orders are now under challenge in this Crl.M.Cs.

4. Heard Sri.M.H.Hanis, the learned counsel appearing for the petitioners and Sri.C.S.Hrithwik and Sri.M.P.Prasanth, the learned Senior Public Prosecutors for the State.

5. The contention of the learned counsel for the petitioners is that the order of cancelling the bail already granted in the year 2018 based on the registration of a Crime in the year 2021 is unwarranted. It is pointed out that, in the subsequent crime also, the petitioners were granted bail and are complying with the bail conditions therein. As far as the case in which the impugned order is passed is concerned, the same is pending trial as the final report is already submitted. According to the learned counsel for the petitioners, they were falsely implicated in the subsequent crime, and it is also not a case which causes any interference in the trial of the earlier case, as there is no

allegation that the alleged victim in the subsequent crime is a witness in the crime which is the subject matter of the order impugned in this case. It is further contended that the fact that the petitioners were subsequently implicated for the offences, by itself cannot automatically lead to the cancellation of the bail already granted to them unless cogent and exceptional reasons are highlighted.

6. On the other hand, the learned Senior Public Prosecutor would seriously oppose the aforesaid submission. It is pointed out that, the petitioners are involved in several cases. The petitioner in Crl.M.C.No.2807/2022 is involved in Crime Nos. 159/2018 of Kalady Police Station, for the offences punishable under Sections 341,324,307 r/w. Section 34 of the IPC, Crime No 160/2018 of Kalady Police Station for the offences punishable under Sections 341,324,308 r/w. Section 34 of the

IPC, Crime No 977/2018 of Kalady Police Station for the offences punishable under Sections 341,323,324,308 r/w. Section 34 of the IPC, Crime No 1499/2018 of Kalady Police Station for the offences punishable under Sections 506,294(b) r/w. Section 34 of the IPC and Crime No 1247/2020 of Kalady Police Station for the offences punishable under Sections 506, 294(b) r/w. Section 34 of the IPC. It is also pointed out that the petitioner in Crl.M.C.No.2807/2022 was also detained as per the order passed by the District Collector under the provisions of the Kerala Anti-Social Activities (Prevention) Act. According to the learned Public Prosecutor, the aforesaid petitioner is a habitual offender and therefore, no interference is warranted in the order passed by the learned Sessions Judge.

7. The conditions to be imposed while granting bail, are contemplated under Sections 437(3) r/w.

Section 439(1)(a) of Cr.PC. The condition not to involve in similar offences during the bail period is something which is specifically stipulated in the aforesaid provision. Since such a condition is specifically mentioned in the statute, that would indicate the importance of such condition and the necessity to insist on the compliance of the same. However, the question that arises here is whether a violation of the said condition should result in the cancellation of the bail in all the cases. In my view, merely because of the reason that such a condition was imposed while granting bail to the accused, that would not result in the cancellation of bail automatically. This is particularly because, since the order of cancellation of bail is something that affects the personal liberty of a person, which is guaranteed under Article 21 of the Constitution of

India, unless there are reasons justifying or warranting such an order, the bail already granted cannot be cancelled. In **Dolat Ram and Others v. State of Haryana [(1995)1 SCC 349]**, the Hon'ble Supreme Court has observed as follows:

"5. 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 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."

The aforesaid view was reiterated in **X v. State of Telangana and Another** reported in [(2018) 16 SCC 511]

8. In **Dataram Singh v. State of Uttar Pradesh [(2018) 3 SCC 22]**, it was observed by the Hon'ble Supreme 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."

Therefore, while considering an application to cancel the bail on the ground of non compliance of the conditions, the court has to consider the question whether 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. In **XI, Victim SC No.211 of 2018 of POCSO Court v. State of Kerala and Others [2019(3)KHC 26]**, this Court laid down the principles with regard to the nature of the enquiry to be conducted by the court concerned, while considering an application for cancellation of bail. In paragraph 9 of the said judgment, it was observed as follows:

"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 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 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."

Thus, from all the above decisions, it is evident that, mere violation of the condition alone is not sufficient to cancel the bail granted by the court. Before taking a decision, the court has to conduct a summary inquiry based on the records, including the documents relating to the subsequent crime and arrive at a conclusion as to whether it is necessary to cancel the bail or not. Therefore, the orders impugned in these cases are to be considered by applying the yardstick as mentioned above.

9. When coming back to the facts of this case, it can be seen that the petitioners are seen implicated in the offences under Sections 341,308,324 r/w. Section 34 of the IPC, in a crime registered in the year 2018. They were granted bail on 9.2.2018, subject to the above conditions. Now the present application is submitted in the year 2022 on the allegation that the petitioners

are involved in a crime committed in the year 2021. The fact remains that in both cases, final reports were already submitted by the Police. In the subsequent crime also, the petitioners were granted bail even after taking into consideration the criminal antecedents of the petitioners. Therefore, custody of the petitioners is not required to conduct the trial of the said cases. The allegations in the subsequent crime are not relating to an act which was allegedly committed by the petitioners with the intention to intimidate or influence any witnesses in the crime registered in the year, 2018. Both crimes are entirely different and have no connection with each other.

10. In my view, even though the court which granted the bail is empowered to direct the arrest of the petitioners who were already released on bail by virtue of the powers conferred upon the

court as per Section 437(5) and 439(2) of Cr.PC, such power has to be exercised only if it is absolutely necessary. Of course, if the subsequent crime is allegedly committed with the intention to influence or intimidate the witnesses, the consideration should have been different, but it is not the case here. In **Dataram Singh's** case, it was categorically observed that, bail once granted, cannot be cancelled 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. While considering the alleged involvement of the petitioners in the subsequent crime for cancellation of bail, the fact that the second crime is after three years of the earlier crime is also a relevant aspect. The petitioners are indeed involved in some other cases, and one of the

petitioners is already undergone preventive detention under KAA(P)A. However, that alone cannot be a reason to cancel the bail, unless it is shown that the involvement of the petitioners in the subsequent crime is affecting the trial of the earlier case. If the prosecuting agency is concerned with the commission of repeated offences by the accused persons, there are ample statutory provisions available for them to initiate appropriate proceedings for subjecting the accused persons to preventive detention. The stipulations contained in Section 437(5) and 439(2) of Cr.PC cannot be treated as a substitute for preventive detention laws. The legislature has brought into force, various enactments to enable the authorities concerned to keep the persons involved in repeated crimes under preventive detention, despite the stipulations in 437(5) and 439(2) of Cr.P.C. The said fact fortifies the view which I

have taken as above. Moreover, there are no provisions in Cr.PC which specifically deal with the cancellation of bail and instead, the power is given to the court as per sections 437(5) and 439(2) to direct the person already released on bail, to be arrested and committed to prison, *if it considers necessary to do so*. When the court orders the arrest of a person already released on bail, it would have the effect of cancellation of the bail. Therefore what is relevant is not a mere violation of the bail condition but the satisfaction of the court that '*it is necessary to do so*'. While considering the aforesaid question, the matters such as; the time gap between the crimes, the possibility of false accusation in the subsequent case, bail granted to the accused in the subsequent crime, stage of the prosecution of the case in which cancellation of bail is sought, chances of affecting or causing interference in

the fair trial of the case, etc. could be relevant. In some cases, the commission of heinous crimes repeatedly, in such a manner as to infuse fear in the mind of the witnesses, which may deter them from deposing against the accused, may also be relevant, as it is something which affects the conduct of the fair trial. However, no hard and fast rules can be laid down in respect of the same, and it differs from case to case. As held in the case of **XI, Victim SC No.211 of 2018 of POCSO Court** (supra), the court has to conduct a summary enquiry after perusing the records and arrive at a satisfaction as to whether it is necessary to cancel the bail of the accused.

12. While applying the above principles to the facts of this case, one of the crucial aspects relevant for consideration is whether the subsequent crime interferes with the conduct of a fair trial of the case in which he is involved.

Such a situation is not there in this case. Further, the mere allegation of the involvement of the petitioners in the subsequent crime after three years of the crime in which the bail was granted, cannot by itself be a reason for the cancellation of bail. Even in the subsequent cases, the petitioners were granted bail and the investigation in that case was also completed. Therefore, the custody of the petitioners is not at all necessary, and hence I do not find any justifiable reason to sustain the order of cancellation of bail.

In the result, both these Crl.M.Cs are allowed. The orders passed by the IInd Additional Sessions Court, Ernakulam on 24.02.2022 in Crl.M.P.No.247/2022 and Crl.M.P.No.249/2022 in Crl.M.C.No.197/2018 are hereby quashed. However, it is made clear that, this shall not preclude the authorities concerned in initiating any

proceedings for preventive detention of the petitioners if there are materials warranting the same.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

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APPENDIX OF CRL.MC 2807/2022

PETITIONER'S ANNEXURES:

Annexure-A TRUE COPY OF THE OBJECTION FILED BY THE
PETITIONER IN CRL.MP NO.247/2022 IN CRL.MC
NO.197/2018 IN CRIME NO.160/2018

Annexure-B CERTIFIED COPY OF THE ORDER DATED 24.02.2022
IN CRL.MP NO.247/2022 IN CRL.MC.NO.197/2018
IN CRIME NO.160/2018 OF THE II ADDITIONAL
SESSIONS JUDGE, ERNAKULAM

APPENDIX OF CRL.MC 2814/2022

PETITIONER'S ANNEXURES:

Annexure-A TRUE COPY OF THE OBJECTION FILED BY THE
PETITIONER IN CRL.MP NO.249/20222 IN CRL.M.C.
197/2018 IN CRIME NO.160/2018

Annexure-B CERTIFIED COPY OF THE ORDER DATED 24.02.2022
IN CRL.M.P.NO.249/2022 IN CRL.M.C.NO.197/2018
IN CRIME NO.160/2018 OF THE II ADDL.SESIONS
JUDGE, ERNAKULAM