

[POCSO Act] Unilateral Bail Cancellation Without Hearing Accused Not Legal: Kerala High Court

2022 LiveLaw (Ker) 566

IN THE HIGH COURT OF KERALA AT ERNAKULAM
DR. JUSTICE KAUSER EDAPPAGATH; J.
CRL.MC NO. 7667 OF 2022; 2nd NOVEMBER 2022
MUHAMMED YASIN versus STATION HOUSE OFFICER

Against the Order / Judgment in Crl.MP No.2404/2022 of Fast Track Special Court (POCSO), Kalpetta
Petitioner by Advs. Sunny Mathew, Nikitta Tressy George, Buhaira K.K., Aadhal Thankachan. K. Sujith (Thuravoor)
Respondents T V Neema -Sr PP

ORDER

The order passed by the Fast Track Special Court, Kalpetta (for short, the court below) cancelling the bail granted to the petitioner even without hearing him is under challenge in this Crl.M.C.

2. The petitioner is the accused in Crime No.215/2022 of Vellamunda Police Station. The offences alleged against him are punishable under Sections 354A(I)(i) and Sections 9 and 10 of the Protection of Children from Sexual Offences Act, 2012.

3. The petitioner was arrested on 19/6/2022 and was granted bail by the court below on imposing certain conditions as per the order dated 11/7/2022. Thereafter, the prosecution filed an application to cancel the bail on the ground that he has violated the conditions that he shall not see or communicate with the victim child in any manner and that he shall not enter the locality where the victim child resides. The court below even without giving notice to the petitioner or giving an opportunity to the petitioner to oppose the application, straight away allowed the application, cancelled the bail and also issued non bailable warrant.

4. I have heard Sri.Sunny Mathew, the learned counsel for the petitioner and Smt.T.V.Neema, the learned Senior Public Prosecutor.

5. The cancellation of bail is directly linked with personal liberty which is one of the cherished constitutional freedoms guaranteed under Article 21 of the Constitution of India. The bail once granted cannot be cancelled in a mechanical manner without considering the post bail conduct of the accused and whether any supervening circumstances have rendered. It is the fundamental principle of natural justice that before any action is taken against an affected party, a notice must be given to him in order to present the cause against the proposed action. This cardinal rule of justice administration is espoused in the latin maxim *audi alteram partem*. It embodies the concept that no person should be condemned unheard. No decision should be taken by the court without hearing both sides. The finding of the court below that in a case where cancellation of bail is sought on the ground of violation of the conditions of the bail order, no notice need to be issued to the accused cannot be justified at all. The decision relied on by the court below [**Ajeesh and Others v. State of Kerala** (2021 (2) KHC 235)] does not lay down such a proposition of law. When the cancellation of bail is sought either on the ground of post conduct of the accused like violation of the conditions of the bail or on the ground of the occurrence of supervening circumstances, the court must issue notice to the accused to explain why the bail granted to him should not be cancelled. He should also be given a fair opportunity of hearing. The order cancelling the bail unilaterally without hearing the accused cannot withstand legally.

6. In the the light of the above findings, the impugned order cannot be sustained and it is accordingly set aside. The court below shall reconsider the application for cancellation of bail after giving sufficient opportunity to the petitioner to file an objection and for hearing. The non bailable warrant issued against the petitioner is hereby set aside.

The Crl.M.C. is disposed of as above.