

**Indulging In Similar/Other Criminal Activities Reason For Bail Cancellation
When Such Condition Imposed In Bail Order: Kerala HC Reiterates**

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

A. BADHARUDEEN, J.

Crl.M.C No.7371 of 2022; 18 January, 2023

JEBY JAMES versus STATE OF KERALA

Petitioner / Accused No. 2 by Advs. C.P. Udayabhanu, Navaneeth N. Nath, Rassal Janardhanan A., Abhishek M. Kunnathu, Boban Palat, P.U. Pratheesh Kumar, P.R. Ajay.

Respondent / Complainant by Public Prosecutor G. Sudheer

ORDER

This petition has been filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short), challenging order in Crl.M.P.No.482 of 2022 in S.C(NDPS) 78/2021 in Crime No.392 of 2021 of Kanjirappally Police Station, dated 06.08.2022. The petitioner herein is the 2nd accused in the above crime. The respondent is State of Kerala.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

3. Short facts:

The petitioner herein, who is arrayed as accused No.2 in S.C(NDPS) 78/2021, arising out of Crime No.392 of 2021 of Kanjirappally Police Station, alleged to have committed offences punishable under Section 20(b)(ii) B, C, 22(a)(b) and 29 of the NDPS Act. He was nabbed by the police on 22.04.2022 and thereafter released on statutory bail, since the prosecution failed to file final report within the statutory period, as per Annexure-1. While granting statutory bail, one among the conditions was:

"The accused/petitioners shall not get involved in similar offences during the currency of the bail."

4. Subsequently on 15.04.2022, Thrikkodithanam Police recovered 9.100 kgs of dried ganja from the possession of the petitioner along with other 2 accused and accordingly, Crime No.521/2022, alleging commission of offences punishable under Section 20(b)(ii) B of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS' for convenience) and he was arrested in the said case. But he was released on bail subsequently in the above crime.

5. Crl.M.P.No.482/2022 is the petition filed by the prosecution seeking cancellation of bail granted to the petitioner as per Annexure-1 since the petitioner violated condition No.4 in Annexure-1 order. After hearing both sides, the learned Special Judge cancelled the bail relying on the decision of the Apex Court reported in [1995 (1) SCC 349], **Dolat Ram & Ors. v. State of Haryana**. The above order is under challenge in this petition.

6. While arguing to set aside the order impugned, the learned counsel for the petitioner given emphasis to 2 decisions of this Court. The first decision is one reported in [I.L.R 2022 (4) Kerala 165], **Marakkar & anr. v. State of Kerala & anr.** In the said decision, while considering Section 439(2) of Cr.P.C, this Court held as under:

Section 439(2) of Cr.P.C confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody

7. The second decision is of this Court reported in [2022 (4) KLJ 150], **Godson & Ors. v. State of Kerala**, to contend that involvement of an accused in a subsequent crime by itself is not a reason to cancel the bail.

8. It is argued by the learned counsel for the petitioner further that since the bail granted to the accused as per Annexure-1 order was cancelled as per Annexure-2 order, the right of the accused to defend the said case as well as the subsequent case outside the jail has been denied and further, mere registration of a subsequent crime by itself is not a reason to cancel the bail.

9. Whereas the learned Public Prosecutor placed a 3 Bench 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 & anr.** to contend that if the accused misuses his liberty by indulging in similar/other criminal activity, the same is a reason to cancel the bail granted to the accused, by invoking powers under Section 439(1) of Cr.P.C.

10. While considering the cancellation of bail for subsequent involvement of the accused in other offence, this Court, in the decision reported in [2022 (6) KLT OnLine 1129], **Sreeja Mannangath v. State of Kerala**, considered the impact of the legal question exhaustively and finally following the ratio in **P. v. State of Madhya Pradesh & anr.**'s case (*supra*) held that misuse of liberty by the accused is a reason for cancellation of the bail and the said ratio shall be the binding precedent. The ratio in **Godson & Ors. v. State of Kerala**'s case (*supra*) , which would run against **P. v. State of Madhya Pradesh & anr.**'s case (*supra*) , has been distinguished by this Court. The relevant paragraphs of the above order is as under:

"In the latest decision of the Apex Court reported in [2022 KHC 6496]: [2022 (2) KLD 49] : [2022 Bail Appl. No.3513/2022 8 / 21 CrI.M.A.No.3 of 2022 IN B.A.No.3513 of 2022 -:7:- 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 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**, [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 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."

11. In this case it is argued by the learned counsel for the petitioner that police can implicate anybody in a subsequent crime if they had any animosity to the accused. Although this argument appears to be impressive at the first blush, nothing substantiated in this case to hold that the police had any animosity towards the petitioner herein and accordingly he was implicated in the subsequent crime. That apart, the initial crime was registered by Kanjirappally police when commercial quantity of contraband was seized from the custody of the petitioner along with other accused alleging commission of offence punishable under Sections 20(b) (ii) B, C, 22(a)(b) and 29 of the NDPS Act. The occurrence was on 22.04.2021. Thereafter, the petitioner was released on statutory bail and he got involved in another crime, viz., Crime No.521 of 2022 of Thrikkodithanam Police Station. Police nabbed the petitioner, who is the 2nd accused in Crime No.392/2021 of Kanjirappally Police Station, on being found possessing 9.100 kgs of ganja. Since the law is settled that indulging in similar or other criminal activities is a reason for cancellation of the bail, particularly, when a condition imposed in the initial bail order is to that effect, involvement of the accused in a similar offence by itself is a reason to cancel the bail granted, cancellation of bail on the said finding is to be justified. Therefore, the order impugned does not require any interference and hence the Crl.M.C is liable to be dismissed.

Therefore, the Crl.M.C fails and is accordingly dismissed.