

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 17th OF OCTOBER, 2022

MISCELLANEOUS CRIMINAL CASE No. 45937 of 2022

BETWEEN:-

SMT. RAMLESH BAI

.....APPLICANT

(BY SHRI GAURAV MISHRA – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH,
THROUGH POLICE STATION KACHNAR,
DISTRICT ASHOKNAGAR (MADHYA
PRADESH)**
- 2. RAJBHAN SINGH**

.....RESPONDENTS

***(BY SHRI C.P. SINGH – PANEL LAWYER FOR STATE/RESPONDENT
NO.1)***

***(SHRI RAJESH PATHAK - ADVOCATE FOR RESPONDENT
NO.2/COMPLAINANT)***

*This application coming on for hearing this day, the Court passed
the following:*

ORDER

This application under Section 439(2) of CrPC has been filed for cancellation of bail granted by this Court by order dated 16.08.2022 passed in M.Cr.C. No.38920/2022.

2. The facts necessary for disposal of present application in short are that the respondent No. 2 is facing trial for offence under Sections 420, 467, 468, 409, 471 of IPC in Crime No.133/2021 registered at Police Station Kachnar District Ashoknagar. He was granted bail by order dated 16.08.2022 on the condition that in case, if the respondent No. 2 deposits an amount of Rs.5,00,000/- through cheque in the account of CEO, Zila Panchayat, Ashoknagar and furnishes cash surety of Rs.1,00,000/-, then he shall be released on bail. It is submitted that after the applicant was released on bail, he was welcomed by a mob of more than 100 people, who not only garlanded him and touched his feet and also chanted slogans in his favour. It is further submitted that the applicant was brought to his house in a procession and the applicant was standing in an open Jeep and was waving his hands to the general public. On the next date, even gunshots were fired by the applicant in the air and the supporters were challenging the applicant. It is submitted that this conduct of the applicant was video-graphed and the said video is also filed along with the application in the form of CD accompanied by a certificate under Section 65-B of the Evidence Act. It is further submitted that the release of the applicant has sent a shock wave in the society and the manner in which he came out of the jail has also adversely affected the moral of the witnesses and consequently the witnesses are turning hostile. It is further submitted that the Supreme Court in the case of **Ms.**

P. Vs. State of Madhya Pradesh and another reported in **AIR 2022 SC 2183** has dealt with such a situation and has found that the bail granted to the accused is liable to be cancelled and, accordingly, it is prayed that the bail granted to the respondent No. 2 may be cancelled.

3. Per contra, the application is vehemently opposed by the counsel for the respondent No. 2. It is submitted that the respondent No. 2 had filed several complaints against the husband of the present applicant and, therefore, she has enmity against respondent No. 2 and an application for cancellation of bail has been filed with an ulterior motive. Criminal antecedents of the husband of the applicant has also been placed on record. It is submitted that merely because the supporters of the respondent no. 2 had welcomed him after his release and also took blessings from him would not amount to demonstration of any authority or terror. Welcome and blessing after release of an accused is a normal feature of the Indian society and there is nothing unusual in it. The fear which is in the mind of the applicant is without any bonafide reason and the application for cancellation of bail has been filed under misconception and misunderstanding, therefore, the same is liable to be dismissed. It is further submitted that the CD enclosed with the application for cancellation of bail is forged and tempered document which requires a separate investigation.

4. Since the respondent No. 2 had claimed that the CD indicates that the application for cancellation of bail is a tampered and doctored document, therefore, the said CD was played in the open Court in the presence of the counsel for the parties. After watching CD, counsel for the respondent No. 2 did not dispute the contents of the same and could

not point out any reason for alleging that the CD is a doctored one.

5. Counsel for the respondent No. 2 also admitted that not only respondent No. 2 was welcomed by a mob of more than 100 people by garlanding him, touching his feet and chanting slogans in his favour, but he was taken in a procession to his house and the respondent No. 2 was standing in an open Jeep and was waiving his hands.

6. Heard the learned counsel for the parties.

7. The Supreme Court in the case of **Ms. P. (supra)** has held as under:-

28. It has been vehemently urged on behalf of the appellant/complainant that the respondent No. 2's bail order deserves to be set aside not only on the grounds stated above, but also in the light of his blatant conduct subsequent to being released for which reference has been made to his photographs appearing in the social media with his snapshots prominently displayed on posters/hoarding in the forefront with the faces of some influential persons of the society in the backdrop, welcoming him with captions like "Bhaiyaa is back", "Back to Bhaiyaa", and "Welcome to Role Janeman".

29. The explanation sought to be offered for the above by the learned counsel for the respondent No. 2 is that he is a student leader who belongs to a community that celebrates the festival "Maa Narmada Jayanti" and the posters in question have nothing to do with his being released on bail. However, the captions referred to above with emojis of crowns and hearts thrown in for good measure, belie this version.

30. Even if it is assumed that the posters in question were not contemporaneous to the release of the respondent No. 2 from detention, the captions tagged to his photographs on the social media highlight the superior position and power wielded by

the respondent No. 2 and his family in the society and its deleterious impact on the appellant/complainant. The emojis of crowns and hearts tagged with the captions quoted above are devoid of any religious sentiments sought to be portrayed by the respondent No. 2. On the other hand, they amplify the celebratory mood of the respondent No. 2 and his supporters on his having been released from detention in less than two months of being taken into custody for a grave offence that entails sentence of not less than ten years that may even extend to life. The brazen conduct of the respondent No. 2 has evoked a bona fide fear in the mind of the appellant/complainant that she would not get a free and fair trial if he remains enlarged on bail and that there is a likelihood of his influencing the material witnesses. It is noteworthy that a representation has also been submitted by the appellant's father to the Superintendent of Police, District Jabalpur expressing the very same apprehension.

31. In view of the aforesaid facts and circumstances, we are of the considered opinion that the respondent No. 2 does not deserve the concession of bail. Relevant material brought on record has been overlooked by the High Court while granting him bail. The supervening adverse circumstances referred to above, also warrant cancellation of bail. Accordingly, the impugned order is quashed and set aside and the respondent No. 2 is directed to surrender within one week from the date of passing of this order.

32. It is however clarified that the observations made above are confined to examining the infirmity in the impugned order granting bail to the respondent No. 2 and his conduct thereafter and shall not be treated as an opinion on the merits of the case which shall be decided on the basis of the evidence that shall be placed before the trial Court.

This order shall also not preclude the respondent No. 2 from applying afresh for bail at a later stage, if any, new circumstances are brought to light.

8. Therefore, the facts of this case shall be considered in the light of the law laid down by the Supreme Court in the case of **Ms. P. (supra)**.

9. If the video which was video-graphed immediately after his release is considered, then it is clear that he welcomed by a mob of approximately 100 people who not only garlanded him and touched his feet, but were also chanting slogans in his favour and thereafter the respondent No. 2 was taken in his house in a Jeep and in another video, respondent No. 2 is seen firing in air and one of his supporter was heard challenging the applicant. Thus, it is clear that the respondent No. 2 has come out of the jail by projecting him as a warrior. This glorification of an accused on his release by a mob of several persons would necessarily have an adverse effect on the society. Furthermore, the respondent No. 2 was granted bail after considering the period of detention as well as on the condition of depositing an amount of Rs.5,00,000/- as well as on furnishing a cash surety. The bail cannot be equated with acquittal. It is merely a temporary respite to the accused so that a perfect balance can be made amongst the rights of an under-trial, the society as well as the complainant. Glorification of an accused can never be in the interest of society as well as justice dispensation system. Furthermore, the witnesses have also started turning hostile which may be result of glorification or release of respondent No.2 on bail.

10. Under these circumstances, this Court is of the considered opinion that the bail granted to the respondent No.2 is liable to be cancelled.

11. Accordingly, the bail order dated 16.08.2022 passed in M.Cr.C.

No.38920/2022 is hereby **cancelled** on the ground of misuse of liberty by the respondent No.2. Respondent No.2 is directed to surrender before the Trial Court within a period of one month from today, i.e., **16.11.2022**.

12. The application succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

Abhi