[2025] 4 S.C.R. 1312 : 2025 INSC 501

Ankit Mishra
v.
The State of Madhya Pradesh & Anr.

(Criminal Appeal No. 2037 of 2025)

17 April 2025

[Sanjay Karol and Prashant Kumar Mishra*, JJ.]

Issue for Consideration

Whether the High Court has committed any serious error in law while granting anticipatory bail in the facts and circumstances of the case.

Headnotes†

Code of Criminal Procedure, 1973 – s.438 – Penal Code, 1860 – ss.195A, 294, 506 – Allegation that respondent no.2 hurled abuses using derogatory language and extended death threats to appellant – FIR was registered – The High Court granted anticipatory bail to respondent no.2 – Appellant contended that the respondent no.2 is a known gangster and habitual offender, therefore he shouldn't be entitled to anticipatory bail:

Held: The alleged offences in the present FIR are all triable by Judicial Magistrate, First Class – None of the offences would carry sentence of more than seven years – The view taken by the High Court to release respondent no.2 on anticipatory bail does not suffer from any fundamental error of law – It is not a case where respondent no.2 has been released on anticipatory bail in a heinous offence – True it is that ordinarily habitual offender ought not to be released on bail in a routine manner, however, in the case at hand, the High Court has elaborately dealt with the cases against respondent no.2 – Once the benefit of anticipatory bail has been given by the High Court, the consideration for its cancellation has to be tested on the anvil as to whether the High Court has committed any serious error in law while granting anticipatory bail in the facts and circumstances of the case – If it had been a case where the respondent no.2 is alleged to have committed any heinous offence, the consideration would have been different – No interference required with the order passed by the High Court. [Paras 9, 10]

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* Author

Ankit Mishra v.
The State of Madhya Pradesh & Anr.

Case Law Cited

Deepak Yadav v. State of Uttar Pradesh & Anr. **[2022] 4 SCR 1 : (2022) 8 SCC 559 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Anticipatory bail; Habitual offender; Cancellation of bail; Triable by judicial magistrate first class; Obscene abuses; Death threats; Previous offence; Heinous offence; Section 195A Penal Code, 1860; Section 294 Penal Code, 1860; Section 506 Penal Code, 1860; Section 164 CrPC; Error of law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2037 of 2025

From the Judgment and Order dated 10.04.2024 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in MCRC No. 11000 of 2024

Appearances for Parties

Advs. for the Appellant:
Abhinav Shrivastava, Shivang Rawat.

Advs. for the Respondents:
K. M. Nataraj, ASG, D.S. Parmar, AAG, Mrs. Mrinal Gopal Elker, Mrs. Shruti Verma, Pawan Reley, Akshy Lodhi, Gaurav Kumar, Ms. Simran Singh, Vivek Gupta.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

Leave granted.

2. The appellant/defacto complainant has challenged the impugned judgment and final order dated 10.04.2024 passed by the High Court

of Madhya Pradesh in MCRC No. 11000 of 2024 wherein the High Court has allowed anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973[1] to respondent no. 2 (Abdul Razzak) in connection with FIR No. 176 of 2023 registered at P.S. Omti, Distt. Jabalpur under Sections 195A, 294 and 506 of the Indian Penal Code, 1860.[2]

3. Briefly stated, the factual matrix of the case is that at around 1.00 P.M on 30.03.2023, the appellant went to Victoria Hospital along with his friend (Sandeep Dubey) for a checkup. Respondent No. 2 happened to be in the hospital premises at the same time for his MLC in connection with some other criminal case. On seeing the appellant, respondent no. 2 became agitated and started hurling obscene abuses, using derogatory language and extended death threats to the appellant telling him to withdraw the complaint lodged by him against respondent no. 2 and to change his testimony failing which the appellant and his family members would not be spared. On appellant's complaint, the subject FIR was registered on the same day i.e. 30.03.2023. His statement under Section 164 Cr.P.C was also recorded wherein the appellant reiterated the allegations against respondent no. 2.

4. It is the case of the appellant that respondent no. 2 is a known gangster and habitual offender operating in and around Jabalpur having 58 members in his gang. Documents to this effect have been filed along with this appeal. There are 45 FIRs registered against him, therefore, the High Court ought not to have exercised the discretion of allowing the benefit of anticipatory bail in favour of a habitual offender. Respondent No. 2 is also convicted and awarded imprisonment of 02 years in a case arising out of FIR No. 41 of 1996 registered at P.S. Madan Mahal, Jabalpur and that he has committed several other offences of similar nature akin to the present one. It is also highlighted that respondent no. 2 may misuse his liberty by indulging in similar activities considering his track record. Therefore, respondent no. 2 is not entitled for anticipatory bail.

5. *Per contra*, learned counsel for respondent no. 2 would submit that the High Court has dealt with the criminal history of respondent

1 'Cr.P.C.'

2 'IPC'

no. 2 and yet concluded that the present is a fit case for his release on anticipatory bail. It is submitted that most of the criminal cases were registered during the period from 1991 to 2012 for which the respondent no. 2 has either been acquitted or released on bail. There was no FIR against him during the period from 2012 to 2021. However, from 26.08.2021 onwards other FIRs were registered against respondent no. 2 including a case under National Security Act. However, the said proceedings under National Security Act have been quashed by this Court in Special Leave Petition (Crl.) No. 8597 of 2012 vide order dated 31.01.2013.

6. Mr. K.M. Nataraj, learned ASG appearing for the State of Madhya Pradesh would vehemently submit that considering the criminal history of respondent no. 2 the High Court ought not to have allowed the prayer for grant of anticipatory bail. However, he would fairly submit that the special leave petition (Crl.) No. 14223 of 2024 preferred by the State of Madhya Pradesh against the present impugned order has already been dismissed by this Court vide order dated 15.10.2024.

7. We have heard learned counsel for the parties and perused the material on record.

8. Before proceeding to deal with the merits of the case it would be appropriate to bear in mind the law laid down by this Court in the matter of **Deepak Yadav vs. State of Uttar Pradesh & Anr.**[3] as to when bail once granted should be cancelled by the same Court or by the higher Court. The following is held in paras 31 to 36:

> **"31.** This Court has reiterated in several instances that 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 trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).
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> **32.** A two-Judge Bench of this Court in *Dolat Ram* v. *State of Haryana,* (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

3 (2022) 8 SCC 559

(*i*) interference or attempt to interfere with the due course of administration of justice;
(*ii*) evasion or attempt to evade the due course of justice;
(*iii*) abuse of the concession granted to the accused in any manner;

(*iv*) possibility of the accused absconding;
(*v*) likelihood of/actual misuse of bail;
(*vi*) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.
33.4. Where bail has been granted on untenable grounds.
33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In *Neeru Yadav v. State of U.P.,* (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], the accused was granted bail by the High Court. In an appeal against the order [*Mitthan Yadav* v. *State of U.P.,* 2014 SCC Online All 16031] of the

High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

> *"12. …* It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. *If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."*
> (emphasis supplied)

35. This Court in *Mahipal* [*Mahipal* v. *Rajesh Kumar,* (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] held that : (SCC p. 126, para 17)

> *"17.* Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

> **36.** A two-Judge Bench of this Court in *Prakash Kadam* v. *Ramprasad Vishwanath Gupta,* (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] held that : (SCC p. 195, paras 18-19)
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> > *"18.* In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. …
> > *19.* In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

9. Reverting back to the present case, the High Court has dealt with the previous criminal cases registered against respondent no. 2. The High Court has also considered the facts and circumstances including the allegations in the present case. The alleged offences in the present FIR are all triable by Judicial Magistrate, First Class. None of the offences would carry sentence of more than seven years. The previous offence in relation to which respondent no. 2 has extended threats constituting the present offence is also triable by Judicial Magistrate, First Class, hence, the present offences would also be triable by Judicial Magistrate, First Class in terms of Section 195A of the IPC. Thus, the present offence is not triable by Sessions and does not carry sentence more than seven years. Respondent no. 2 is in jail in connection with some other offences. However, still, he was allowed anticipatory bail in the present case because he has not been arrested by the concerned police in the present case and it appears that if he is released on bail in other cases, he may be arrested in the present case also so as to keep him in jail.

10. Having given anxious consideration to the arguments placed by both the sides, we are of the considered view that the view taken by the High Court to release respondent no. 2 on anticipatory bail does not suffer from any fundamental error of law. It is not a case where respondent no. 2 has been released on anticipatory bail in a

heinous offence. True it is that ordinarily habitual offender ought not to be released on bail in a routine manner, however, in the case at hand, the High Court has elaborately dealt with the cases against respondent no. 2. Once the benefit of anticipatory bail has been given by the High Court, the consideration for its cancellation has to be tested on the anvil as to whether the High Court has committed any serious error in law while granting anticipatory bail in the facts and circumstances of the case. In our view, had it been a case where respondent no. 2 is alleged to have committed any heinous offence, the consideration would have been different but as noted *infra* the offences are triable by Judicial Magistrate, First Class. Therefore, we are not inclined to interfere with the order passed by the High Court. Accordingly, the appeal is dismissed.

However, considering the criminal record of respondent no. 2,it is directed that as and when he is released on bail in other cases, he shall report to the concerned police station on 1st or 2nd day of every month during the pendency of the trial and shall not be involved in any other criminal activity failing which it will remain open for the appellant or the first respondent/State of Madhya Pradesh to move before the High Court for cancellation of bail granted to respondent no. 2.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Ankit Gyan