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v.

THE STATE OF MADHYA PRADESH AND ANOTHER

(Civil Appeal No. 740 of 2022)

MAY 5, 2022

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**[N. V. RAMANA CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

Code of Criminal Procedure, 1973: s. 439 – Special powers of High Courts and Courts of Sessions regarding bail – Exercise of – Held: High Court or the Sessions Court have wide discretion u/s. 439(1) however, it must be exercised after due application of the judicial mind and not in a routine manner – Liberty of the individual has been placed on the high pedestal however, the reasons for granting bail should be furnished – Absence of cogent reasons and failure to refer the relevant factors to grant bail can persuade the appellate court to interfere with the order passed – Bail once granted, can be cancelled only under supervening circumstances or when the conduct of the accused is no longer conducive to a fair trial – On facts, the High Court not justified in exercising its jurisdiction u/s. 439(1) for grant of regular bail to respondent no. 2-student leader against whom case was registered u/ss. 376(2)(n) and 506 IPC – High Court granted bail to the respondent no. 2 on the ground of delay in lodging the FIR, without offering any plausible explanation for the same – Respondent no. 2 is involved in four criminal cases – Respondent no. 2 immediately after being released from jail, took out a procession and mounted hoardings in the city, with his photographs prominently displayed, celebrating his release – 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 complainant – Brazen conduct of the respondent no. 2 has evoked bona-fide fear in the mind of the complainant that she would not get a free and fair trial if he remains enlarged on bail and there is a likelihood of his influencing the material witness – High Court while granting bail overlooked the relevant material brought on record – Supervening adverse circumstances also warrant cancellation of bail – Thus, the order granting bail is quashed and set aside.

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- A *Ram Govind Upadhyay v. Sudarshan Singh and Others* (2002) 3 SCC 598 : [2002] (2) SCR 526; *Prahlad Singh Bhati v. NCT, Delhi and Another* (2001) 4 SCC 280 : [2001] 2 SCR 684; *Chaman Lal v. State of U.P. and Another* (2004) 7 SCC 525 : [2004] 3 Suppl. SCR 584;
- B *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and Another* (2004) 7 SCC 528; *Puran v. Rambilas and Another* (2001) 6 SCC 338 : [2001] 3 SCR 432; *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* (2010) 14 SCC 496 : [2010] 12 SCR 1165;
- C *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and Another* (2004) 7 SCC 528; *Narendra K. Amin (Dr.) v. State of Gujarat and Another* (2008) 13 SCC 584 : [2008] 6 SCR 1149; *Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and Another* (2012) 4 SCC 134 : [2012] 3 SCR 278; *Abdul Basit Alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another* (2014) 10 SCC 754 : [2014] 10 SCR 571; *Neeru Yadav v. State of Uttar Pradesh and Another* (2014) 16 SCC 508 : [2014] 12 SCR 453; *Anil Kumar Yadav v. State (NCT of Delhi) and Another* (2018) 12 SCC 129 : [2017] 11 SCR 195;
- E *Mahipal v. Rajesh Kumar alias Polia and Another* (2020) 2 SCC 118 : [2019] 14 SCR 529; *Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another* (2022) SCC online SC 453; *Masroor v. State of Uttar Pradesh and Another* (2009) 14 SCC 286 : [2009] 6 SCR 1030; *Ash Mohammad v. Shiv Raj Singh Alias Lalla Babu and Another* (2012) 9 SCC 446 : [2012] 7 SCR 584; *Dolat Ram and Others v. State of Haryana* (1995) 1 SCC 349 : [1994] 6 Suppl. SCR 69; *Prakash Kadam and Others v. Ramprasad Vishwanath Gupta and Another* (2011) 6 SCC 189 : [2011] 6 SCR 800; *Ranjit Singh v. State of Madhya Pradesh And Others* (2013) 16 SCC 797 : [2013] 11 SCR 273; *Abdul Basit alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another* (2014) 10 SCC 754 : [2014] 10 SCR 571; *Imran v. Mohammed Bhava and Another* (2022) SCC OnLine SC 496; *Daulat Ram and Others vs. State of*
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Haryana (1995) 1 SCC 349 : [1994] 6 Suppl. SCR 69; A
Ms. Y v. State of Rajasthan and Anr. Criminal Appeal
No. 649 of 2022 – referred to.

Case Law Reference

[2002] 2 SCR 526	referred to	Para 13	B
[2001] 2 SCR 684	referred to	Para 13	
[2004] 3 Suppl. SCR 584	referred to	Para 14	
(2004) 7 SCC 528	referred to	Para 15	
[2001] 3 SCR 432	referred to	Para 15	C
[2010] 12 SCR 1165	referred to	Para 16	
(2004) 7 SCC 528	referred to	Para 17	
[2008] 6 SCR 1149	referred to	Para 17	
[2012] 3 SCR 278	referred to	Para 17	D
[2014] 10 SCR 571	referred to	Para 17	
[2014] 12 SCR 453	referred to	Para 17	
[2017] 11 SCR 195	referred to	Para 17	
[2019] 14 SCR 529	referred to	Para 17	E
[2009] 6 SCR 1030	referred to	Para 18	
[2012] 7 SCR 584	referred to	Para 19	
[1994] 6 Suppl. SCR 69	referred to	Para 20	
[2011] 6 SCR 800	referred to	Para 20	F
[2013] 11 SCR 273	referred to	Para 21	
[2014] 10 SCR 571	referred to	Para 22	
[1994] 6 Suppl. SCR 69	referred to	Para 24	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 740 of 2022. G

From the Judgment and Order dated 16.11.2021 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in MCRC No. 55343 of 2021.

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A Mahesh Srivastava, Vaibhav Manu Srivastava, Ms. Shikha Khurana, Ms. Riya Thomas, Kanishk Khullar, Advs. for the Appellant.

Siddharth Luthra, Sr. Adv., Rajul Shrivastav, Ms. Charu Ambwani, Rajneesh Chuni, Indrajeet Yadav, Ms. Ankita, Prithviraj Singh, Shakti Pandey, Advs. for the Respondents.

B The Order of the Court was passed by

HIMA KOHLI, J.

1. Leave granted.

C 2. The present appeal by way of special leave arises from an order dated 16th November, 2021, passed by the learned Single Judge of the High Court of Judicature for Madhya Pradesh; at Jabalpur in MCRC No. 55343 of 2021, whereby an application filed by the respondent No. 2/accused under Section 439 of the Code of Criminal Procedure, 1973¹ has been allowed and he has been granted bail on furnishing a personal bond for a sum of ₹ 1,00,000/- (Rupees One Lac only) with a solvent surety in the like amount to the satisfaction of the trial court and certain other conditions imposed therein by the learned Single Judge in connection with Crime No. 39/21 registered on the complaint of the appellant at P.S. Mahila Thana, Jabalpur, State of Madhya Pradesh, for the offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860².

E 3. A brief recapitulation of the facts of the instant case is necessary. The allegations levelled against the respondent No. 2/accused as recorded in FIR dated 21st June, 2021 are that he had induced the appellant/ complainant to establish a physical relationship with him on the false pretext of marrying her. The appellant/ complainant has stated that the respondent No. 2 has been in physical intimacy with her since July, 2019, when on applying vermillion (*sindhoor*) on her forehead, he had convinced her that they had got married as per Hindu rituals. Subsequently, in July, 2020 when the appellant informed the respondent No. 2 that she was pregnant, he along with his sister had taken her to a private hospital at Jabalpur and had made her consume some pills to undergo abortion, without her knowledge. It has been alleged that thereafter, the respondent

¹ for short “Cr.P.C.”

H ² for short the “IPC”

No.2 started avoiding the appellant and stopped returning her calls. When confronted by the appellant, he categorically refused to solemnize their marriage. On the appellant's complaint, the FIR was registered against the respondent No.2 on 21st June, 2021. A

4. Apprehending his arrest in the aforesaid FIR, the respondent No. 2 filed an application under Section 438 Cr.P.C., before the learned Additional Sessions Judge, Jabalpur, Madhya Pradesh seeking anticipatory bail which was dismissed vide order dated 30th June, 2021. A fresh application for anticipatory bail was moved by the respondent No. 2 before the High Court of Madhya Pradesh, Principal Seat at Jabalpur which was opposed by the appellant who filed objections thereto. Vide order dated 10th August, 2021 the said application was also dismissed by the High Court. Aggrieved by the rejection of his application for anticipatory bail, respondent No. 2 had approached this Court by filing a Petition for Special Leave to Appeal (Crl.) No. 6617 of 2021 which was dismissed vide order dated 13th September, 2021. B C

5. On conclusion of the investigation, a charge-sheet was filed by the prosecution on 25th October, 2021. Within four days reckoned therefrom, respondent No. 2 applied before the Additional Sessions Judge, Jabalpur, Madhya Pradesh for regular bail under Section 439 of the Cr.P.C., that was rejected by an order dated 29th October, 2021. The respondent No. 2 then moved the High Court for grant of regular bail. The said application has been allowed by the High Court by the impugned order dated 16th November, 2021. Aggrieved by the relief granted to the respondent No. 2, the appellant/complainant has filed the present appeal by way of special leave seeking cancellation of the regular bail granted to him. D E

6. Ms. Shikha Khurana, learned counsel for the appellant has assailed the impugned order stating that no reasons whatsoever have been assigned by the High Court for granting bail to the respondent No. 2; that the High Court has erred in overlooking the criminal antecedents of the respondent No. 2 and his father who are politically well connected and are in an influential position due to which there is an apprehension of threat to the appellant; that the High Court has ignored the material evidence including photographs produced by the appellant showing that the respondent No.2 has applied vermilion on her forehead as a symbol of having sanctified their relationship in the eyes of the society. Learned F G

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A counsel specifically drew the attention of this Court to the photographs enclosed with the petition and marked as Annexure P-2 which show a beaming appellant and the respondent No.2/accused in close proximity with vermilion applied on her forehead. Another photograph is stated to be that of the appellant with the mother of the respondent No. 2, in happier times.

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7. Learned counsel for the appellant asserts that the appellant had given her consent to the respondent No. 2 to establish a physical relationship with her only after he had promised her that he would marry her which turned out to be a false promise and in the process, the appellant had conceived which pregnancy was also got forcibly terminated by the
C respondent No. 2. It was further submitted that after being released on regular bail, respondent No. 2 started threatening the appellant. That had compelled her father to lodge a complaint with the Superintendent of Police, Jabalpur vide letter dated 14th December, 2021 wherein it was submitted that immediately after being released from jail, respondent
D No.2 had taken out a procession and had mounted hoardings in the city, with his photographs prominently displayed, celebrating his release which fact is stated to be borne out from the photographs annexed with the petition and marked as Annexure P-16. Learned counsel for the appellant contended that the said hoardings were strategically placed by the respondent No.2 and his family members at locations situated between
E the locality where the appellant and her family reside and the work place of her father, thus, trying to mock at them.

8. Notice was issued on the present petition on 11th April, 2022. As per postal tracking report service is complete on both the respondents and also by way of proof of service filed by the counsel for the appellant,
F after effecting service on the Standing Counsel for the State of Madhya Pradesh. Ms. Charu Ambwani, counsel for respondent No.2 already on caveat, has filed a counter affidavit in opposition to the present petition and the State is also represented today before us.

9. Mr. Siddharth Luthra, learned Senior Advocate appearing for
G the respondent No.2 has supported the impugned order passed by the High Court granting regular bail in favour of the respondent No. 2. Although it has not been disputed that the respondent No.2 and the appellant were having a consensual physical relationship, the plea taken is that respondent No.2 had not made any false promise or intentional

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misrepresentation of marriage to the appellant. Both the parties were known to each other for long and had voluntarily got into a physical relationship that had lasted for over two years. It was pointed out that though the appellant refers to incidents of the year 2019 and 2020, the FIR was belatedly registered only in June, 2021, without explaining the delay.

10. Alleging that the appellant and her father were trying to blackmail the respondent No. 2 and they had raised an illegal demand on him for closure of the case, learned Senior Advocate appearing for the respondent No.2 submitted that the present petition is yet another attempt to pressurize the respondent No. 2 to marry the appellant. As for the photographs of the posters annexed at Annexure P-16 of the petition, it has been submitted that the said posters had been put up in the first week of February, 2022, which is almost three months after the impugned order was passed granting bail to the respondent No. 2 and the said photographs clearly show that the respondent No. 2 was sending greetings on the annual festival of “*Maa Narmada Jayanti*” that was celebrated this year in the month of February.

11. On the other hand, Ms. Ankita Choudhary, Deputy Advocate General appearing for the respondent No.1/State of Madhya Pradesh has supported the appeal and submitted that the High Court has failed to take into consideration the fact that the respondent No. 2 and his father are involved in five criminal cases out of which respondent No.2 is an accused in four criminal cases and his father is an accused in one criminal case, all registered at different police stations in Jabalpur, for the offences punishable under Sections 294, 323, 324 and 506 IPC and this itself was sufficient ground to have rejected the bail application filed by the respondent No. 2. It was also pointed out that the appellant’s statement recorded under Section 164 Cr.P.C. is consistent with her earlier statement recorded under Section 161 Cr.P.C., thus lending credence to her version vis-à-vis the respondent No.2.

12. The short question that falls for our consideration is whether the High Court was justified in exercising jurisdiction under Section 439(1) of the Cr.P.C. for grant of regular bail in the facts of the present case.

13. It is no doubt true that the High Court or for that matter, the Sessions Court have a wide discretion in deciding an application for bail under Section 439 Cr.P.C. However, the said discretion must be exercised

A after due application of the judicial mind and not in a routine manner. In *Ram Govind Upadhyay v. Sudarshan Singh and Others*³, falling back on an earlier decision in the case of *Prahlad Singh Bhati v. NCT, Delhi and Another*⁴, this Court had observed as follows: -

B “4(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

C (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

D (c) While it is not expected have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

E (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

14. Similarly, in *Chaman Lal v. State of U.P. and Another*⁵, this Court had noticed certain aspects relevant for consideration at the time of granting bail, namely:

F “9. (1) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (2) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (3) prima facie satisfaction of the Court in support of the charge.”

G 15. We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav And*

³ (2002) 3 SCC 598

⁴ (2001) 4 SCC 280

⁵ (2004) 7 SCC 525

H ⁶ 2004 (7) SCC 528

Another⁶, where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words: A

“11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: B C

- (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. D
- (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) *prima facie* satisfaction of the court in support of the charge.”

(See Ram Govind Upadhyay [supra] and Puran v. Rambilas and Another⁷)” E

The aforesaid decision also acknowledges the fact that the conditions stipulated under Section 437(1)(i) Cr.P.C. ought to be taken into consideration for granting bail even under Section 439 of the Cr.P.C.

16. In the case of Prasanta Kumar Sarkar v. Ashis Chatterjee And Another⁸ after referring to several precedents, this Court held thus: F

“9. ...However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: G

⁷(2001) 6 SCC 338

⁸(2010) 14 SCC 496

- A (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- B (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- C (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

17. The aforesaid principles have been restated in several decisions rendered by this Court including Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another⁹, Narendra K. Amin (Dr.) v. State of Gujarat and Another¹⁰, Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and Another¹¹, Abdul Basit alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another¹², Neeru Yadav v. State of Uttar Pradesh and Another¹³, Anil Kumar Yadav v. State (NCT of Delhi) and Another¹⁴, Mahipal v. Rajesh Kumar alias Polia and Another¹⁵, and as recently as in Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another¹⁶

18. Courts have placed the liberty of an individual at a high pedestal and extended protection to such rights, whenever and wherever required. At the same time, emphasis has also been laid on furnishing reasons for granting bail even though they may be brief. In Masroor v. State of

⁹ (2004) 7 SCC 528

G ¹⁰ (2008) 13 SCC 584

¹¹ (2012) 4 SCC 134

¹² (2014) 10 SCC 754

¹³ (2014) 16 SCC 508

¹⁴ (2018) 12 SCC 129

¹⁵ (2020) 2 SCC 118

¹⁶ (2022) SCC online SC 453

H ¹⁷ (2009) 14 SCC 286

Uttar Pradesh And Another¹⁷, it has been observed by this Court as follows: A

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.” B

19. In the same strain as expressed above, this Court has held in Ash Mohammad v. Shiv Raj Singh alias Lalla Babu And Another¹⁸, C as follows :

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others’ rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”. D E F G

¹⁸ (2012) 9 SCC 446

¹⁹ (1995) 1 SCC 349

A 20. It is true that bail once granted, ought not to be cancelled. In *Dolat Ram And Others v. State of Haryana*¹⁹, this Court has held that very cogent and overwhelming circumstances are necessary for cancellation of bail and bail once granted, should not be cancelled in a mechanical manner. It is equally true that an unjustified or perverse order of bail is vulnerable to interference by the superior Court. So is an order where irrelevant material has been taken into consideration [Refer : *Narendra K. Amin (Dr.) (Supra)*]. The factors that are paramount for cancellation of bail have been succinctly stated in *Prakash Kadam and Others v. Ramprasad Vishwanath Gupta and Another*²⁰ in the following words:

C “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. Moreover, the above principle applies when the *same* court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

D 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 the 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.”

E 21. Echoing the above principle, in *Ranjit Singh v. State of Madhya Pradesh And Others*²¹, it has been held thus:

F “19.There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.....”

²⁰ (2011) 6 SCC 189

²¹ (2013) 16 SCC 797

H ²² (2014) 10 SCC 754

22. In *Abdul Basit alias Raju And Others v. Mohd. Abdul Kadir Chaudhary And Another*²², this Court has opined that : A

“19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused’s misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.” B

23. In a recent decision of a three Judge Bench of this Court in *Imran v. Mohammed Bhava and Another*²³ it has been held as follows: C

23. Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in *Vipan Kumar Dhir Vs. State of Punjab and Anr.* 3 has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact. It was thus observed:- E

“9. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in *Daulat Ram and Others Vs. State of Haryana* observed that: F

“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 G

²³ 2022 SCC OnLine SC 496

- A 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.”
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- C 10. These principles have been reiterated time and again, more recently by a 3 Judge Bench of this Court in *X Vs. State of Telengana and Another*.
- D 11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system...”
- E 24. XXXXX
25. XXXXXX
- F 26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles.
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H ²⁴ Refer 1995 (1) SCC 349 (*Daulat Ram and Others vs. State of Haryana*)

24. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial²⁴. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled are enumerated below: -

- 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 unconducive to a fair trial.

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

25. Keeping the aforesaid parameters to be borne in mind when dealing with a petition where not only has the order granting bail been assailed on the ground of perversity and illegality, supervening circumstances have been pleaded by the appellant that justify interference by this Court, we may now proceed to deal with the instant case.

- A 26. A perusal of the impugned order goes to show that the sole ground on which the concession of bail has been extended by the High Court to the respondent No.2 is the delay on the part of the appellant/complainant in lodging the FIR, without offering any plausible explanation for the same. Absence of cogent reasons and failure to refer to the relevant factors that weighed with the Court to grant bail is also an important factor that can persuade the Appellate Court to interfere with the order passed. In this context, this Court has referred to the consequences of failure to give reasons for granting bail in *Ms. Y v. State of Rajasthan And Another*.²⁵ and speaking for the Bench, Hon'ble Chief Justice N.V. Ramana has observed that:-
- C “17. Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the High Court to grant bail. In fact, no reasoning is apparent from the impugned order.
- D 18. Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In Puran v. Rambilas, (2001) 6 SCC 338 this Court held as under:
- E “8. ...Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. **That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.**” (emphasis supplied)
- F
- G 19. In Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 this Court indicated the importance of reasoning in the matter concerning bail and held as follows:

H ²⁵ Order in Criminal Appeal No. 649 of 2022 @ SLP(Crl) No. 7893 of 2021 dated 19th April 2022

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, **there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind...** (emphasis supplied)

20. In Brij Nandan Jaiswal v. Munna, (2009) 1 SCC 678, which concerned a challenge to grant of bail in a serious offence, this Court has reiterated the same position as was observed in Kalyan Chandra Sarkar (supra). This Court has held as under:

“12... However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. **While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.**”

(emphasis supplied)

27. The impugned order reveals that the High Court has made short shrift of the submissions made by the prosecution counsel to the effect that in her statements recorded under Sections 161 and 164 Cr.P.C., the appellant/complainant has not waived and stuck to her version and the fact that the respondent No. 2 has previous criminal history. It is worthwhile to note that the criminal antecedents of the respondent No.2 were brought to the notice of the High Court by the appellant/complainant and learned counsel for the respondent No.1/State has also confirmed that he is involved in at least four criminal cases as detailed below:

A	Accused	Crime No.	Police Station	Sections Indian Penal Code, 1860
	Respondent No.2 Accused	249/2015	Laadganj, Jabalpur	294, 324, 506 and 34
B	Respondent No.2 Accused	423/2017	Madan Mahal, Jabalpur	294, 323, 324, 452, 506 and 34
	Respondent No.2 Accused	294/2017 177/2019	Civil Lines, Jabalpur	294, 323, 324
C	Respondent No.2 Accused	56/2019	Civil Lines, Jabalpur	143 and 188

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. A B

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. C

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.

33. The appeal is allowed and disposed of on the above terms.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.