IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:17.05.2024

1. CRM-M-9029-2023

[redacted] ....Petitioner

V/s

State of Haryana and another ....Respondents

2. CRM-M-9118-2023

[redacted] ....Petitioner

V/s

State of Haryana and another ....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sitanshu Sharma, Advocate for the petitioner
(in both the petitions).

Ms. Priyanka Sadar, AAG Haryana
(in both the petitions).

Mr. R.S. Athwal, Advocate for respondent No.2
(in both the petitions).

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SUMEET GOEL, J.

1. This order will dispose of aforesaid two petitions filed under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of anticipatory bail granted to private respondent(s) vide order dated 06.02.2023 passed by learned Additional Sessions Judge, Faridabad in FIR No.32 dated 04.03.2022 registered for offences punishable under Sections 323, 406, 498-A, 506 and 34 of IPC and Section 25 of the Arms Act at Women Police Station Ballabgarh, District Faridabad, Haryana.

2. The petitioner is the father of the victim, whose marriage was solemnized with the private respondent-[redacted] on

22.11.2015 according to sikh rites and ceremonies at Jalandhar, Punjab. As per the prime stand of the petitioner (herein), the private respondent(s) along with their family members used to torment the victim on account of dowry and hence an FIR *ibid* got registered by him.

3. Vide order dated 06.02.2023 passed by Additional Sessions Judge, Faridabad, the respondent No.2-[redacted] was granted anticipatory bail; relevant whereof reads as under:

> *"Heard. This court while granting interim pre-arrest bail to the petitioner on 17.01.2023, had referred the matter to Mediation and report of Mediator namely, Ms. Durgesh Bakshi, reveals that despite several efforts the matter could not be settled by way of mediation. Admittedly, in compliance of order dated 17.01.2023, the petitioner has already joined the investigation and apparently custodial interrogation of the petitioner is not required as present FIR has been lodged by the father. Regarding non recovery of entire jewellery articles, it may be added here that our Hon'ble High Court in case titled as Priyanka vs. State of Haryana, bearing CRM-M-42197-2020, decided on 07.01.2021, has held that in view of the law laid down in Prit Pal Singh vs. State of Punjab and another, 2014(5) RCR (Crl.) 771, proceedings under Sections 406 and 498A of the IPC are not meant for recovery of jewellery and dowry articles and the complainant, if so chooses, can move Civil Court for recovery of said articles. Moreover, after taking into account the allegations and counter allegations, it transpires that demand and entrustment of certain articles to the petitioners is a disputed question of fact, which would be considered when the evidence is led during trial. Hence, in view of facts detailed above, without commenting on the merits of the case, order dated 17.01.2023, passed by this Court, is hereby made absolute"*

3.1 Vide order dated 06.02.2023 passed by Additional Sessions Judge, Faridabad, the respondent No.2-[redacted] was granted anticipatory bail; relevant whereof reads as under:

> *"Heard. Admittedly, in compliance of order dated 24.01.2023, the petitioner has already joined the investigation and apparently custodial interrogation of the petitioner is not required. As far as non recovery of*

dowry articles etc. is concerned, it may be added here that our Hon'ble High Court in case titled as Priyanka vs. State of Haryana, bearing CRM-M-42197-2020, decided on 07.01.2021, has held that in view of the law laid down in Prit Pal Singh vs. State of Punjab and another, 2014(5) RCR (Crl.) 771, proceedings under Sections 406 and 498A of the IPC are not meant for recovery of jewellery and dowry articles and the complainant, if so chooses, can move Civil Court for recovery of said articles. Moreover, demand and entrustment of certain articles to the petitioner is a disputed question of fact, which would be considered when the evidence is led during trial. Hence, in view of facts detailed above, without commenting on the merits of the case, interim bail-order dated 24.01.2023, passed by this Court, is hereby made absolute."

4. The afore-said order(s) dated 06.02.2023 have been challenged by the petitioner (herein)-complainant in CRM-M-9029-2023 & CRM-M-9118-2023 respectively.

5. Learned counsel for the petitioner has argued that the private respondent(s) ought not to have been granted the concession of anticipatory bail by the Sessions Court since there were serious allegations against the said respondent(s). It has been further argued that recovery of the dowry articles/Istridhan was not made and hence the Sessions Court ought to have dismissed the anticipatory petition(s) filed by the private respondent(s). It has been further argued that the petitioner had spent huge amount of money on the marriage in question and the FIR reflects high-handedness on part of the private respondent(s). Thus, cancellation of the anticipatory bail granted to the private respondent(s) is sought for.

6. Learned counsel appearing for the State has submitted that the challan (report under Section 173 of Cr.P.C.) has been presented by the Police in the concerned Court on 12.07.2023. Learned State counsel has further submitted that, after investigation, no challan was presented under the Arms Act against the private respondent(s). It has been further

submitted by the learned State counsel that the police has not received any complaint, made by the petitioner, about the private respondent(s) having extended any threat etc. to the petitioner or having tried to influence witnesses(s), after being enlarged on anticipatory bail.

7. Learned counsel appearing for respondent No.2 (in both cases) has argued that the FIR in question is result of a matrimonial discord. Various conciliation attempts were made between the parties but to no avail. It has been further argued that the allegations pertaining to demand of dowry are false and the same have been made only to exert pressure upon respondent No.2 for arriving at a settlement at the terms of the petitioner and his daughter (victim).

8. I have heard learned counsel for parties and have perused the record.

9. The prime issue that arises for consideration in the present petition(s) is as to whether the anticipatory bail granted by the Sessions Court to private respondent(s) ought to be cancelled in the facts and circumstances of the case. The analogous legal issue that arises for consideration is as to what are the factors to be considered for cancellation of bail earlier granted to an accused.

Relevant Statute

10. **Code of Criminal Procedure, 1973 (**hereinafter referred to as 1973 Code**)**

"***437 When bail may be taken in case of non-bailable offence***—

[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but –

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-Section without giving an opportunity of hearing to the Public Prosecutor.]

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(5) Any court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

439. Special powers of High Court or Court of Session regarding bail. —

(1) A High Court or Court of Session may direct –

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

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(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

The Criminal Procedure Code, 1898 (hereinafter referred to as 1898 Code)

*"**497**.(1) When any person accused of ör suspected of the commission of' any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or "imprisonment" for life;*

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

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(5) A High Court Division or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody."

***498**. 1 The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court Division or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.*

> *2. A High Court or of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody."*

Relevant Case Law:

11. The precedents, *apropos* to the matter(s) in issue, are as follows:

(i) In a case titled as "***Gurcharan Singh and others vs. State (Delhi Administration), (1978) 1 SCC 118*** the Hon'ble Supreme Court has held as follows:-

> *"16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498 of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439 (2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498 (2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section_439(2). Under Section 439 (2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the state is*

aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

(ii) The Hon'ble Supreme Court in a judgment titled as ***Himanshu Sharma vs. State of Madhya Pradesh, 2024(4) SCC 222*** has held as under:

"12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud. In the present case, none of these situations existed."

(iii) In a case titled as "***The State through the Delhi Administration vs. Sanjay Gandhi, 1978(2) SCC 411*** a three Judges Bench of the Hon'ble Supreme Court has held as follows:-

"14. Before we go to the facts of the case, it is necessary to consider what precisely is the nature of the burden which rests on the prosecution in an application for cancellation of bail. Is it necessary for the prosecution to prove by an mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they are won over by the accused? We think not. The issue of cancellation of bail can only arise in criminal cases, but that does not mean that every incidental matter in a criminal case must be proved beyond a reasonable doubt like the guilt of the accused. Whether an accused is absconding and therefore his property can be attached under Section 83 of the Criminal Procedure Code, whether a search of person or premises was taken as required by the provisions of Section 100 of the Code, whether a confession is recorded in strict accordance with the requirements of Section 164 of the Code and whether a fact was discovered in consequence of information received from an accused as required by Section 27 of the Evidence Act are all matters which fall peculiarly within

the ordinary sweep of criminal trials. But though the guilt of the accused in cases which involve the assessment of these facts has to be established beyond a reasonable doubt, these various facts are not required to be proved by the same rigorous standard. Indeed, proof of facts by preponderance of probabilities as in a civil case is not foreign to criminal jurisprudence because, in cases where the statute raises a presumption of guilt as, for example, the Prevention of Corruption Act, the accused is entitled to rebut that presumption by proving his defence by a balance of probabilities. He does not have to establish his case beyond a reasonable doubt. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused. The prosecution, therefore, can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail."

(iv) In a case titled as "***Ranjit Singh vs. State of M.P. and others, 2013(4) RCR (Criminal) 600***, the Hon'ble Supreme Court has held as follows:-

20. It needs no special emphasis to state that there is distinction between the parameters for grant of bail and cancellation of bail. 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. We have already referred to various paragraphs of the order passed by the High Court. We have already held that the learned trial Judge has misconstrued the order passed by the High Court. However, we may hasten to add that the learned single Judge has taken note of certain supervening circumstances to cancel the bail, but we are of the opinion that in the obtaining factual matrix the said exercise was not necessary as the grant of bail was absolutely illegal and unjustified as the court below had enlarged the accused on bail on the strength of the order passed in M.Cr.C. No. 701 of 2013 remaining oblivious of the parameters for grant

of bail under Section 439 Criminal Procedure Code. It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course."

(v) In a case titled as "***Neeru Yadav vs. State of U.P., 2014(16) SCC 508***, the Hon'ble Supreme Court has held as follows:-

"13. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. 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 and have not been taken note of bail 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."

(vi) In a case titled as "***Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr., 2022(9) SCC 321,*** a three Judges Bench of the Hon'ble Supreme Court has held as follows:-

"29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse, or is founded upon irrelevant materials adding vulnerability to the order granting bail, an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of Kanwar Singh Meena v. State of Rajasthan, wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:
"10.…Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken

> *into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.…The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."*

Analysis (re law)

12. The concept of "*cancellation of bail"* is statutorily manifested in terms of Section 439 (2) of 1973 Code. This concept was embodied in the earlier statute i.e. 1898 Code as well *albeit* with difference(s). The ratio decidendi of judgment in case of ***Gurcharan Singh*** (supra) makes it clear that, in the 1898 Code, the bail granted by the High Court could be cancelled only by it & bail granted by a Sessions Court could be cancelled by such Sessions Court only. However, Section 439(2) of 1973 Code has vested power to cancel bail which has been granted "*under this chapter*" upon both the High Court as also the Sessions Court. The words "*under this Chapter"* relates to Chapter XXXIII of Cr.P.C. of 1973 & hence the unequivocal result

thereof is that the High Court as also the Sessions Court have requisite powers to cancel "*any bail*" granted by *"any Court"* by way of powers vested under this Chapter. In other words; the High Court is well empowered to cancel a bail granted by itself or by a Sessions Court or by the Court of a Magistrate while the Sessions Court is empowered to cancel a bail granted by High Court or by itself or by a Magistrate. However, a Sessions Court can cancel bail granted by High Court only on account of supervening/new circumstances or on account of misconduct of such accused or on account of violation of any condition(s) imposed by the High Court while granting bail. The Magistrate can, of course, cancel bail granted by him but he cannot cancel a bail granted by High Court or Sessions Court except when such accused has violated/contravened any condition(s) imposed upon by such High Court or Sessions Court while granting bail to such accused. This position, is indubitable, as a Magistrate has been vested with powers for cancellation of bail only in terms of Section 437(5) of 1973 Code *whereas* the High Court and Sessions Court have been vested with powers under Section 439 of Cr.P.C., of 1973 to cancel *"any bail granted under Chapter XXXIII of 1973 Code"*.

12.1 Section 439(2) of Cr.P.C., 1973 deals with *"any person who has been released on bail under this Chapter"* i.e. Chapter XXXIII of 1973 Code, which engirths in itself, Section 438 of the Code (provision envisaging anticipatory bail/pre-arrest bail) as well. Hence such power operates in realm of all kinds of bails, whether regular bail or anticipatory bail. *Ergo,* there is no conceptual difference between cancellation of regular bail and cancellation of anticipatory bail except that a Magistrate will not

have statutory power to cancel an anticipatory bail granted by High Court or Sessions Court.

12.2. At this juncture, it would be profitable to consider an issue often springing up before Courts. Petition(s) labelled as plea(s) for "*cancellation of bail"* are filed in Court(s), more often than not, whether such applicant is actually seeking *"cancellation of bail"* on account of the accused misusing the grant of bail or on account of any supervening developments disentitling such accused to remain on bail *OR* where the plea raised is that, the bail ought not to have been granted at all vide the impugned order, in the factual conspectus of such case. The 1973 Code neither stipulates the words "*cancellation of bail"* nor "*setting-aside of a bail order"* but only stipulates the words "*any person who has been released on bail be arrested and committed to custody"*. There is no gainsaying that there is a foundational difference between "*cancellation of bail"* and "*setting-aside of a bail order"*; a difference which, by way of simile, can be said to be as stark as between chalk and cheese. The Hon'ble Supreme Court in cases of ***Ranjit Singh*** (supra) and ***Neeru Yadav*** (supra) has incontestably articulated that "*cancellation of bail"* is sought for on account of supervening circumstances/subsequent developments/misconduct of accused etc. whereas "*setting-aside of a bail order"* is sought for by laying challenge to the said bail order on ground of it being perverse or based on irrelevant material(s). The parameters for consideration of the two are, accordingly, different and contrastive.

13. The next aspect that craves attention is as to what are the factors relevant for considering of a plea for "*cancellation of bail"* or "*setting-aside*

of a bail order." At the very outset; it deserves to be noted that, it is too far well settled a principle to be ratiocinated upon, that consideration(s) for grant of bail *vis.-a-vis.* cancellation/setting-aside thereof are entirely different.

14. In a plea seeking "*cancellation of bail"*; such applicant ought to show, primarily, subsequent supervening circumstances such as accused having endeavored to influence/intimidate witness(s) or accused having violated bail condition(s) or accused having committed another offence(s) or accused having secured bail by misrepresenting/concealing material fact(s) or bail having been granted in ignorance/violation of statutory provisions and factors of akin nature. The Hon'ble Supreme Court in the case of ***Himanshu Sharma*** (supra) has delineated the nature and kind of such factors as have been stated by this Court hereinabove.

14.1. Further, the Hon'ble Supreme Court in the case of ***Sanjay Gandhi*** (supra) has enounced regarding the nature and degree of burden upon the applicant (seeking cancellation of bail). The plea of such an applicant has to be tested on the anvil of preponderance of probabilities & such an applicant is not required to prove, beyond reasonable doubt, the facts pleaded by him in support of such a plea.

15. In a plea seeking "*setting-aside of a bail order"*; the factors required to be considered are as to whether bail has been granted on relevant consideration(s); grounds required to be evaluated for grant of bail have been duly factored into the order granting bail and other factors of *akin* nature. The Hon'ble Supreme Court in the case of ***Jagjit Singh*** (supra) has held that the High Court or Sessions Court can set-aside an order granting

bail passed by an inferior Court if such order is based on irrelevant considerations, order granting bail has resulted in miscarriage of justice etc. It goes without saying that the High Court or Sessions Court; while dealing a plea for setting-aside a bail order; sits in a jurisdiction, which is akin to appellate jurisdiction & hence it can look into the veracity and propriety of the order (granting bail) from all the perspectives. However, a Court while dealing with such a plea, ought not to substitute its own opinion with the one expressed in the impugned order.

16. It would not be pragmatic to even attempt to lay-down exhaustive parameters in this regard as every case, especially a criminal case, is *sui generis.* Such a *quixotic* attempt ought to be avoided as no inexorable formulae can be laid down in this regard.

17. As an epilogue to above discussion, the following principles emerge:

I. (i) There is a conceptual distinction, between "*cancellation of bail*" & "*setting-aside of a bail order"*. In a plea seeking "*cancellation of bail"*; the factors required to be considered are *akin* to supervening circumstances/events or mis-conduct of accused *whereas* in a plea seeking *"setting-aside of a bail order";* the factors required to be considered are *akin* to the order in question being unjustified or illegal or not based on relevant consideration(s). In other words, a plea seeking *"setting aside of a bail order"* is more in the nature of laying challenge to an order granting bail before a superior Court upon merits thereof.

(ii) It would be pragmatic as also desirable, for the cause of ease and clarity, that a plea filed under Section 439 of Cr.P.C., 1973 clearly states as to whether the plea is for *"cancellation of bail"* or for *"setting aside of a bail order."* or on both accounts.

II. *Plea seeking cancellation of Regular Bail.*

(i) A High Court has power to cancel regular bail granted by itself or by a Sessions Court or by a Magistrate's Court.

(ii) A Sessions Court has a power to cancel regular bail granted by High Court or by itself or by a Magistrate's Court. However, the Sessions Court can cancel regular bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel bail granted to an accused by High Court only on account of such like supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby bail was granted to such accused.)

(iii) A Magistrate does have the power to cancel a regular bail granted by him in terms of Section 437(5) of Cr.P.C. 1973. However, a Magistrate does not have the power to cancel regular bail granted by the High Court or Sessions Court except in a situation wherein the accused has violated any condition(s) imposed upon him when granted such bail by the High Court or the Sessions Court.

(iv) In case cancellation of a regular bail granted by the Sessions Court is sought for; such plea ought to be *ordinarily* filed before the Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not *ipso facto* barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.

(v) The factors for consideration in a plea for cancellation of a regular bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether the accused has flouted the cancellation of bail, whether bail was procured by

misrepresentation or fraud or concealing relevant material and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.

(vi) Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.

(vii) The degree and nature of proof required to be shown by an applicant (seeking cancellation of regular bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.

III. *Plea seeking setting-aside of regular bail order.*

(i) A plea seeking *"setting-aside of a bail order"* has to be essentially filed in the Court, superior to the one which has granted bail.

(ii) In case setting-aside of a bail order granted by the Magistrate's Court is sought for, such plea ought to be *ordinarily* filed before the Sessions Court. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not *ipso facto* barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.

(iii) For setting-aside a bail order passed by a Sessions Court; such plea, but of-course, will have to be filed before the High Court.

IV. *Plea seeking cancellation of anticipatory bail/pre-arrest order*

(i) A High Court has power to cancel an anticipatory bail granted by it or by a Sessions Court.

(ii) A Sessions Court has power to cancel an anticipatory bail granted by High Court or earlier granted by it. However, the Sessions Court can cancel anticipatory bail granted by High

Court only where the accused has violated any condition(s) imposed by the High Court (while granting such bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel anticipatory bail granted to an accused by High Court only on account of such likes supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby such bail was granted to such accused.)

(iii) In case cancellation of an anticipatory bail granted by Sessions Court is sought for; such plea ought to be filed ordinarily before Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. of 1973, the filing of such a plea straight away before the High Court is not barred. At the same time, it would be expedient that such a plea (straight away filed before High Court) must show cogent reasons for not approaching the Sessions Court in first instance.

(iv) The factors for consideration in a plea for cancellation of an anticipatory bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material, and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.

(v) Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be

filed, in the first instance itself, before the Court which had granted bail in question.

(vi) The degree and nature of proof required to be shown by an applicant (seeking cancellation of an anticipatory bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.

V. *Plea seeking setting aside of an anticipatory bail/pre-arrest bail order*

(i) A plea seeking setting aside of an anticipatory bail/pre-arrest bail order by a Sessions Court has to be essentially filed before High Court.

(ii) The factor, required to be considered in a plea seeking cancellation of an anticipatory/pre-arrest bail order; is as to whether the impugned order (granting anticipatory bail/pre-arrest bail) has objectively dealt with nature and gravity of allegations against accused, role of accused in the crime(s) alleged, need for custodial interrogation, likelihood of accused influencing the investigation/witnesses, likelihood of the accused absconding from process of justice etc.

VI. Where a plea made under Section 439(2) of Cr.P.C. 1973 raises grounds regarding "*cancellation of bail*" as also for "*setting aside of bail order*", such plea has to be essentially made before the superior Court.

Analysis re facts

18. Now this Court reverts to the facts of the present case to ratiocinate thereupon.

18.1. The averments made in the petition(s) as also the arguments raised by learned counsel for the petitioner, indubitably, shows that petition(s) has been filed for setting-aside of the anticipatory bail order(s) granted to the private respondent(s) vide order dated 06.02.2023 passed by the learned Additional Sessions Judge, Faridabad. It is worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the private respondent(s) has misused the concession of anticipatory bail granted

by the Sessions Court by threatening/intimidating the witness(s) or by trying to influence the investigation/trial etc. The impugned order(s) was passed on 06.02.2023 whereinafter challan (report under Section 173 of Cr.P.C., 1973) was filed on 12.07.2023 and trial is underway. The sole plank of argument raised on behalf of the petitioner is that the complete recovery of dowry articles/Istridhan has not been made and hence the Sessions Court ought not to have granted the anticipatory bail to the private respondent(s). It is trite law that non-recovery of dowry articles/Istridhan cannot, by itself, be a ground for declining a plea for grant of anticipatory bail to the husband or his relatives. The factum, as to what were the dowry articles/Istridhan in question and whether complete recovery thereof has been made or not, is essentially required to be gone into during the course of trial. This issue cannot be delved into at the stage of consideration of a plea for grant of anticipatory bail in a meticulous manner. The order(s) passed by Sessions Court is a well-reasoned speaking order and cannot be said to be suffering from vice of non-application of judicial mind. This Court, keeping in view the entirety of the facts and circumstances of the case(s) in hand, does not find any good ground to hold that the Sessions Court, while passing the impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition(s) in hand deserves rejection.

Decision

19. As a sequel to the above discussion, both the petitions filed under Section 439(2) of Cr.P.C. of 1973, seeking setting-aside of

anticipatory bail orders dated 06.02.2023 passed by learned Additional Sessions Judge, Faridabad, are dismissed.

20. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

May 17, 2024
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes