

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr.M.P.(M) No. 227 of 2021 with
Cr.M.P.(M) No. 721 of 2021
Decided on: 31.05.2021

Cr.MP(M) No.227/2021

Soniapetitioner
Versus
State of Himachal Pradesh respondent

Cr.MP(M) No.721/2021

State of Himachal Pradeshpetitioner
Versus
Sonia respondent

Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Pratik Sharma, Advocate, for the petitioner, in Cr.MP(M) No. 227/2021.

For respondents : Ms. Sheetal Vyas, Advocate, for the respondent, in Cr.MP(M) No. 721/2021.

Mr. Anil Jaswal, Additional Advocate General with Amit Dhumal, Deputy Advocate General & Mr. Manoj Bagga, Assistant Advocate General, for the respondent in Cr.MP(M) No. 227/2021 and the petitioner in Cr.MP(M) No. 721/2021.
(Through video conferencing)

Jyotsna Rewal Dua, J (Oral)

Cr.MP(M) No. 721/2021

State has moved this petition seeking cancellation of bail granted to the respondent on 10.02.2021 in Cr.M.P(M) No. 291/2021.

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

FIR No. 135/2020, was registered against the respondent on 13.09.2020, under Section 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985, at Police Station Damtal, District Kangra, H.P. Respondent was arrested in the aforesaid FIR on 13.09.2020. She was accused of possessing 7.79 grams of heroin.

2. Cr.MP(M) No. 227/2021 was moved by the respondent (Petitioner therein) for grant of regular bail in the aforesaid FIR on 04.01.2021. Petition was listed on 01.02.2021 before the Hon'ble Coordinate Bench/Vacation Bench, when notice was issued and waived by the State. Status report was directed to be filed and the matter was ordered to be listed in first week of March, 2021.

3. During the pendency of Cr.MP(M) No. 227/2021 and subsequent to notice having been issued in it, the respondent filed another Cr.MP(M) No.291/2021, under Section 439 of the Code of Criminal Procedure for grant of regular bail in the same FIR through a different counsel. The second bail petition was listed on 09.02.2021, when notice was issued and the status report was called for. The status report was filed by the State without disclosing the fact of filing and pendency of previous bail petition (Cr.MP(M) No. 227/2021) by the respondent in the same FIR. Respondent also did not disclose in her second bail petition (Cr.MP(M) No. 291/2021) about her filing Cr.MP(M) No. 227/2021, seeking regular bail in the same FIR and its

pendency in the Court. On 10.02.2021, respondent was enlarged on bail in Cr.MP(M) No. 291/2021.

4. The first bail petition (Cr.MP(M) No. 227/2021), which on 01.02.2021 was ordered to be listed in the first week of March, 2021, was listed before the Hon'ble Coordinate Bench on 05.03.2021, when following order was came to be passed:-

"The petitioner had filed this bail petition on 4.1.2021. However, the bail petitioner had filed a mention memo about the same during winter vacation, pursuant to which the matter was posted before this Court on 1.2.2021, on which date, this matter was ordered to be listed in the first week of March, 2021 to file status report. The said bail petition is supported by an affidavit of one Sarishta Devi, who claimed to be mother of the bail petitioner Sonia.

Ms. Abhilasha Kaundal, Advocate appearing vice Mr. Pratik Sharma, learned counsel for the petitioner seeks liberty to withdraw the present petition. The Registry has placed before me another matter filed by the same petitioner, which is registered as Cr.MP(M) No.291/2021 and a perusal of same reveals that it was filed through e-mail on 8.2.2021, i.e., after passing of the order on 1.2.2021 in the instant bail petition.

In paragraph 17 of new bail petition, which was registered as Cr.MP(M) No.291 of 2021, there is a declaration that no other bail application is pending before any other Court. This petition is supported by an affidavit of one Uttam Kumar, who in affidavit did not disclose any relationship with the petitioner. The said petition (Cr.MP(M) No.291 of 2021) was posted before the learned Vacation Judge (Hon'ble Ms. Justice Jyotsna Rewal Dua) on 9.2.2021, on which date, status report was sought for the next date, i.e., 10.2.2021. When the matter was taken up on 10.2.2021, the Hon'ble Co-ordinate Bench allowed the petition and granted bail.

Thus apparently, when Cr.MP(M) No.291 of 2021 was filed, the bail petitioner concealed the fact of pendency of instant petition and in paragraph 17 of the bail petition, it is mentioned that no other bail application was pending before any other court of law and this contention is supported by an affidavit of one Uttam Kumar. The contents of both the bail petitions mentioned same FIR, i.e., FIR No.135 of 2020 dated 13.9.2020 under Section 21 of NDPS Act registered in Police Station Damtal, District Kangra, H.P and

the particulars of the petitioner in both the petitions are also same. The contents of the affidavit filed in Cr.MP(M) No.291 of 2021 reveal that while imparting instructions to the counsel, the deponent did not bring in the notice of the counsel about the pendency of present bail petition. Therefore, the error apparent lies on the petitioner because without her knowledge, second petition could not have been filed.

Given the fact that the Co-ordinate Bench has already closed Cr.MP(M) No.291 of 2021 vide order dated 10.2.2021, as such the instant bail petition should also be listed before the same Bench.

Mr. Nand Lal Thakur, learned Additional Advocate General states that this fact was not in the knowledge of the office of Advocate General and they have come to know about it just now, when this matter has been taken up. He states that the State shall file an application for cancellation of bail granted in Cr.MP(M) No.291 of 2021.

Given above, the State to file such application for cancellation of bail granted in Cr.MP(M) No. 291 of 2021 within one week from today. The State to also apprise in the cancellation application that for what reasons, the concerned police official failed to bring to the notice of the Hon'ble Court about the fact of pendency of the previous bail petition.

The Registry is directed to post the cancellation application alongwith instant bail petition, i.e., Cr.MP(M) No.227 of 2021 before the same Court, which had granted such bail in Cr.MP(M) No.291 of 2021."

It is in this background, State has moved the instant petition, seeking cancellation of bail granted to the respondent on 10.02.2021 in Cr.MP(M) No.291/2021.

5. Heard learned counsel for the parties and gone the record.
6. Learned counsel for the respondent (original bail petitioner) submits that Cr.MP(M) No.227/2021 was filed on the affidavit of the mother of the respondent. She was an illiterate lady and not aware about filing of the first bail petition of the respondent or the

fact that some order has been passed in the bail petition (Cr.MP(M) No.227/2021). Ignorant of filing of the first petition, second bail petition was filed subsequently on the affidavit of one Uttam Kumar by engaging a different counsel. Learned counsel further submitted that there was no deliberate attempt on part of the respondent to mislead and to abuse the power of the Court. The second bail petition came to be filed only on account of communication gap between the respondent, her mother and learned counsel representing her. These facts were not brought to the notice of learned counsel, who represented the respondent in the subsequent bail petition. Filing of second petition was also not to the knowledge of her counsel representing her in the first petition. Whereas, learned Deputy Advocate General contended that the respondent, during pendency of her previously filed bail petition had not only chosen to file a subsequent bail petition in relation to the same FIR, but that too without disclosing the fact about pendency of the previous bail petition as well as the fact that notice in the said petition had already been issued by the Court. Therefore, he prayed for cancellation of the bail granted to the respondent in Cr.MP(M) No.291/2021. Learned counsel representing the original bail petitioner in Cr.MP(M) No. 227/2021 submitted that he had intimated about filing of the bail petition (Cr.MP(M) No.227/2021) and the order passed in it, to his clients at the relevant time itself.

7. The law relating to canceling of bail has been summarized by Hon'ble Apex Court in **2020 (2) SCC 743, titled *Myakala Dharmarajam and Ors. Vs. State of Telanganan and Anrs.***, wherein it was held that bail can also be cancelled where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material 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. It was also observed that grounds mentioned in the judgment for cancellation of bail are only illustrative and not exhaustive. Relevant paragraphs are as under:-

*"7. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. 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. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.*

8. *In Raghbir Singh V. State of Bihar* this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive.

It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

9. *It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material 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.....”*

Desperate attempt made by learned counsel for the respondent cannot change the glaring fact about filing of Cr.MP(M) No.227/2021 by the petitioner seeking regular bail in FIR No. 135/2020 registered on 13.09.2020. The respondent had filed Cr.MP(M) No.227/2021 on 04.01.2021, in which notice was issued on 01.02.2021. State had waived the issuance of notice and the matter was ordered to be listed in the first week of March,2021. During pendency of this petition, the respondent through e-mail on 08.02.2021 i.e. after passing of the order on 01.02.2021 in Cr.MP(M) No.227/2021 filed second bail petition Cr.MP(M) No.291/2021, through a different counsel with specific averment that no other bail petition of her was pending adjudication before any other Court. The second bail petition was listed on 9.02.2021, when notice was issued and status report was called for 10.02.2021. Status report was filed by the State without disclosing calling of status report in the same FIR in Cr.MP(M) No.227/2021

previously filed by the respondent. Considering the status report and after hearing the case, bail was granted to the respondent on 10.02.2021.

It is obvious that the respondent had hoodwinked the Court and obtained bail by abusing the judicial process. During pendency of Cr.MP(M) No.227/2021, respondent could not institute Cr.MP(M) No.291/2021. Two petitions, one after another, were filed in succession by the respondent for grant of bail in the same FIR and that too when her first bail petition was already pending adjudication. It cannot be assumed that the respondent was not aware about the order passed in her first bail petition. Being aware that Cr.MP(M) No.227/2021 stood filed and on 01.02.2021 was ordered to be listed in first week of March 2021, respondent dared to file second bail petition (Cr.MP(M) No.291/2021) by changing her counsel and without disclosing the fact of pendency of earlier bail petition and the order passed in it either to her learned counsel or to the Court. Such conduct of the respondent is reprehensible and cannot be condoned. Conduct of respondent reflects that she has no respect for law and that she has misled the Court. Hence, the bail granted to the respondent on 10.02.2021 in Cr.MP(M) No. 291/2021 deserves to be cancelled. Accordingly, the petition Cr.MP(M) No. 721/2021 is allowed and bail granted in favour of the respondent on 10.02.2021 in Cr.MP(M)

No.291/2021 is cancelled. However, liberty is reserved to the respondent to file a fresh petition, in accordance with law.

Before parting with the case, it needs to be noticed that while filing status report, in Cr.MP(M) No.291/2021, it was incumbent upon the State to mention therein previous bail petitions filed by the bail petitioner and the outcome thereof. In the instant case, the status report filed in Cr.MP(M) No.291/2021 did not mention Cr.MP(M) No.227/2021 previously filed by the petitioner & pending adjudication as on the date of consideration of second bail petition (Cr.MP(M) No.291/2021). During hearing of the case, learned Additional Advocate General apprised that the error was on account of assumption of concerned police official that the aforesaid two bail petitions relate to two different FIRs. However, thereafter show cause notice in this regard was served upon the concerned police official, now a warning has been issued to him in the matter. Considering that detailed observations in respect to filing of status report have already been made in Cr.MP(M) Nos.1303/2020, titled ***Sunil Kumar Vs. State of Himachal Pradesh***, therefore, let this matter be placed before the Director General of Police for taking suitable action as per law and also for issuing necessary instructions to all concerned authorities regarding proper filing of status reports with up-to-date required particulars.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

Cr.MP(M) No. 227/2021

In view of the order passed in Cr.MP(M) No. 721/2021, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to file afresh, in accordance with law. Prayer has not been opposed by learned Additional Advocate General. Accordingly, the petition stands dismissed as withdrawn with leave and liberty as prayed for. Pending miscellaneous application(s), if any, shall also stand disposed of.

It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.

**Jyotsna Rewal Dua
Judge**

May 31, 2021

(Rohit)