

**ORDERS ON APPLICATION FILED BY THE
PROSECUTION U/S 437 (5) OF CR.PC.**

APP filed this application u/s 437 (5) of Cr.PC and praying to cancel the bail granted to the accused No. 1 to 6 herein on the ground that, after they enlarging on the bail in this case they have took the complainant to their house by promising her that they will look her after in a well manner and

on 19-02-2022 all the accused have formed an un-lawful assembly with an intention to do away the life of the complainant, abused her in filthy language, assaulted on her back, stomach with club and further have dragged her around by holding her hair and have assaulted with their hands and legs.

Per contra, the accused have filed their objection to the present application and praying to dismiss the same on the ground that, the complainant had filed this application only in order to harass them and by cooking up a false story. They further contending that the accused No.1 to 6 and the complainant are residing separately and the accused have never took the complainant with them on 19-02-2022 and have not indulged in any kind of acts that are alleged against them. It is further contended by the accused that the grounds urged by the complainant in the present I.A. is bald and vague and she has come with this application with an ulterior motive and with the instigation of her father and brothers.

Heard both side and perused the records.

It is argued by the Learned APP that the alleged act of the accused No.1 to 6 dated 19-02-2022 amounts to violation of the conditions imposed on them while this court enlarging them on bail and hence, he prays to cancel the bail and commit the accused to prison.

Per contra the Learned Counsel for accused has argued that, since the date of the institution of the present case by the complainant against the accused, both the accused and the complainant are residing separately and the accused are neither in contact with the complainant either personally or indirectly nor they have met her on 19-02-2022 or before or after to the said date. By placing his reliance on a decision in the case of Maheboob Dawood Shaik -Vs.- State of Maharashtra the Learned Counsel for accused contended that once the bail granted to an accused of an offence cannot be canceled unless extraordinary circumstances are made out and he further submitted that since prosecution has not made out such extraordinary circumstances in the case on hand, the present application liable to be dismissed.

On perusal of the materials it is evident that, the offences alleged against the accused are punishable u/s 143, 147, 498(A), 323, 504, 506 R/W 149 of IPC and among the said offences, the offence u/s 498(A) R/W 149 of IPC is non bailable in nature. The

record would further reveal that, in pursuance to the notice issued by this court, the accused No.1 to 6 have voluntarily appeared before this court on 25-03-2021 and filed bail application u/s 437 of Cr.PC. The same was allowed on the very same day and the accused were enlarged on bail. The charges in the present case are already framed and the matter is now set for trial. In the meanwhile, the prosecution come up with the present application.

As already noted, it urged by the prosecution that on 19-02-2022 the accused No.1 to 6 have formed an un-lawful assembly with an intention to do away the life of the complainant, took her to their house by promising to look after well, assaulted her with a club and with his hands and legs and also have abused her in filthy language. According to the prosecution the said act of the accused violates the terms of bail granted to them and hence it is prayed for cancellation of bail.

No doubt, this court is empowered U/s 437 (5) Cr.PC to cancel the bail granted to an accused under sub-clause (1) of sec.437 of Cr.PC. Though the grounds for cancellation of bail are not explained in Sec.437(5) of Cr.PC, the Hon'ble Apex Court in a Case of **Raghubir Singh -Vs.- State of Bihar** reported in **(1986) 4 SCC 481** has laid down the following grounds on which the bail can be canceled;

“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, (vii) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (viii) attempts to place himself beyond the reach of his surety, etc.

These 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 restored to.”

Further, the Hon'ble Apex Court in the case of **Bhagirathsinh -Vs.- State of Gujarath** reported in **(1984) 1 SCC 284** observed that ;

“very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even where a prima facie case is established the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favor by tampering with the evidence.”

In its recent judgment reported in **(2020) 2 SCC 743** in the case **of Myakala Dharmarajam and Ors. -Vs.- State of Telangana and another** has held that;

“The vague allegation without any details of the act committed by the accused or their conduct and on such mere allegations are not a ground for cancellation of bail”.

By keeping the above settled laws in mind now it is to be seen whether prosecution made out any grounds for cancellation of bail granted to the accused.

As already stated, the prosecution seeking for cancellation of bail of accused on the ground of the accused misusing their liberty and indulging in similar criminal activity against the complainant and by way of the alleged act done by them on 19-02-2022. However, except making those allegations in para No.2 of the present application, the prosecution has not produced any documents or any other materials either to believe the alleged act of accused committed on the complainant on 19-02-2022 or to even prima facie establish the said allegations. Upon perusal

of the entire application there is absolutely no mention about which accused out of 6 indulged in the acts of abusing the accused, or assaulting her with club or assaulting her with hands and there is also no mention about what are the abusive words that are uttered on the complainant. Thus, the entire allegation made in para No.2 of the present application by the prosecution appears to be absolutely vague, bald and baseless.

Since, the prosecution making the strong allegation of accused indulging in similar kind of criminal activity against the victim, it is the burden of the prosecution to prima facie establish those allegation by bringing very cogent and overwhelming circumstances and proof of such circumstances before the court so as to enable this court believe the said allegations and to see whether accused have misused their liberty given by granting bail to them. But no such proof have been brought before this court by the prosecution except the mere allegations. The prosecution not even filed the affidavit from the victim/complainant explaining the alleged crime committed on her by the accused on 19-02-2022.

Under the above facts and circumstances, this court is of considered opinion that, the vague, bald and baseless allegations made by the prosecution in the present application can not be a ground to cancel the bail granted to the accused in this case. Thus, holding the present application devoid of merits, I proceed to pass the following;

ORDER

The application filed by the prosecution u/s 437(5) of Cr.PC is dismissed.

Re-issue W/S to CW1 to 3.

For trial.

Call on 01-07-2022.

**Prl. Civil Judge & JMFC,
Chincholi.**