

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

MCRC No. 4948 of 2022

(MANISH @ VIRENDRA @ SAROJ RAI Vs THE STATE OF MADHYA PRADESH)

**Dated : 30-07-2024**

*Shri V.V.R. Daniel - Advocate for applicant.*

*Shri Akshay Namdeo - Govt. Advocate for respondent/State.*

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Applicant has filed an application i.e. I.A. No.15856/2024 for recalling of order dated 14.03.2022.

2. Counsel appearing for applicant submitted that offences under Sections 420, 467, 468, 471, 472, 473, 475 and 417 of Indian Penal Code is registered against the applicant at Crime No.514/2019 at Police Station Kotwali, District Damoh. Applicant was arrested in said crime number. After arrest applicant had filed an application under Section 439 of Cr.P.C. for grant of bail. Said application was registered as M.Cr.C. No.54281/2021. Said application was allowed vide order dated 26.11.2021. Conditional order was passed and direction was given to deposit Rs.10 lacs before the trial Court within period of 30 days and applicant was directed to mark his presence at Police Station Kotwali, District Damoh on 15th of every month. Aforesaid condition was further qualified by another condition that if applicant fails to mark even a single appearance before the concerned authority, then bail order granted to him shall stand automatically cancelled.

3. Applicant pursuant to direction in M.Cr.C. No.54281/2021 dated 26.11.2021 did not appear before local police station on 12.01.2022 and 14.02.2022. Applicant filed an application i.e. M.Cr.C. No.4948/2022 for

modification of bail order dated 26.11.2021 passed in M.Cr.C. No.54281/2021. Said application was dismissed vide order dated 14.03.2022. Learned Coordinate Bench of this Court held that since applicant failed to mark his appearance before police station in accordance with direction given by High Court, therefore, bail order automatically stood cancelled, therefore, application for modification of order cannot be entertained and police authorities were directed to arrest the applicant.

4. Counsel appearing for applicant has filed an application for modification of order dated 26.11.2021 and it was argued that Rs.10 lacs has been deposited before Court as FDR and applicant was regularly appearing before police authority. Due to increasing Covid cases all over India, applicant could not mark his presence. Applicant's father is an old man aged about 78 years and applicant is resident Banaras (U.P.) which is 750 Kms. away from Damoh and it takes four days time in travelling. Applicant filed an application i.e. M.Cr.C. No.4948/2022 for modification of bail order dated 26.11.2021 passed in M.Cr.C. No.54281/2021. Said application was dismissed vide order dated 14.03.2022. Now, applicant has filed an application i.e. I.A. No.15856/2024 for recalling of order dated 14.03.2022 on grounds that any condition as prescribed under Section 439 (1)(a) of Cr.P.C. as an inherent test of proportionality which no Court ought to breach. Condition was onerous and it was almost impossible to perform. Such onerous condition could not have been imposed upon the applicant. It is further submitted that entire amount as ordered by Court was deposited. Court ought to have considered his application for modification and could

not have rejected it only on ground that bail order stood automatically cancelled.

5. Government Advocate appearing for State opposed the application for grant of bail. It is submitted that condition imposed upon applicant is not onerous. Applicant was marking his presence before police station on earlier occasion, therefore, condition was not impossible to perform. It is further submitted that High Court has powers to impose conditions while granting bail conditions have been imposed and same have not been followed. High Court has specifically laid down that in case of failure to abide by conditional order, bail granted shall stand automatically cancelled. Since bail order is cancelled, therefore, no application for modification of same could have been entertained and Court has rightly dismissed the application. No interference is called for.

6. Heard the counsel for the parties.

7. On going through facts of the case and important question of law has arisen before this Court that whether High Court can impose a condition of automatic cancellation of bail order. Cancelling of bail order directly affects freedom of a person which affects his fundamental rights. Any order which is passed affecting freedom of a person must be passed after giving reasonable opportunity of hearing. Reasonable opportunity of hearing is a fundamental right under the Constitution of India. If there is an automatic cancellation of bail order, then valuable right of natural justice is denied to accused. Since automatic cancellation of bail order is violative of fundamental rights of an accused person, therefore, such condition could not

be made part of the bail order. Court is barred from reviewing or altering its own order under Section 362 of Code of Criminal Procedure, 1973 equivalent Section is 403 of B.N.S.S., 2023. Both sections are *pari materia*. While recalling a judgment Court has to apply its mind and has to look into the facts of the case, therefore, bar under Section 362 of Code of Criminal Procedure, 1973 or new Section 403 of B.N.S.S., 2023 will be operative, but there are certain exceptions when Court can recall/relook into the judgment and violation of fundamental rights is one of the said exceptions. Further if condition of automatic cancellation of bail order is hit by Article 21 of the Constitution of India, then order dated 14.03.2022 will be revived and Court can consider the application for modification also.

8. Since order amounts to violation of fundamental rights, therefore, Court in exercise of inherent jurisdiction order dated 14.03.2022 passed in M.Cr.C. No.4948/2022 is recalled. I.A. No.15856/2024 is disposed off.

9. Registry is directed to list this M.Cr.C. No.4948/2022 for hearing on merits.

(VISHAL DHAGAT)  
JUDGE

sp/-