

**Court No. - 72**

**Case:** CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 48 of 2020

**Applicant:** G.S. Raghav

**Opposite Party:** State of U.P. and Another

**Counsel for Applicant:** Rahul Chaudhary

**Counsel for Opposite Party:** G.A., Pratik Chandra

**Hon'ble Vinod Diwakar,J.**

1. Heard Shri Rahul Chaudhary, learned counsel for the applicant/informant, learned A.G.A. for the State-respondent, and perused the records.
2. The instant application has been preferred by the applicant/informant- G.S. Raghav, seeking cancellation of bail of the accused/opposite party no.2- Aditya Goel, in Case Crime No.1889 of 2018, under sections 420, 406, 409 and 120B IPC, Police Station Kavi Nagar, District Ghaziabad, who was enlarged on bail by a co-ordinate Bench of this Court in Criminal Misc. Bail Application No.40534 of 2019, titled Aditya Goel v. State of U.P.
3. Succinctly, the prosecution case is that the accused/opposite party no.2 is associated with a company facing serious allegations of embezzling funds amounting to Rs.2,45,30,623/-. The gist of the accusation is that Earth Iconic Infrastructure Limited is a wholly owned subsidiary company of Earth Infrastructure Limited, where the father and other relatives of opposite party no.2 (the accused) serve as Directors and induced the petitioner/complainant to invest in their company with promises of substantial return in the phased manner. Additionally, the accused issued 41 post-dated cheques of Rs.75,21,059/- each, intended for monthly deposit and clearance. However, 13 out of these cheques were dishonoured. During the investigation, it was revealed that the accused

company failed to fulfil its promise of construction and did not refund the invested amount to the innocent investors.

4. After completion of the investigation, the police filed a supplementary charge sheet against the opposite party no.2, i.e., the accused, on 21.6.2019 under sections 420, 406, 409, and 120B IPC. Following the arrest on 9.6.2019, the opposite party no.2 was released on bail by an order dated 30.9.2019 passed in Criminal Misc. Bail Application No.40534 of 2019 by a co-ordinate Bench of this Court. The relevant paragraph of the order is extracted herein below:

*"1. The applicant will continue to attend and cooperate in the trial pending before the Court concerned on the date fixed after release.*

*2. He will not tamper with the witnesses.*

*3. He will not indulge in any illegal activities during the bail period.*

*It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.*

*In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail."*

5. Aggrieved by the violation of the bail conditions, the informant/applicant has preferred the instant petition for cancellation of the bail stating *inter-alia*; (i) the opposite party no.2 is a habitual offender and indulged in huge embezzlement of the public money received from the innocent investors/home buyers, (ii) Earth Iconic Infrastructure Limited, i.e. company's fund has been siphoned off in M/s Jubilion Infracon Private Limited, M/s Murlidhar Infostock and Realtors Private Limited, M/s Groot Builders Private Limited, Sanwary Women Power Private Limited in which the opposite party no.2 is one of the Directors along with his mother and wife, (iii) Rs.1,30,00,000/- have been transferred to personal account of opposite party no.2 between 30.1.2016 to 1.11.2018, (reference is invited to Annexure No.5 to the instant application), (iv) the opposite party no.2 is a Director in numerous shell companies located at various parts of the country,(v) opposite party no.2 obtained bail by concealing material facts from the Court withholding that he is arrayed as accused in multiple FIRs of similar nature, (reference is invited to

paragraph no.30 of the rejoinder affidavit), (vi) the opposite party no.2 was first appeared on 20.4.2023 before the trial court and thereafter on subsequent dates i.e. 30.1.2023, 21.2.2023, 13.3.2023, 30.6.2023, 17.7.2023, 4.8.2023, 17.8.2023, 25.8.2023, 13.9.2023, 6.10.2023, 20.10.2023, 5.12.2023, 19.12.2023 and 16.1.2024 filed applications for personal exemption, which were erroneously allowed by the trial court without appreciating the bail conditions on the basis of which the opposite party no.2 was enlarged on bail, (vii) the opposite party no.2 has violated the bail conditions on numerous occasions by successively avoiding appearance before the trial court, thereby the trial is not progressing because of the non - cooperation of the accused, (viii) in view of the conduct and breach of the bail conditions, the opposite party no.2, deserved to remain in jail so that trial could proceed and justice could be done to the innocent investors, (ix) the other co-accused persons, who were enlarged on bail by the court are also failing to comply with the bail terms by filing fictitious personal exemption applications and taking benefit of the erroneous orders passed by the trial court in this regard, (x) and if the trial does not proceed due to the non-cooperation of the accused persons, the entire essence of the criminal justice system would fail, causing irreparable loss to the functioning of trial courts.

6. On perusal of the various orders passed in the instant petition, it reveals that a notice of service was served upon the opposite party no.2, but no one turned up to represent his case before this Court, forcing this Court to issueailable warrants to the sureties vide order dated 29.3.2023, thereafter, the sureties appeared and opposite party no.2 through his counsel sought time to file counter affidavit, and the same was filed on 13.7.2023 *inter-alia* stating that (i) opposite party no.2 was student in the year 2016 and is not named in the FIR, (ii) there is no forgery of documents, thereby, the investigating officer has dropped section 467/468/471 IPC during the investigation qua accused persons, (iii) the instant application has been filed to create pressure on the accused

persons to return the money, (iv) the opposite party no.2 has never met the complainant nor signed the document in this regard, (v) the matter is ceased with the NCLT and the NCLT has been pleased to invoke moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 and suspended the Board of Directors of the company, and placed the management of the company under the control of Resolution Professional, (vi) the complainant and the home buyers have an appropriate remedy under section 7 of the Insolvency and Bankruptcy Code, 2016, (vii) the Directors of the company have settled the matter qua some of the home buyers, and therefore, proceedings on their behalf have been quashed by the Court, (viii) the opposite party no.2 has relied upon *State of Gujarat v. Jaswantlal Nathhalal*<sup>1</sup>; *Aneeta Hada v. Godfather Travels & Tours*<sup>2</sup>; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao*<sup>3</sup>, *Dalip Kaur & ors v. Jagnar Singh*<sup>4</sup>, *State of U.P. v. Amarmani Tripathi*<sup>5</sup>, to fortify his submissions.

7. In the written submissions, the opposite party, no.2, reiterated the same arguments raised in the counter affidavit. These points are not addressed separately for the sake of brevity. However, the essence of the submissions is that the directors of the company cannot be held vicariously liable for the criminal acts committed by the company's agents or employees. Furthermore, proceedings under the Insolvency and Bankruptcy Code 2016 have been initiated against the accused company. Therefore, the criminal court is not vested with the authority to prosecute the opposite party no.2.

8. The core and sole issue to be determined before this Court is whether the opposite party no.2, i.e., the accused, has violated the terms and conditions of the bail order dated 30.9.2019, passed in Criminal Misc.

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1. *AIR 1968 SC 700*  
2. *(2012) 5 SCC 661*  
3. *(1988) 1 SCC 692*  
4. *(2009) 14 SCC 696*  
5. *(2005) 8 SCC 21*

Bail Application No.40534 of 2019, during the pendency of the trial, and not the issues raised and argued by the opposite party no.2. Essentially, bail was granted subject to three conditions: (i) the applicant will continue to attend and cooperate in the trial pending before the concerned Court on the date fixed after release, (ii) he will not tamper with the witnesses, and (iii) he will not engage in any illegal activity during the bail period. It was also made clear that in case of a breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

9. The instant application has been pending before this Court since 18.1.2020, and despite various opportunities on numerous occasions, it could not be decided. Therefore, after hearing the counsel for the applicant and upon perusal of the material placed on record, including the counter affidavit and written submissions filed by the opposite party no.2, this Court has proceeded to decide the instant application.

10. Now, reverting to the contentions raised in the counter affidavit and written submissions filed by the accused/opposite party no.2, it is observed that the decisions cited by the accused/opposite party no.2 are not relevant to the facts, circumstances, and issues involved in this case. Therefore, there is no point in referencing those judgments, as none of the aforementioned citations address the parameters decided by the Supreme Court for the cancellation of bail in a series of judgments.

11. In *Dolat Ram and others v. State of Haryana*<sup>6</sup>, the Supreme Court has laid down the grounds for cancellation of bail. The relevant portions of the judgment<sup>6</sup> are underlined herein as follows (i) interference or attempt to interfere with the due course of administration of justice; (ii) evasion or attempt to evade the due course of justice; (iii) abuse of the concession granted to the accused in any manner; (iv) possibility of the accused absconding; (v) likelihood of/actual misuse of bail; (vi) likelihood of the accused tampering with the evidence or threatening witnesses. The three-judge bench of the Supreme Court in *Deepak Yadav*

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6. (1995) 1 SCC 349

*v. State of Uttar Pradesh and Another case*<sup>7</sup> went a step beyond the *Dolat Ram case (supra)* and held that the cancellation of bail cannot be limited to the occurrence of supervening circumstances as the constitutional courts have inherent power and discretion to cancel the bail of an accused even in the absence of supervening circumstances and draw the following illustrative circumstances where the bail can be cancelled. The relevant paragraph is extracted hereinbelow:

*33.1. Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

*33.2. Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*

*33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

*33.4. Where bail has been granted on untenable grounds.*

*33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

*33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*

*33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.*

**12.** In view of the foregoing discussions, this Court has observed that the opposite party no.2 is facing serious allegation of embezzlement of funds, including siphoning of huge amounts into the companies controlled and operated by opposite party no.2, i.e. (i) M/s Jubilion Infracon Private Limited, (ii) M/s Murlidhar Infostock Realtors Private Limited, (iii) M/s Groot Builders Private Limited, (iv) Sanwary Women Power Private Limited in which the opposite party no.2 is one of the Director either along with his mother or wife or both, besides transfer of Rs.1,30,00,000/-

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7. (2022) 8 SCC 559

to his personal account between 30.1.2016 to 1.11.2018 from the companies account; (v) the opposite party no.2/accused has filed personal exemption applications fourteen times, all of which were allowed by the trial court in a mechanical manner by passing template orders. No reasons are provided in any of the orders granting the personal exemption attached to the instant application.

**13.** The co-ordinate Bench of this Court, while enlarging the opposite party no.2 on bail had put the accused to unambiguous terms *inter-alia*; (i) the applicant will continue to attend and cooperate in trial pending before the Court concerned on the date fixed after release, (ii) he will not tamper with the witnesses, (iii) he will not indulge in any illegal activity during the bail period, (iv) it was also made clear that in case of breach of any above conditions, the trial court will be at liberty to cancel the bail.

**14.** Upon perusing the orders passed by the trial court, which are part of the supplementary affidavit dated 5.2.2020 filed by the applicant as Annexure No. SA-1, it is observed that the accused/opposite party no.2 has successively filed fourteen exemption applications. Regrettably, these applications were allowed by the trial court without assigning any reasons. This circumstance compelled the complainant/applicant to file the instant application. It demonstrates that the accused/opposite party no.2 deliberately and intentionally violated the bail terms to obstruct the trial court proceedings. Moreover, the trial court failed in its duty to exercise the discretion granted to it, including the authority to cancel bail in case of any breach of the conditions set forth in the impugned order dated 30.9.2019. The routine issuance of such template orders undermines the litigant's confidence in the judicial system and carries significant consequences for upholding the rule of law.

**15.** In consideration of the prayer made by the applicant and in furtherance of the pursuit of justice, it is hereby directed that the trial court shall (i) ensure the presence of all the accused at each and every hearing to expedite the trial court proceedings, (ii) refrain from routinely

granting personal exemption to the accused through template orders, (iii) ensure the presence of opposite party no.2 including all the accused at every hearing unless justifiable and persuasive reasons for non-appearance are provided, which shall be duly recorded in the orders, (iv) pass the order on exemption application while considering the bail conditions imposed by the courts upon granting the bail to the accused, (v) the trial court shall scrupulously and invariably ensure the compliance of bail conditions imposed by the respective Courts in each accused's case, (vi) complete the trial expeditiously.

**16.** In numerous instances, it has been observed that once bail is granted, the accused fails to cooperate with the trial courts and continuously files successive exemption applications for personal appearances on fictitious grounds. The trial court routinely allows these applications through template orders without providing reasons for their approval. Such orders lack the subjective satisfaction of judges for their allowance, rendering them devoid of legal force and unsustainable in the eyes of the law. Although discretionary power, the granting of such orders should be exercised judiciously and not as a matter of routine. It observed that the trial court routinely issues template orders for personal exemption applications, which contravene the spirit of the bail orders. An example illustrating the nature of such orders is provided hereinafter."

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*पत्रावली पेश हुई अभियुक्त ... .. हाजिर है, शेष की हाजिरी माफी प्रार्थनापत्र  
आज के लिए स्वीकृत... .. .*

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**17.** In view of the foregoing discussion—particularly in the offences forming part of Chapters XVI, XVII, and XVIII of the Indian Penal Code, besides other offences of the Penal Code comprising offences in special statutes—it is mandatory for trial courts to comply with the terms of the bail order strictly, and the conditions dictated in bail orders shall be followed by the trial courts unfailingly.



**18.** The disregard of the bail conditions specified in the bail orders by either party to the litigation or the trial courts is detrimental to the criminal justice system and requires scrutiny. Failure to adhere to the terms of the bail order shall be deemed deliberate and may amount to (i) interference or attempted interference with the due administration of justice; (ii) evasion or attempted evasion of the due process of justice, (iii) abuse of the concession granted to the accused in any manner; (iv) the possibility of the accused absconding; (v) the likelihood of or actual misuse of bail; (vi) the likelihood of the accused tampering with evidence or threatening, or otherwise influencing witnesses. Hence, it is imperative for trial courts to accord the utmost importance to personal exemption applications. Such applications should be adjudicated upon by taking into account the conditions outlined in the bail orders. Furthermore, the aforementioned proposition shall be duly considered and kept in mind while deciding the personal exemption application.

**19.** If the complainant or prosecution finds that the bail conditions are not being adhered to, they may file an appropriate application before the concerned court. The court should decide on such applications within a reasonable time, not exceeding 60 days from the date of filing, and proceed with the trial, utilizing the provisions outlined in Chapter VI of the Code of Criminal Procedure, as well as any other statutory provisions and relevant laws as may be deemed fit and proper by the court in the facts and circumstances of the case.

**20.** With the aforementioned observations, the instant application is **disposed of**, granting the applicant the liberty to seek redressal of their grievances from the court of Additional Chief Judicial Magistrate—III, Ghaziabad. The court is directed to adjudicate upon the applicant's application expeditiously in accordance with this order.

**21.** The Registrar (Compliance) of this Court shall disseminate a copy of this judgment to all District Judges for distribution among all Courts under their jurisdiction and, additionally, to the Director of the Judicial

Training and Research Institute, Lucknow, to promote awareness and facilitate implementation through training programmers.

**Order Date:** 13.2.2024

Anil K. Sharma

**Justice Vinod Diwakar**