

Information of the same was given by the bank to the payee, Pankaj Singh, on 16.12.2017. After that, a registered notice was sent to the applicant by the Advocate of payee Pankaj Singh through registered post on 8.1.2018, which was received by the applicant on 9.1.2018. However, despite the expiry of 15 days from the date of service, the cheque amount was not paid by the applicant. Therefore, the complaint was filed against the applicant on 12.2.2018 by Pankaj Singh through his power of attorney holder Ranveer Singh, also the father of Pankaj Singh. From a perusal of the impugned complaint, it is not in dispute that impugned complaint was filed by the power of attorney holder of payee Ranveer Singh in his own name instead of filing in the name of complainant Pankaj Singh, which is not permissible under the law as observed above. Therefore, this Application deserves to be allowed.

27. Accordingly, the application u/s 482 No. 28869 of 2024 is **allowed**. The impugned proceeding arising out of Case No. 602 of 2018 (*Ranveer Singh vs. Jitendra Kumar Mangla*), under Section 138 N.I. Act, P.S. Hariparvat District Agra is hereby quashed. However, the complainant, Pankaj Singh, is at liberty to file a fresh complaint in accordance with law.

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(2024) 12 ILRA 28

**APPELLATE JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 18.12.2024**

**BEFORE**

**THE HON'BLE ASHUTOSH SRIVASTAVA, J.**

Criminal Misc. Bail Cancellation Application No.  
475 of 2024

**Yogesh Kumar Garg** ...Applicant  
**Versus**  
**State of U.P. & Anr.** ...Opposite Parties

**Counsel for the Applicant:**  
Siddhartha Srivastava

**Counsel for the Opposite Parties:**  
G.A.

**Criminal Law - Indian Penal Code, 1860 – Sections 420, 467, 468, 471, 406, 504, 506 & 120B - Against grant of bail - Maintainability - Jurisdiction - The Code of Criminal Procedure, 1973 - Section 362 - Applicant/first informant moved bail cancellation application before Sessions Court on ground that conditions imposed by Court of Sessions for grant of bail had not complied with inasmuch as amount of Rs.42 lacs as undertaken by opposite party No. 2 to be deposited not deposited and only Rs.4 lacs deposited during pendency of bail cancellation application - Application rejected - Impugned order. (Para 3, 4)**

**Held, applicant already approached Court of Sessions seeking cancellation of bail granted u/s 439 (2) Cr.P.C - The Court of Sessions refused to cancel bail already granted - In opinion of Court, applicant having exercised his option to seek cancellation u/s 439 (2) Cr.P.C. before Court of Sessions can't now approach High Court by moving another bail cancellation application u/s 439 (2) Cr.P.C - Thus, order passed by Court of Sessions can be challenged before High Court in application u/s 482 Cr.P.C. (Para 15, 19)**

**Bail cancellation application dismissed. (E-13)**

**List of Cases cited:**

1. Himanshu Sharma Vs St. of M.P. reported in 2024 (4) SCC 222
2. Gurcharan Singh Vs St. (UT of Delhi) reported in 1978 (1) SCC 118, (Para 16)

3. Puran Vs Rambilas & anr. with Shekhar & anr. Vs St. of Maha. & anr. reported in 2001 (6) SCC 338, (Para 16, 17)

4. Rajesh Kumar & anr. Vs St. of U.P. & ors., (Crl. Misc. Case No. 5572 of 2015), decided on 7.1.2016

5. Surendra Kumar Singh Vs St. of U.P. through Home Secretary Government of U.P. Lucknow & ors., (Case No. 275 of 2016), decided on 26.5.2015

6. Narendra Kumar Amin Vs St. of Guj. reported in 2008 (13) SCC 584

7. Ranjit Singh Vs St. of M.P. reported in 2012 (16) SCC 797, (Para 19)

8. Smt. Rukhsana Vs St. of U.P. & anr., (A482 Cr.P.C. No. 14905 of 2012), (Para 4), decided on 23.04.2013

(Delivered by Hon'ble Ashutosh  
Srivastava, J.)

1. This is a Bail Cancellation Application seeking the cancellation of bail granted to the opposite party No. 2, namely, Kuna Kapoor son of Vinod Kapoor by the Sessions Court vide order dated 23.12.2022.

2. The learned Sessions Court, Ghaziabad while granting bail to the opposite party No. 2 imposed a condition that the opposite party would pay a sum of Rs.42 lacs out of the outstanding amount of Rs.4 crores and 37 lacs to the applicant/first informant within two months.

3. The bail cancellation was sought by the applicant herein by moving a bail cancellation application before the Sessions Court, Ghaziabad on the ground that the conditions imposed by the Court of Sessions for grant of bail had not been complied with inasmuch as the amount of

Rs.42 lacs as undertaken by the opposite party No. 2 to be deposited had not been deposited and only a sum of Rs.4 lacs was deposited that too during the pendency of the bail cancellation application.

4. The leaned Sessions Court vide order dated 10.9.2024 rejected the bail cancellation application placing reliance upon the various decisions of the Apex Court.

5. The applicant/first informant had approached this Court with the following prayer:-

*"It is therefore most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to cancel the bail granted to opposite party No. 2 by setting aside the order dated 10.9.2024 passed by Shri Nishant Maan, Addl. District Judge/FTC-2, Ghaziabad in Bail Cancellation Application No. 178 of 2023 (Yogesh Kumar Garg versus Kunal Kapur) in connection with FIR No. 472 of 2022, under Sections 420, 467, 468, 471, 406, 504, 506 & 120B IPC, PS-Kotwali, District Ghaziabad."*

6. This Court vide order dated 11.12.2024 had made a specific query from the learned counsel for the applicant to the effect as to whether after rejection of the bail cancellation application by the Sessions Court, a bail cancellation application would lie before this Court under Section 439 (2) Cr.P.C. or the applicant herein may pursue remedies against the order dated 10.9.2024 rejecting the bail cancellation application before the appropriate forum, the learned counsel for the applicant sought time to address on the said aspect.

7. I have heard Shri Siddharth Srivastava, learned counsel for the applicant/first informant in support of the bail cancellation application as also Shri S. K. Rai, learned AGA-I for the State-respondent and have perused the records.

8. Shri Siddharth Srivastava, learned counsel for the applicant has invited the attention of this Court to the provisions of Section 439 (2) Cr.P.C. to submit that the power to cancel bail already granted has been conferred to the Court of Sessions as also to the High Court. In the case at hand, the Sessions Court has refused to cancel the bail granted by it to the opposite party No. 2 and as such, the bail cancellation application can be considered by this Court in exercise of the powers conferred under Section 439 (2) Cr.P.C. He accordingly contends that the instant bail cancellation application before the Court is maintainable. Reliance is placed upon the decision of the Apex Court in the case of *Himanshu Sharma versus State of Madhya Pradesh* reported in **2024 (4) SCC 222** for the proposition that bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail the accused has flouted the conditions of bail order. Reliance is also placed upon a decision of the High Court of Hyderabad for the State of Telengana and Andhra Pradesh reported in **2014 SCC Online Hyd. 1643 (2014) 3 ALT (Crl.) 112** for the proposition that an application under Section 439 (2) Cr.P.C. would be maintainable before this Court despite rejection of an application under Section 439 (2) Cr.P.C. before the Court of Sessions.

9. Per contra, Shri S. K. Rai, learned AGA-I vehemently opposing the instant bail cancellation application submits that

the same is not maintainable and the remedy available to the applicant herein is to assail the order dated 10.9.2024 passed by the Court of Sessions in a 482 Cr.P.C. application. Reliance is placed upon the decision of the Apex Court in the case of *Puran versus Rambilas and another with Shekhar and another versus State of Maharashtra and another* reported in **2001 (6) SCC 338** as also two decision of the co-ordinate Bench of this Court in *Crl. Misc. Case No. 5572 of 2015 (Rajesh Kumar and another versus State of U.P. and others)* decided on 7.1.2016 and in the *Case No. 275 of 2016 (Surendra Kumar Singh versus State of U.P. through Home Secretary Government of U.P. Lucknow and others) U/s 482/378/407 Cr.P.C.* decided on 26.5.2015.

10. I have given my anxious thoughts to the submissions made by learned counsels for the parties and have gone through the rulings cited at the Bar.

11. The scope of power under Section 439 (2) Cr.P.C. conferred upon a High Court has been considered by the Apex Court in the case of *Gurcharan Singh versus State (UT of Delhi)* reported in **1978 (1) SCC 118**. Their Lordships have succinctly explained the provisions regarding cancellation of bail under the Cr.P.C. culled out the differences from the Code of Criminal Procedure, 1898 (old Code) and elucidated the position of law viz-a-viz powers of the Courts granting the cancelling the Bail. The Apex Court in Para 16 of *Gurcharan Singh (supra)* observed as under:-

*"16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498*

*CrPC 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 has 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."*

12. The Apex Court in ***Puran versus Rambilas*** reported in **2001 (6) SCC 338** has held that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervising circumstances warranting such cancellation. In ***Narendra Kumar Amin versus State of Gujrat*** reported in **2008 (13) SCC 584**, the Apex Court while reiterating the principle laid down in ***Puran versus Rambilas (supra)*** drew a distinction between the two in respect of relief available in view or appeal. In the said case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439 (2) Cr.P.C. In appeal, it was contended before the Apex Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Apex Court observed that when irrelevant materials have been taken into consideration by the Court granting order of bail, the same makes the order vulnerable and subject to scrutiny by the Appellate Court and that no review would lie under Section 362 of the Code. In essence, the Apex Court opined that if the order of grant of bail is perverse,

the same can be set at naught only by the superior Court and has left no room for a review by the same Court.

13. Yet again, the Apex Court in ***Ranjit Singh versus State of M.P. reported in 2012 (16) SCC 797*** reverberating the aforesaid principle observed as under:-

*"19. ? 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."*

14. From the above, it is culled out that the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and consequently an order granting bail can only be set aside on the grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court.

15. In the case at hand, the applicant/first informant herein had already approached the Court of Sessions, Ghaziabad seeking cancellation of the bail granted by it under Section 439 (2) of the Cr.P.C. The Court of Sessions vide order dated 10.9.2024 refused to cancel the bail already granted. In the opinion of the Court, the applicant having exercised his option to seek cancellation under Section 439 (2) of Cr.P.C. before the Court of

Sessions cannot now approach this Court by moving another Bail Cancellation Application under Section 439 (2) Cr.P.C.□ A challenge would have to be made to the orders rejecting the Bail Cancellation Application and the same cannot be achieved in the present proceedings. Had the applicant/first informant approached this Court at the first instance seeking the cancellation of the bail granted to the opposite party No. 2 by the Court of Sessions by its order dated 23.12.2022 invoking the provisions of Section 439 (2) of Cr.P.C., the application would be maintainable of Section 439 (2) of Cr.P.C., the application would be maintainable.

16. It is an accepted principles of law that when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail and order in the absence of any express provision in the Cr.P.C., for the same. Section 362 of the Cr.P.C. operates as a Bar to any such alteration or review of the cases disposed of by the Court, the only exception of bail correction of clerical or arithmetical error by the Court.

17. A co-ordinate Bench of this Court in the case of ***Smt. Rukhsana versus State of U.P. and another (application under Section 482 Cr.P.C. No. 14905 of 2012)*** was pleased to hold as under:-

*"4. When an order has been passed under Section 439, Cr. P.C. cancelling the bail order recorded under*

*Section 437 the accused would have two courses open. It is always this right to move for bail afresh before the proper forum but his right to challenge the validity of the order of cancellation of bail cannot be taken away simply for the reason that he has a right to pray for bail again. This challenge could not be made in a petition under Section 397, Cr. P.C. as an order recording bail or its cancellation is but an interlocutory order and the validity of the order, therefore, could only be challenged in a proceeding under Section 482, Cr. P.C. invoking the inherent powers of the Court to prevent abuse of process of any Court or to secure the ends of justice. The objection of the complainant in this behalf is thus not tenable and this Court can look to the validity of the cancellation of bail in exercise of its powers under Section 482, Cr. P.C. It must also be indicated that cancellation of bail is normally to be made only on the proof of misuse of privilege of bail either by abscondence or by interference with investigation or by threats to witnesses."*

18. The Hon'ble Apex Court in the case of *Puran and Shekhar and another (supra)* was pleased to hold as under:-

*"16. ....When Section 439(2) grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of Orders passed by the Court of Sessions. Of course cancellation of bail has to be on principles set out hereinabove and only in appropriate cases.*

*17. Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397 (3) of the Code of Criminal*

*Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified. [Re. Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551 and Krishnan and Another v. Krishnaveni and Another (1997) 4 SCC 241]."*

19. the validity of the order passed under Section 439 (2) Cr.P.C. The order dated 10.9.2024 passed by the Court of Sessions, Ghaziabad rejecting the Bail Cancellation Application, at the instance of the applicant/First Informant can be questioned before the Court in an application under Section 482 Cr.P.C. The instant Bail Cancellation Application is held to be not maintainable and is **dismissed**, leaving it open for the applicant to assail the order dated 10.9.2024 passed by the Sessions Court, Ghaziabad in appropriate proceedings. There shall be no order as to costs. .

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(2024) 12 ILRA 33

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 20.12.2024**

**BEFORE**

**THE HON'BLE SALIL KUMAR RAI, J.**

Contempt Application (Civil) No. 6731 of 2024

**Smt. Suman Devi**

**...Applicant**

**Versus**

**Sri Avinash Kumar Yadav, Social Welfare Officer, Fatehpur**

**...Opposite Party**

**Counsel for the Applicant:**

Sri Bhawesh Pratap Singh