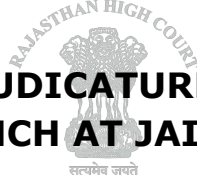




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Criminal Bail Cancellation Application No. 66/2023

Harshadhipati S/o Shri Mukesh Kumar, Aged About 27 Years,  
R/o Maharishi Bhawan Opposite Airport Terminal -1,  
Sanganer Presently Admitted At Sms Hospital, Jaipur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Its PP
2. Girraj Singh Malinga S/o Shri Chhote, R/o  
Thakurpada, P.s. Badi Kotwali, District Dholpur.

-----Respondents

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For Petitioner(s) : Mr. Ajay Kumar Jain  
Mr. Mukesh Kumar  
Mr. Bhuvnesh Sharma

For Respondent(s) : Mr. Sher Singh Mehla, PP  
Mr. Manu Kumar  
Mr. Aditya Sharma  
Mr. Pankaj Gupta  
Mr. Sudhir Jain

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**HON'BLE MR. JUSTICE FARJAND ALI**

**(Through VC)**

**Order**

**ORDER PRONOUNCED ON ::: 05/07/2024**

**ORDER RESERVED ON ::: 15/03/2024**

**BY THE COURT:-**

**REPORTABLE**

***" Power, influence, position, money, and sentiments,  
no matter how lofty, must never eclipse the supremacy  
of law. "***

**Implication of Law :**



1. The mandate of law must be scrupulously observed, as it constitutes the legal framework that ensures societal cohesion and peace. The actions and conduct of individuals should be in consonance with the spirit and letter of the law, thereby reinforcing the principle that no one is above the legal system.

2. Under the constitutional framework, every individual is guaranteed with comprehensive protection, which is integral to maintain public confidence in the legal system.

3. Law serves as the bulwark of individual security, instilling confidence that fundamental rights to life and liberty are safeguarded. This assurance is derived from the procedural rigor established by law, which ensures that these rights are not merely theoretical but are actively protected and enforceable as guaranteed by the constitution of India.

4. Thus, the legal system not only promotes a sense of security but also reinforces the notion that the rights and freedoms of individuals are inviolable and protected by an overarching legal order. In this way, the law underpins societal stability and well-beings of an individual, emphasizing that adherence to it, is essential for the collective and individual good. It is through this unwavering commitment to legal principles that society can thrive as a peaceful and just habitat for all its members.

5. As Law and society are intrinsically connected, each reinforcing and sustaining the other. The existence of any group of individuals who have reached a consensus on a set of



rules or a code for living together inherently leads to the development of law. This shared understanding forms the basis for a code of conduct, essential for inclusive and harmonious habitation within that society.

6. This concept of law emerges from the necessity of peaceful coexistence. Once the notion of a guaranteed order takes root in the minds of individuals, it becomes widely accepted and adhered to by all. Consequently, the concept of law originates and is subsequently given precedence above all else, establishing its supremacy.

7. No individual can thrive without the structure of law, regardless of their personal beliefs. The human race, with its unique propensity to assert dominance in various aspects, whether positively or otherwise, necessitates a regulated framework to channel its actions. Therefore, the necessity and acceptance of law is a *must*.

8. Human beings as a specie, possess a unique awareness of both their individual needs and their responsibilities toward other species too. This awareness encompasses essential aspects of his/her life such as hunger, shelter, growth, protection, and equitable development. Normally, everyone possesses these intrinsic senses. The guiding principles of law are derived from these basic human senses and needs. Thus, every individual who inherently possesses these senses, and therefore, in order to protect and balance them equitably, a code of conduct becomes indispensable. This code of conduct, is known as "**LAW**" which





ensures the smooth, peaceful, and uninterrupted execution of daily life, enabling human society to function cohesively and prosperously.

9. In essence, law serves as the cornerstone of societal stability, ensuring that the rights and needs of individuals are respected and balanced against the collective good. It provides the framework within which individuals can achieve their potential while maintaining harmonious relationships with others. This legal framework is essential for the development and flourishing of human society, highlighting the inseparability of law and society.

**Background of facts:**

10. The petitioner/complainant has filed the present application seeking the indulgence of this court for the cancellation of bail granted to respondent No. 2, Giriraj Singh Malinga, by this Court, vide order dated 17.05.2022, in S.B. Criminal Appeal No. 837/2022 under Section 14A(2) of the SC/ST (Prevention of Atrocities) Act, 1989.

11. The relevant facts necessary to elucidate the sequence of events are that, an FIR was lodged at the instance of the petitioner/complainant, Harshadhipati, who alleged in his parcha bayan, that he has been serving as Assistant Engineer (O/M) at JVVNL, Badi Hall. On 28.03.2022, while he, along with other officials, was conducting a meeting in his office, a sudden loud noise was heard at the gate. Upon opening the gate, respondent No. 2, Badi MLA Mr. Giriraj Singh Malinga,





entered the office accompanied by 5- 6 individuals. The complainant further alleged that he greeted the MLA and offered him his chair, upon which respondent No. 2 smashed the chair on his face, causing injuries, and began hurling casteist abuses and slurs at him, accusing him of removing electricity transformers from his area. Despite the complainant's explanation for his official actions, respondent No. 2 and his associates assaulted the complainant, resulting in multiple injuries.

12. Upon the aforesaid parcha bayan FIR no. 120/2022 came to be registered at Police Station Badi, District Dholpur for the offences under section 143, 332, 353, 504, 506 of IPC and 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (Prevention of Atrocities )Act 1989. That during investigation the respondent o.2 was arrested and this court vide order dated 17.05.2022, allowed the appeal and extended the concession of bail to respondent No.2.

13. Thereafter, the petitioner filed an application under Section 439(2) Cr.P.C., seeking cancellation of bail granted to the accused respondent No.2 on various counts, predominately with respect to arduous and intimidating conduct of respondent No.2, since the inception of the case and specifically after being enlarged on bail.

14. This court vide order dated 24.05.2022, after adverting to the seriousness of the allegations apprised by learned counsel for the petitioner as well as the material placed and canvased before it regarding the conduct of the



respondent No.2, was persuaded to issue notices to the respondents, whereby directing the Superintendent of Police Dholpur, to ensure the service. For ready reference, the order dated 24.05.2022 is reproduced as follows:

*"Grant of bail is a rule and denial of it, is an exception. This Court has always been of this firm view that an imprisonment must follow after the judgment of conviction is passed but in any case, the sentence/incarceration must not precede the conviction unless extraordinary circumstances are shown regarding conduct of the accused, his influence in the society, availability of material from which an inference can be drawn that if released, the accused will hamper the evidence or would otherwise abuse the liberty granted in his favour.*

*No one is above the law and in fact, no one can be.*

*The instant application for cancellation of bail has been moved on behalf of the victim Harshadhipati who allegedly thrashed up by the accused named in the FIR. While hearing the bail plea, this Court vide order dated 17.05.2022; following the cardinal principles related to the bail jurisprudence and aptly guided by the judicial pronouncements passed by the Hon'ble Supreme Court time and again in respect of bail, persuaded to enlarge the accused on the grounds mentioned in the bail order dated 17.05.2022.*

*Along with the instant application for cancellation of bail, some documents and a compact disk have been annexed, supported with an affidavit. The cutting of daily national newspaper is also annexed. It is emanating from the documents*





submitted along with the application that when the accused Giriraj Singh Malinga came to be arrested in this matter, he obtained a medical certificate purportedly showing him to be a corona positive patient and therefore, he was admitted in hospital and on the day when he was released, he was found to be corona negative. A celebratory procession of people including the accused paraded in the town after his release. As per the report and photographs published in the newspaper, several obnoxious comments have been made by the accused-respondent and the other sitting MLAs Rajendra Singh Gudha, Wajib Ali and other leaders. The nasty and indecorous behaviour shown by the accused/respondent after his release persuaded this Court to interfere in the matter.

According to criminal jurisprudence, the conduct of the accused is an imperative factor to be considered while granting a bail, thus:

Issue notice to the accused-respondent as to why the concession granted by this Court may not be withdrawn by cancelling the bail, returnable on 27.05.2022.

It shall be the duty of the Superintendent of Police, Dholpur to ensure service upon the accused-respondent who is a public representative and a public figure. In case the service could not be affected, the Superintendent of Police shall appear in person before this Court and furnish an affidavit as to under what circumstances the State machinery failed to affect service on a public figure.

Due to paucity of time, the Registrar (Judicial) of this Court is directed to send the copy of the notice





*to the SP, Dholpur through e-mail/fax by today  
itself for service upon the accused- respondent.*

*List the matter on 27.05.2022.*

15. On 27.05.2022 the notices came be served as learned counsel, Mr. Sudhir Jain puts in appearance on behalf of respondent No.2 who sought time to rebut the contents of the application for cancellation of bail.

**SUBMISSIONS :**

16. During the course of arguments learned counsel for the petitioner argued that the respondent No.2 has concealed material facts regarding the criminal antecedents that as many as 19 cases were being registered against him. He further argued that the petitioner was not arrested by the agency despite having direct allegation of assault upon the respondent No.2, for almost one and a half month and later surrendered upon the call of the chief minister on 11.05.2022 which shows the influentiality of the respondent over the agency.

17. It was further argued by the counsel for the petitioner that as soon as the respondent was arrested i.e. 12.05.2022, he gave positive test for corona virus and was referred and admitted to the hospital at Dholpur. Furthermore, on 17.05.2022 the respondent was granted bail by this court and soon after, the respondent tested negative for corona virus on 18.05.2022. And on 19.05.2022, a road show was organised to demonstrate his power where the respondent No.2 delivered intimidating speech and comments while asserting





his dominance over the system. In support of the contention learned counsel referred to the newspaper cutting, articles, chats, DVD and transcripts underlining the blatant misuse of liberty and influence over the system exercised by the respondent No.2.

18. Learned counsel further argued that witnesses of the case namely Jaspal Gurjar, Puran Singh, as well as the complainant was also threatened by the petitioner aides Keshav Singh and Mohan Singh over call; and a complaint bearing no. 250/2022 dated 19.06.2022 was registered at police station karni vihar, in which after the inquiry; the allegation was found true and proceedings against the accused under 107/116 of Cr.Pc. was initiated, bearing criminal misc. case no. 4058/2022 before the court of executive magistrate Jaipur. Further an FIR no. 342/2023, dated 13.08.2023 came to be registered at Police Station Badi, District Dholpur, for the offences under section 195A, 120B of IPC and 3(2)(v) of Sc/St ((Prevention of Atrocities) Act, 1989 (as Amended 2015) against the respondent No.2.

19. Learned counsel for the petitioner/complainant, in order to support the aforesaid arguments has placed reliance upon the judgment passed in **Ms. P vs state of Madhya Pradesh 2022, Harijit Singh vs Inderpreet Singh @ Inder & Anr. 2021**, and other judgments of Hon'ble the Supreme Court, delivered in case of **Mahipal Vs. Rajesh Kumar @ Polia & Anr., 2020 2 SCC 118** and in case of



**Myakala Dharamrajam & Ors. Vs. State of Telengana & Ors. AIR 2020 SC 317.**

20. On the contrary, learned counsel representing respondent No.2 has vehemently contested and rebutted the assertions and allegations put forth in the application. He contends that respondent No. 2 has not abused the judicially granted liberty nor endeavoured to exert undue influence on law enforcement agencies or intimidate any witnesses connected to the case.

21. Additionally, counsel argues that the petitioner's accusations stem from a personal vendetta against respondent No. 2, aimed at tarnishing his reputation without substantive evidence to substantiate these claims. It is emphasized that all pertinent information has been forthrightly presented to the court, indicating no grounds for the cancellation of bail.

22. Moreover, counsel directs the court's attention towards established principles governing the cancellation of bail, as articulated in numerous judicial pronouncements by the Hon'ble Supreme Court. It further submits that the current circumstances of the case do not warrant the revocation of bail granted to respondent No. 2, based on the factual and legal parameters delineated.

23. Heard learned counsel for the petitioner / complainant and learned Public Prosecutor and perused the material available on record.



24. At this juncture, this court is mindful that ordinarily the merits of the case should not be reconsidered to revoke the previously granted liberty under bail proceedings. In adherence to legal doctrine, the assessment for revoking bail must be predicated exclusively upon **compelling, overwhelming, supervening and intervening circumstances**. These criteria necessitate substantial and pivotal factors that carry decisive weight in the judicial determination and not otherwise for cancellation of bail.

**ADJUDICATION:**

25. Before stepping further to underscore the principles for cancellation of bail it is imperative to understand the concept of bail first.

26. An analogy can be drawn with the concept of bailment when a person is released on bail with a surety. In this context, the accused is entrusted to the surety with the promise that the surety will ensure the accused's appearance before the authorities when required. It is akin to a bailment arrangement, wherein the accused is effectively handed over to the guarantor under specific conditions. The individual shall not merely be kept under custody for his appearance before the court on day fixed for the proceeding, rather in place thereof, he may be allowed to attend the same, from his place; his ordinary residence.

27. The underlying philosophy of bail is deeply rooted in the principle of presumption of innocence, a cornerstone of the legal system that asserts an individual is considered





innocent until proven guilty. This principle mandates that an accused should not be unduly deprived of liberty before a formal adjudication of guilt. Bail, therefore, serves as an instrument to safeguard this fundamental right, ensuring that an accused person is not subjected to punitive detention without due process.

28. Thus, bail, as a judicial mechanism, is meticulously designed to uphold justice by balancing individual rights with societal interests. This delicate equilibrium ensures that while the accused's liberty is protected, the integrity of the legal process and public safety are not compromised. The core object is to ensure a smooth fair and transparent judicial proceedings/trial. And the same may not be hampered or impeded by any stakeholder. Further, the entire bail jurisprudence revolves around the conduct of the accused. It has to be seen that whether there is any apprehension that if released on bail, the accused may hamper the evidence or whether he would flee from justice.

29. That Hon'ble supreme court in **Prasanta Kumar Sarkar vs Ashis Chatterjee & Anr 2010 AIR SCW 6699**, as well as in **State Through C.B.I vs Amaramani Tripathi on 26 September, 2005** has laid down broad parameters regarding consideration of bail application by the High courts has observed as follows:

*"We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting*





*bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."*

30. That recently on **17.05.2024**, the Hon'ble supreme court in **Ajwar vs. Waseem & ANOTHER, 2024**, has held that the bail can be cancelled by the same court even if the accused has not misused the liberty granted:

*"It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by*





*a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.*

*In P v. State of Madhya Pradesh and Another(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words: "24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."*

31. Coming back to factual edifice, this court was persuaded to issue notice primarily over the conduct of the respondent No.2, where a public figure and elected representative, whose actions just after being release on bail, appeared to convey a message of **glorification** contrary to



established legal norms. Such conduct seemed to suggest a challenge to and triumph over the established legal framework, thereby potentially influencing society at large.

32. It is emanating from the material made available to this court that the respondent No.2 being a MLA, despite having direct allegation of thrashing a public servant at government premise; could not be taken into custody or may be the state agency didn't dare to arrest him. And it is perhaps, due to the public rage or victims serious protest, he was made to surrender. The startling fact which came afront is that the respondent No.2 was never lodged to conventional prison. Rather he was admitted to hospital, just after the rejection of bail order by the special court, upon for the reason that he was found corona positive. It is noteworthy that till the order granting bail was received, the respondent No.2 was in a hospital. Astonishingly, on the very next day of the bail order, he was found corona negative. On the subsequent day, a huge procession was organized in order to glorify his release and for sure with intent to canvas a hostile and fearful atmosphere towards his opponents; as this court feels. The respondent No.2, delivered a vitriolic and menacing speech at the rally wherein several politicians were staged, using the platform to demonstrate his power and influence. His comments were designed to intimidate and assert dominance, creating an atmosphere of fear and showcasing his disregard for legal and societal norms. The factum of the above rally





was widely covered by daily newspaper, digital media as well as on social media platforms. The relevant material is provided to this court and the same is attached with the record. Some of the objectionable comments felt apt by this court to be reproduced here:

“धौलपुर में 3 घंटे तक निकले रोड शो में मलिंगा के साथ राज्य मंत्री राजेन्द्र गुढ़ा, विधायक वाजिद अली खुली जीप में सवार थे। गुढ़ा बोले— एसपी हो या कलेक्टर, वे सीमा लांघेंगे तो जन प्रतिनिधि भी सीमा लोंघेंगे।”

“रिहा होने के बाद गरजे **मलिंगा**, कहा— जनता की तरफ आंख उठाई तो आंखें निकाल लेंगे... मंत्री राजेन्द्र गुढ़ा ने नौकर पर बोला हमला”

33. That suffice it to say, that the respondent No.2 seems to have acted in an unruly manner so as to display his might, dominance and strength; Supposedly, the same appears to have been done with an oblique motive to frighten and oppress the victim.

34. Thus, the aforesaid acts not only disrupt the moral fabric of the community but also poses significant challenges to the administration of justice. Particularly in cases where a public servant has been physically assaulted for not obeying the unjust cause of an elected representative of public, can create an atmosphere of undue applaud or feeling of supremacy for the accused within the public, which is antithetical to the principles of justice and fairness. Thus, Glorification of an accused is fundamentally detrimental to the





interests of society and undermines the integrity of the justice dispensation system.

35. In supplement to the aforesaid, the jurisprudence of bail recognizes that the release of an accused on bail should not be construed as a statement of his /her innocence; or a diminishment of the gravity of the alleged offence. The primary objective of bail is to ensure that the accused appears for trial while allowing them to maintain their liberty, in accordance with the presumption of innocence. **However, when the conduct of the accused is glorified, either by himself or by the media, public figures, or by community support, the same tends to distort public perception towards the impartiality of the judicial process. Glorification of a triumph after having committed an illegal act, at all times gives a message to the society and that a powerful person can do anything in utter disregard to Rule of Law. Repercussion of the same is far fetching thereby weakening the faith and trust upon the rule of Law and Justice.**

36. That Apex court on the somewhat related grounds of glorification of bail and organizing rally just after the release and sharing the stage with other leaders cancelled the bail **the case of P. Vs. State of Madhya Pradesh and another reported in AIR 2022 SC 2183 has held as under:-**



"28. It has been vehemently urged on behalf of the appellant/complainant that the respondent No. 2's bail order deserves to be set aside not only on the grounds stated above, but also in the light of his blatant conduct subsequent to being released for which reference has been made to his photographs appearing in the social media with his snapshots prominently displayed on posters/hoarding in the forefront with the faces of some influential persons of the society in the backdrop, welcoming him with captions like "Bhaiyaa is back", "Back to Bhaiyaa", and "Welcome to Role Janeman".

29. The explanation sought to be offered for the above by the learned counsel for the respondent No. 2 is that he is a student leader who belongs to a community that celebrates the festival "Maa Narmada Jayanti" and the posters in question have nothing to do with his being released on bail. However, the captions referred to above with emojis of crowns and hearts thrown in for good measure, belie this version.

30. Even if it is assumed that the posters in question were not contemporaneous to the release of the respondent No. 2 from detention, the captions tagged to his photographs on the social media highlight the superior position and power wielded by the respondent No. 2 and his family in the society and its deleterious impact on the appellant/complainant. The emojis of crowns and hearts tagged with the captions quoted above are devoid of any religious sentiments sought to be portrayed by the respondent No. 2. On the other hand, they





*amplify the celebratory mood of the respondent No. 2 and his supporters on his having been released from detention in less than two months of being taken into custody for a grave offence that entails sentence of not less than ten years that may even extend to life. The brazen conduct of the respondent No. 2 has evoked a bona fide fear in the mind of the appellant/complainant that she would not get a free and fair trial if he remains enlarged on bail and that there is a likelihood of his influencing the material witnesses. It is noteworthy that a representation has also been submitted by the appellant's father to the Superintendent of Police, District Jabalpur expressing the very same apprehension.*

*31. In view of the aforesaid facts and circumstances, we are of the considered opinion that the respondent No. 2 does not deserve the concession of bail. Relevant material brought on record has been overlooked by the High Court while granting him bail. The supervening adverse circumstances referred to above, also warrant cancellation of bail. Accordingly, the impugned order is quashed and set aside and the respondent No. 2 is directed to surrender within one week from the date of passing of this order.*

*32. It is however clarified that the observations made above are confined to examining the infirmity in the impugned order granting bail to the respondent No. 2 and his conduct thereafter and shall not be treated as an opinion on the merits of the case which shall be decided on the basis of the evidence that shall be placed before the trial Court. This order shall also not preclude*





*the respondent No. 2 from applying afresh for bail at a later stage, if any, new circumstances are brought to light.”*

37. In light of the aforesaid dictum it is imperative to note that such circumstance marks tangible adverse effects on the legal proceedings. i.e. crucial witnesses of the case, may start turning hostile due to the perceived power and influence of the accused. The same would undermine the truth-seeking function of the trial and can lead to the miscarriage of justice. Such hostility may arise from direct intimidation, coercion, or even a sense of futility in testifying against someone who is having an elevated public status and appears to enjoy broad support. So, jurisprudence of bail necessitates a careful consideration of these potential adverse effects to ensure that the process of justice is not subverted and undermined, and the rule of law is upheld.

38. Therefore, glorification emerges as a critical supervening circumstance that warrants serious consideration as substantial grounds for the cancellation of bail.

39. In the coming chain of circumstances, this court has carefully noted the sequence of events surrounding respondent No. 2's arrest and subsequent actions. The Respondent No. 2 was arrested on 12.05.2022, and tested positive for the coronavirus, leading to his referral and admission to a hospital in Dholpur. On 17.05.2022, this court granted him bail, and the next day, he tested negative for the virus. On 19.05.2022, a road show was organized where



respondent No. 2 delivered an intimidating speech, asserting his dominance over the system.

40. Upon a meticulous consideration of the material submitted by the counsel for the petitioner-complainant, this court has observed the influential conduct of respondent No. 2 since the Lodging of the FIR. It is particularly noteworthy that respondent No. 2 tested positive for COVID-19 shortly after his bail was denied by the special court and was subsequently admitted to the hospital. While this hospitalization was not initially concerning, the subsequent sequence of events raises significant suspicion. After being granted bail by the High Court, respondent No. 2's COVID-19 test results turned negative. Moreover, despite the quarantine requirements, respondent No. 2 managed to address a rally on 19.05.2022, thereby showcasing his power and influence and allegedly delivered intimidating speech as noted in the preceding paras.

41. These chain of events strongly suggests that respondent No. 2 may have leveraged administrative facilities for his personal convenience, thereby undermining the integrity of the legal process.

42. This situation seriously undermines the trust in the neutrality of state authorities, raising questions about how and under what circumstances such unauthorized extraneous benefits were provided to the respondent, despite he being an accused.

43. Further, one of the relevant circumstance which beseeched the attention of this court was that investigation in



the matter having direct allegation of assault attributed to the Respondent No.2 along with his aides by a public servant was not being concluded over more than a year and half. It was expected, and indeed imperative, for the investigative agency to conclude the investigation in accordance with the legal principles and provisions. Shockingly, the charge sheet was not filed for over 18 months, and only after this court took notice of the state of affairs, the state investigating agency managed to file the same after having sought several opportunities to file it before the appropriate court on various dates' 31.07.2022, 25.08.2022, 12.09.2022, 04.11.2022.

44. The conduct of the investigative agency in this case demonstrated blatant defiance and disregard for the court's orders to file the chargesheet. Notably, Respondent No. 2 was not even included in the initial chargesheet submitted to the competent court. Instead, Respondent No. 2 was only charge sheeted later through a supplementary chargesheet. That too, after repeated directions and warn of this court. This behaviour by the investigative agency has deeply concerned the court, raising questions about the prevailing circumstances and potential external pressures that led to the delay in filing the chargesheet against Respondent No. 2, leaving the matter pending under Section 173(8) of the CrPC at the time of filing of initial chargesheet before the court.

45. It is relevant to observe that initial FIR no. 120/2022 came to be registered for the offences punishable under section 143, 332, 353,504,506 of IPC and 3(1)(r), 3(1)(s)



and 3(2)(va) of SC/ST (Prevention of Atrocities )Act 1989 and after investigation the chargesheet no.193A against the respondent no. Giriraj singh Malinga, came to be filed under section 147, 1481, 149, 333, 504, 307,120B IPC and 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (Prevention of Atrocities )Act,. It is thus, investigation agency fortified the complicity of the accused respondent No.2 in the present case.

46. Aforementioned circumstances, clearly reflect the significant influence wielded by Respondent No. 2, who is an MLA of the ruling party. This court is persuaded to relate these events, which collectively speak volumes about the conduct and actions of Respondent No. 2 throughout the entire investigative process. The pattern of behaviour observed, including the disregard for court orders and the delayed filing of the chargesheet, suggests a consistent exertion of influence and an attempt to manipulate the investigational procedure. Such conduct by Respondent No. 2, in conjunction with the noted irregularities, raises serious concerns about the integrity and impartiality of the investigation.

47. Further more, it has been duly noted that witnesses in the case, namely Jaspal Gurjar, Puran Singh, and the complainant, were subjected to threats by the petitioner's associates, Keshav Singh and Mohan Singh, through telephonic communications. Consequently, a complaint bearing number 250/2022, dated 19.06.2022, was lodged at the Karni Vihar police station. Following a thorough inquiry, the allegations were substantiated, resulting in the initiation of



proceedings against the accused under Sections 107/116 of the Cr.P.C. in case number 4058/2022 before the Executive Magistrate, Jaipur. Additionally, an FIR numbered 342/2023, dated 13.08.2023, was registered at Police Station Badi, District Dholpur, alleging offenses under Sections 195A and 120B of the IPC, as well as Section 3(2)(vi) of the SC/ST (Prevention of Atrocities) Act, 1989 (as amended in 2015).

48. It is felt appropriate to reiterate that the fundamental and sole basis for granting bail to a person is to protect their sense of liberty through procedure established by law. Courts have a duty to ensure that when an individual's liberty is curtailed, it is protected within the confines of the law. After advertent to the supervening factors of the case, present case in hand not only warrants interference with the bail granted to Respondent No. 2, but also highlights the need to prevent future instances where liberty is manipulated by individuals based on their social status and influence over the public. Such actions result in a miscarriage of justice and cuts down public faith in the judicial system.

49. The conduct of the accused respondent post-release on bail, specifically involving the issuance of threats to witnesses, constitutes a compelling and supervening circumstance that unequivocally warrants the cancellation of bail. This behaviour not only undermines the integrity of the judicial process but also poses a significant risk to the administration of justice, thereby necessitating a reassessment of the bail conditions initially granted.





50. That Hon'ble Supreme Court in the case of **Neeru Yadav v. State of U.P. (2015)**, held that misuse of liberty granted by bail, such as indulging in activities detrimental to public order, warrants cancellation of bail.

51. That **Hon'ble Supreme Court in Panchanan Mishra vs Digambar Mishra & Ors 2005 (3) SCC 143**, has observed the significance of time for cancellation of bail where the circumstances of the case warrants immediate indulgence; the relevant para is reproduced as neath:

*"We have given our careful consideration on the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses threatening the family members of the deceased victim and also create problems of law and order situation."*

52. The Apex court in, **The State through the Delhi Administration vs. Sanjay Gandhi AIR 1978 SC 961**,





categorically observed the dimension of section 439(2) as under:

*[24] Section 439 (2) of the Criminal P. C. confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chap. XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process. We might as well wind up the Courts and bolt their doors against all than permit a few to ensure that justice shall not be done."*

53. That the Hon'ble Supreme Court In **Puran v. Rambilas and Anr. 2001 (6) SCC 338**, has observed the distinction on cancellation of perversity and on the ground of misconduct at the hands of the accused wherein it has been said as neath:

*"Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation."*





54. Thus, issuing threats to the complainant and witnesses in this case constitutes a grave violation of the complainant's rights and demonstrates the respondent's blatant disregard for the legal process. Such threats are likely to intimidate and coerce the complainant and witnesses, potentially leading to the withdrawal of the complaint or altering their testimonies, thereby severely undermining the integrity of the judicial process. The very foundation of justice is compromised when parties are allowed to use threats and intimidation to influence legal proceedings. This behaviour not only erodes public trust in the legal system but also obstructs the fair and impartial administration of justice. Therefore, the act of threatening the complainant or witnesses is a serious and compelling ground for the cancellation of bail. Such conduct unequivocally demonstrates the respondent's unwillingness to abide by the conditions of bail and adhere to the rule of law, justifying the revocation of the bail previously granted.

55. That cardinal circumstances canvassed for cancellation of bail has meticulously dealt by the Hon'ble the Supreme Court, in the case of **Dolatram & Ors. Vs. State of Haryana, 1995 1 SCC 349**, wherein it has held that:-

*"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming*





*circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the trial.*

56. As the judgment stresses upon the circumstances where the court must remain vigilant to such evolving factors to ensure that the continued granting of bail aligns with the interests of justice and public safety. By recognizing and responding to supervening circumstances, the court upholds the integrity of the bail system, maintaining a balance between the presumption of innocence and the need to protect the community from potential harm or obstruction of justice. Thus, while established overwhelming circumstances provide a framework, the fluid nature of legal proceedings demands ongoing evaluation and adaptation to safeguard the integrity of the judicial process.





57. Besides the above, one glaring fact has been brought to the notice of the Court that several criminal cases were pending against the respondent No.2 accused and as such, he was having a bad criminal conduct but the above fact was not brought to the notice of the Court either by the petitioner or by the learned Public Prosecutor at the time of consideration of his bail application. It is well nigh settled that the person having criminal antecedent is ordinarily not supposed to be released on bail owing to the reason that the possibility of his future indulgence in committing further crime cannot be ruled out. Either the facts of previous criminal antecedents were not apprised to this Court deliberately or it is unintended but the fact remains that more than a dozen criminal cases were lodged against the accused. This fact in itself is relevant for consideration of the application for cancellation of bail.

58. The overwhelming circumstances justifying the cancellation of bail are not exhaustive, as additional supervening circumstances may necessitate reconsideration. Supervening circumstances refer to events or conditions arising after the grant of bail that significantly alter the circumstances under which bail was originally granted. These circumstances can render continuity of bail untenable, despite initially meeting standard bail criteria. His delivery of a vitriolic and menacing speech at a rally subsequent to his release on bail stands as a compelling ground for the cancellation of bail, representing a significant supervening circumstance. Through this speech, the respondent No.2 utilized the platform to



intimidate and assert dominance, fostering an environment of fear and demonstrating a disregard for both legal standards and societal norms along with other developed facts of the present case makes the circumstances pregnant with both overwhelming and supervening factors to revisit the question of concession of bail granted to him.

**DECISION:**

58. Thus, in view of the detailed discussion, this court deems it appropriate to cancel the bail granted to **Respondent No.2 Giriraj Singh Malinga**, the same stands cancelled. The application for cancellation of bail is allowed and the order granting bail dated 17.05.2022 passed in S.B. Criminal Appeal No. 837/2022 is cancelled accordingly. The respondent No.2 accused shall surrender before the trial court within 30 days from today. The copy of this order shall be transmitted to the learned trial court forthwith. The trial court is hereby directed to issue necessary directions in this regard in order to ensure the presence of the accused before it. Needless to state that the observation made in the order shall not be taken as future impediment for the trial court to re-consider the fresh bail application of the accused respondent No.2 Giriraj Singh Malinga, in the event it is assessed that the statements of the witnesses and complainant have been recorded.

**(FARJAND ALI),J**

4-Mamta/-

