



2025 INSC 1136

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS.4197-4199 OF 2025
[ARISING OUT OF SLP (CRIMINAL) NOS.5814-5816 OF 2025]**

ABHIMANUE ETC. ETC.

... APPELLANTS

VS.

STATE OF KERALA

... RESPONDENT

WITH

**CRIMINAL APPEAL NOS. 4200-4201 OF 2025
[ARISING OUT OF SLP (CRIMINAL) NOS.7641-7642 OF 2025]**

VISHNU ETC.

... APPELLANTS

VS.

STATE OF KERALA & ANR.

... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.
2. Assailed in the present set of appeals is the judgment and order dated 11th December, 2024¹ of the Kerala High Court, passed on a batch of petitions² filed by the State of Kerala praying for setting aside of grant of bail (through separate orders) to a total of 10 (ten) accused. *Vide* the impugned order, the High Court set aside

¹ impugned order

² Crl. M Nos. 4707, 4713, 4716, 4739, 4749, 4752, 4762, 4767 & 4798 of 2024

the orders granting bail to 5 (five) of the 10 (ten) accused, who are the appellants before us.

3. A First Information Report³ under Sections 143, 147, 148, 149, 324 and 302, Indian Penal Code, 1860⁴, was registered on 19th December, 2021, against unknown persons. It was alleged therein that such unknown persons committed the said offences under the leadership of one political activist of a particular political organization (not a party to these proceedings). Soon thereafter, the appellants were arrested. As per the narrative in the police report (charge-sheet) filed under Section 173(2), Code of Criminal Procedure, 1973⁵ dated 15th March, 2022, the accused are activists of a particular political organization who, allegedly, due to political enmity murdered the victim on 18th December, 2021. Accused 2-6 formed an unlawful assembly, followed the victim in a vehicle and collided with his scooter at 5:50 pm. The victim fell down whereupon he was brutally attacked; ultimately, he succumbed to his injuries at 11:30 pm. The accused were consequently charged with having committed offences under Sections 120-B, 109, 115, 143, 147, 148, 149, 324 and 302, IPC and Section 27(1) of the Arms Act, 1959. We note that the appellants Abhimanue, Athul, Sanand, Vishnu and Dhaneesh figure as A-3, A-5, A-4, A-2 and A-6, respectively, in the charge-sheet.

³ FIR No. 621/2021, PS Mannanchery, District Alappuzha, Kerala

⁴ IPC

⁵ Cr. PC

4. In December 2022, *vide* separate orders of various dates, after being in custody for nearly a year, the appellants and the co-accused were granted bail by the trial court. The State applied for cancellation of bail before the Additional Sessions Judge, who rejected the application on 5th April, 2024.
5. Next, the State approached the High Court in May 2024 praying for setting aside of the orders granting bail to the accused persons.
6. The High Court divided the accused into two categories – (i) conspirators and (ii) persons against whom the specific overt act of murder was alleged. The appellants belong to the second category. The High Court noted that bail was granted to the appellants by the Sessions Court in a mechanical manner, without referring to any *“circumstance that should have been borne in mind while granting bail in a heinous crime as murder”*. The High Court further noted that the Sessions Court granted bail, based on two factors. *First*, the accused had been in custody for more than a year, and *secondly*, there was no opposition from the Public Prosecutor. The possibility of influencing the witnesses or tampering with evidence was not borne in mind by the Sessions Court, whereas only a few weeks prior, their bail applications were rejected finding that they may influence the witnesses and tamper with evidence. The High Court found that there was no change of circumstances, and hence bail should not have been granted. The High Court also rejected the argument that bail

should not be cancelled, as the applications praying for cancellation were filed more than a year and a half after the grant of bail. Accordingly, the bail granted in favour of the appellants stood set aside by the High Court.

7. Aggrieved by the impugned order revoking grant of bail, the appellants have now carried it to this Court in appeal.
8. Mr. Soumya Chakraborty, learned senior counsel, submitted on behalf of the appellants that setting aside orders granting bail, on an application filed more than 18 (eighteen) months after such grant, was unjustified. Further, the appellants did not tamper evidence or influence witnesses, did not abscond, and did not violate any other bail condition while on bail; as such, setting aside of the orders granting bail was uncalled for and without justifiable reasons. He further submitted that the application for cancellation of bail, preferred by the State before the High Court, was not maintainable. Since an earlier application for cancellation had already been rejected by the Sessions Judge, the proper remedy of the State was to approach the High Court under Sections 401 and 482, Cr. PC, rather than by way of a fresh application for cancellation before the High Court. Lastly, as the State did not challenge the order of the Sessions Judge refusing to cancel the bail, the said order has attained finality and is now unassailable.
9. The State filed a status report pursuant to an order of this Court. Upon perusal of the report, apart from the antecedents of the

accused, it is seen that the accused were identified based on CCTV footage of the crime, which was recovered from a nearby house. Relying thereon, learned senior counsel Mr. Dinesh, representing the State, urged that the impugned order suffers from no infirmity and, thus, deserves to be upheld.

- 10.** It was also stated in the status report that Vishnu (A-2) had violated a condition of interim bail (granted by this Court *vide* order dated 28th May, 2025) by entering the district of Alappuzha on 30th July, 2025. Vishnu (A-2), along with Rajendra Prasad (A-1), allegedly assaulted and threatened (by knife) a person named Abhiram on the same day which led to registration of FIR No. 1006/2025.
- 11.** Opposing the petitions, Mr. R. Basant, learned senior counsel appearing on behalf of the respondent no. 2 (widow of the victim), submitted that the Sessions Court failed to consider the severity of the allegations against the appellants and granted bail by a non-speaking order. On the other hand, the order impugned in these appeals is well-reasoned and this Court ought to be loath to interfere therewith. Out of the total 10 (ten) accused, the High Court set aside the orders granting bail of only 5 (five) accused, after considering all relevant factors. Distinguishing them from the conspirators, the appellants herein were classified in the category of the actual assailants in the gruesome murder. Specific overt acts attributable to each accused were discussed in detail by the High Court. Our attention was also drawn to the

several criminal antecedents of the appellants. A-2, along with a co-accused, allegedly committed offences even after the grant of interim protection by this Court on 30th July, 2025. Moreover, it was submitted that the Sessions Court granted bail to the several accused upon hearing only the Public Prosecutor and not the Special Public Prosecutor, who was appointed for the case. Lastly, the High Court rightly held that delay in filing an application for revocation of bail is no ground for rejecting such an application.

- 12.** Mr. Chakraborty responded by stating that Vishnu entered into the district as he was required to attend the ongoing trial of the case on that date. As regards the commission of an offence by Vishnu, it was submitted that the purported victim (Abhiram) had denied the involvement of the accused persons in the offence by way of an affidavit filed before the High Court in proceedings instituted by Vishnu under Section 482, Cr. PC.
- 13.** Heard learned senior counsel appearing for the parties and perused the record.
- 14.** Before proceeding further, we consider it appropriate to begin our analysis by addressing one of the arguments raised by Mr. Chakraborty. He has challenged the very maintainability of the application filed before the High Court. According to him, once an application under Section 439(2), Cr. PC seeking cancellation of bail has been rejected by the Sessions Judge, a second application under the same provision cannot be filed directly before the High Court. Instead, the proper course would be either

to challenge the Sessions Judge's order in a petition for revision, or to invoke the inherent powers of the High Court under Section 482, Cr. PC.

15. We are unable to agree with this argument. We note that, in the present case, the application before the High Court was filed under "Section 482 r/w 439 (2) of Code of Criminal Procedure". That being the case, nothing prevented the High Court from exercising its inherent powers.
16. We now propose to proceed with our discussion on the other aspects of the case.
17. Law is well settled that cancellation of bail is distinct from revocation of an order granting bail. Bail may be cancelled when the accused violates any of the conditions imposed. On the other hand, an order granting bail can be revoked if such an order is found to be perverse or illegal. In **P v. State of Madhya Pradesh⁶**, a three-judge Bench of this Court, after analyzing various previous decisions, discussed the distinction between the two. Relevant paragraphs of the decision are reproduced below:

21. Echoing the above principle, in *Ranjit Singh v. State of M.P.* [*Ranjit Singh v. State of M.P.*, (2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405], it has been held thus:

"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."

6 (2022) 15 SCC 211

22. In *Abdul Basit v. Mohd. Abdul Kadir Chaudhary* [*Abdul Basit v. Mohd. Abdul Kadir Chaudhary*, (2014) 10 SCC 754 : (2015) 1 SCC (Cri) 257], this Court has opined that: (SCC p. 763, para 19)

“19. Therefore, 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 a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on 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.”

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.

25. Some of the circumstances where bail granted to the accused under Section 439(1) CrPC can be cancelled are enumerated below:

- (a) If he misuses his liberty by indulging in similar/other criminal activity;
- (b) If he interferes with the course of investigation;
- (c) If he attempts to tamper with the evidence;
- (d) If he attempts to influence/threaten the witnesses;
- (e) If he evades or attempts to evade court proceedings;
- (f) If he indulges in activities which would hamper smooth investigation;
- (g) If he is likely to flee from the country;
- (h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;
- (i) If he attempts to place himself beyond the reach of his surety.
- (j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

(emphasis ours)

- 18.** In the present case, the High Court revoked the orders granting bail after noting that the Sessions Court kept only two considerations in mind: period of custody and ‘no opposition from the prosecution’, without a discussion of the other factors in detail. However, the Sessions Court having primarily proceeded on the premise of there being no objection from the side of the prosecution for grant of bail, it would have been just and proper for the High Court to direct the Sessions Court to consider all the relevant factors and decide afresh the application of the appellants for bail. Evidently, in the absence of the Sessions Court looking into all relevant factors for grant of bail, the High Court took upon itself such a responsibility. Looking at the gravity of the crime and the apprehension of evidence being tampered and witnesses being susceptible to influence and intimidation, the High Court proceeded to revoke the bail.
- 19.** What weighs with us now, in the facts and circumstances of the present case, is whether the High Court ought to have revoked the bail for the reasons that it assigned or should the High Court have directed the Sessions Court to decide the application for bail afresh.
- 20.** Directing the Sessions Court to decide the application for grant of bail is an available option to us given the circumstances noted above but having regard to the lapse of time and the submissions advanced, we propose to decide the appeals on merits.

- 21.** Apart from the fact that it has not been shown to our satisfaction that the appellants violated any of the conditions of bail except in one case, which we propose to consider a little later, we are of the considered opinion that notwithstanding the gravity of the offences alleged against the appellants, the conflicting interests of individual liberty on the one hand and the victim's rights as well as concerns for community safety on the other could have been better balanced bearing in mind that the appellants had suffered incarceration for nearly a year and thereafter had been on bail for almost 2 (two) years before the orders granting bail were revoked *vide* the impugned order. The likelihood of the accused influencing the witnesses or tampering with the evidence and ensuring smooth progress of the trial could have been taken care of by imposing stringent conditions over and above those which were imposed while granting bail.
- 22.** Reverting to the sole instance of violation of bail condition, we note that after the grant of interim bail by this Court, Vishnu and A-1 had allegedly assaulted and threatened Abhiram with a knife, which led to Abhiram lodging an FIR under Sections 115 (2), 118(1), 351(2) and 25 of the Bhartiya Nyaya Sanhita, 2023. Seeking quashing of the said FIR, Vishnu approached the High Court. The records indicate that Abhiram filed an affidavit before the High Court denying Vishnu's involvement in the crime stating that *“(T)he police may have for reasons best known to them implicated him in the offence. After preparing the statement, I*

merely affixed by signature at the paper as shown by them without reading the statement. I was never aware that the Petitioner's name was included". Abhiram also denied having settled the dispute and clarified that "*upon conciliation talks only the misunderstanding was mitigated*". Suffice it to record on perusal of the above statement that there is much more than what meets the eyes. We are not prepared to accept the contention that the FIR lodged by Abhiram affords ground for cancellation of bail granted to Vishnu.

23. Our attention was also invited to the status report filed by the State, to indicate the various criminal antecedents of the appellants. Suffice it to say, however, that such antecedents by themselves cannot constitute a ground for denial of bail. In this context, a useful reference may be made to the decision of a coordinate Bench of this Court in **Ayub Khan v. State of Rajasthan**⁷ of which one of us (Augustine George Masih, J.) was a member. The relevant paragraph therefrom is extracted below:

10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents.

24. Cancellation/revocation of bail, no doubt, seeks to uphold trial integrity. The dominant purpose thereof is to ensure a fair trial

and protect societal interests by preventing persons accused of a heinous or grave crime and having tendencies to influence or intimidate witnesses or to tamper evidence from being released. Indeed, if such accused are likely to interfere with witness testimony, the courts could be justified in ordering the accused to be taken back into custody. However, at the same time, the golden rule of bail jurisprudence propounded by Hon'ble V.R. Krishna Iyer, J. of 'bail being the rule and jail an exception' cannot be ignored. Taking back the appellants in custody for no better reason than that the Sessions Court should not have been swayed by omission of the Public Prosecutor to raise any objection to grant of bail should not operate to the appellants' prejudice, more so when two years have passed in the interregnum.

- 25.** Upon perusing the status report filed by the State, we find that the case was posted for "schedule trial" on 30th May, 2025 and thereafter the case has been listed on various dates. As per the chargesheet, a total of 141 (one hundred forty-one) witnesses are to be examined. Of them, there are at least five witnesses who allegedly witnessed the crime. The trial will obviously take time to conclude. Bearing in mind that the appellants since grant of bail have not been involved in any similar or other offence, we prefer to lean in favour of liberty rather than its curtailment. Accordingly, while setting aside the impugned order, the

appellants' liberty is not curtailed subject to imposition of certain stringent conditions.

26. To obviate any possibility of tampering with evidence and intimidation and/or influencing of the witnesses by the appellants, we impose the following conditions for grant of bail to the appellants:

- a. The appellants shall not enter the limits of district Alappuzha, save when their presence is required for the purposes of trial.
- b. The appellants shall inform the trial court of their respective address where they propose to stay during such time condition (a) remains in force.
- c. On every alternative day, the appellants shall mark their presence at the police station having jurisdiction in respect of their proposed places of stay. Such attendance need not be marked, if on any particular day, they are required to remain present before the trial court.
- d. The appellants shall not procrastinate the trial and fully cooperate with the trial court to take the trial to its logical conclusion without any delay.
- e. The appellants shall not tamper with prosecution evidence and influence/intimidate the witnesses.
- f. The appellants shall not pray for deferment of cross-examination of any eye-witness.

- g. After the evidence of all the alleged eye-witnesses is recorded, the appellants shall be at liberty to seek modification of condition (a) supra before the trial court.
 - h. The appellants shall be required to furnish bail bonds to the satisfaction of the trial court.
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- 27.** The trial court, in addition to the aforesaid conditions, may impose any other conditions as it may deem fit and proper.
 - 28.** The police administration of the State may appoint the investigating officer of the case or any other police officer to ensure that not only do the appellants not influence/intimidate the witnesses but also that protection to the witnesses, as and when the occasion so demands, is provided.
 - 29.** We direct the State too to cooperate with the trial court by ensuring the presence of all the private and official witnesses on the dates fixed by the trial court for recording evidence.
 - 30.** The trial court is encouraged to expedite the trial by scheduling dates in such a manner that witness testimony is recorded without undue delay.
 - 31.** The appellants shall continue to remain on bail, pending trial, subject to adherence to the terms and conditions for such grant as imposed by the trial court, in addition to the conditions imposed by us. Should there be any breach of the terms and conditions and the same is brought to the notice of the trial court,

appropriate orders may be passed including cancellation of the bail granted by this Court.

- 32.** The impugned judgment and order revoking the orders granting bail stands set aside. The appeals are, accordingly, allowed.
- 33.** Pending application (s), if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;
SEPTEMBER 22, 2025.**