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HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of order dated 15.12.2021 passed by learned Single Judge in
WPCR No.836/2021)

WA No. 48 of 2022

- Jagmohan Yadu S/o Gulal Yadu Aged About 50 Years R/o
Khorpa, Police Station Patan, District Durg, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer, Police
Station Patan, District Durg, Chhattisgarh.
2. Bhagawat Yadav S/o Ramanuj Yadav Aged About 31 Years
Village Khorpa, Police Station Patan, District Durg,
Chhattisgarh.
3. Rupesh Yadav S/o Ramanuj Yadav Aged About 28 Years
Village Khorpa, Police Station Patan, District Durg,
Chhattisgarh.

---- Respondents

For Appellant :- Mr. Umesh Verma, Advocate with
Mr. Shantam Awasthi, Advocate
For Respondent-State :- Mr. Gagan Tiwari, Dy.G.A.

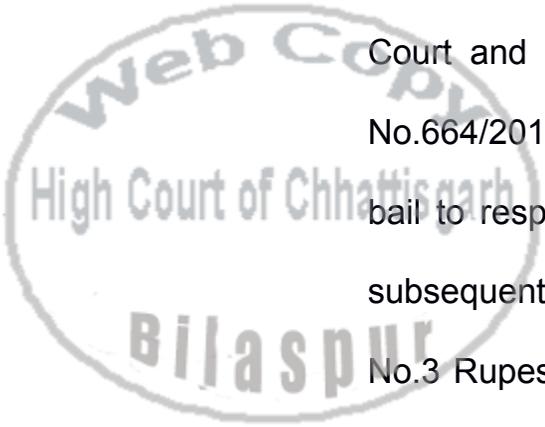
Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice N.K. Chandravanshi
Judgment on Board

Per Goutam Bhaduri, J.



4/4/2022

1. Challenge in this appeal is to the order dated 15.12.2021 passed by the learned Single Judge in WPCR No.836/2021. [For the sake of convenience, the parties hereinafter would be referred as per their description in WPCR].
2. The brief facts of this case are that the respondents No.2 and 3 were convicted in a Sessions trial by the 2nd Additional Sessions Judge, Durg on 02.3.2019, along with two other accused persons. They had filed an appeal before the High Court and the Division Bench of this High Court in CRA No.664/2019, initially suspended the sentence and granted bail to respondent No.2 Bhagwat Yadav on 26.3.2021 and subsequently, the jail sentence imposed upon respondent No.3 Rupesh Yadav was suspended on 06.9.2021. It is the case of the petitioner (victim), who is the brother of the deceased, that after the respondent No.2 Bhagwat Yadav was released on bail, he started threatening the family members of the victim for which the application was moved by the petitioner before the Police Station - Patan on 29.10.2021, followed by another application dated 19.11.2021. It is contended since no action was taken by the Police, the Police became dormant as such the writ petition bearing WPCR No.836/2021 was filed with the following reliefs:-





“a. The Hon'ble Court may kindly be pleased to call for the records of the case from the respondents.

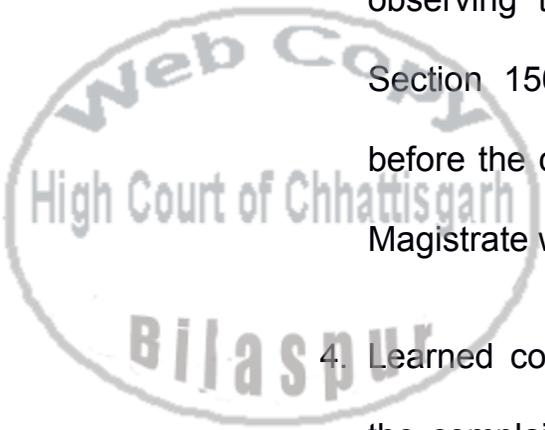
b. The Hon'ble Court may kindly be pleased to direct the Respondent No. 01 to take appropriate steps to ensure safety and security of the petitioner and his family members.

c. The Hon'ble Court may kindly be pleased to direct the Respondent No. 01 to take appropriate steps for cancellation of the Bail/Suspension of sentence of the respondents No. 2 & 3.

d. The Hon'ble Court may kindly be pleased to grant any other relief as it deems fit and proper in the facts and circumstances of the case.”

3. The learned Single Judge dismissed the writ petition by observing that the petitioner may file a complaint under Section 156(3) of Cr.P.C. or Section 200 of the Cr.P.C. before the concerned Magistrate having jurisdiction and the Magistrate would decide the case on its own merits.

4. Learned counsel for the petitioner submits that apart from the complaint which was made to the Police for which, no action was taken, the writ petition also contained a prayer for cancellation of bail. The said prayer remained unanswered, as the petitioner though may have the right to file the complaint before the competent Judicial Magistrate but cancellation of bail still remained to be answered. He would submit that once the bail has been granted and the proviso to Section 389 Cr.P.C. since only confers power to the public prosecutor to file application for cancellation cannot be read in isolation and interpretation is to be harmonized with Section 372 of the Cr.P.C., which gives power to the victim

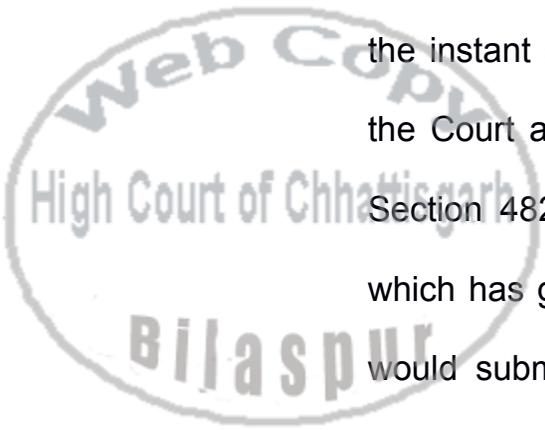




to file an appeal. Therefore, he would submit that *ipso facto* power of cancellation of bail would be conferred on the victim. The victim would be clothed with power to file an application for cancellation of bail or making a prayer before any competent Court, therefore, the order requires to be modified accordingly.

5. *Per contra*, learned State counsel would submit that proviso clause to Section 389 Cr.PC. gives power to the public prosecutor to file an application for cancellation of bail and in the instant case, since the victim has come forward before the Court as such the victim may file an application under Section 482 Cr.P.C. before the concerned Division Bench which has granted bail to the respondents No.2 and 3. He would submit that the learned Single Bench of the Court may not entertain the application for cancellation of bail granted by the Division Bench. He would further submit that the High Court of Madhya Pradesh in the matter of **Mahesh Pahade Vs State of Madhya Pradesh**, (CRA No.933 of 2014 decided on 18.7.2018) has taken into account the right of the victim for filing an application for cancellation of bail. He would also place reliance upon the decision of the Supreme Court in the matter of **Pampapathy Vs. State of Mysore** reported in **AIR 1967 SC 286**.

6. We have heard the learned counsel for the parties and



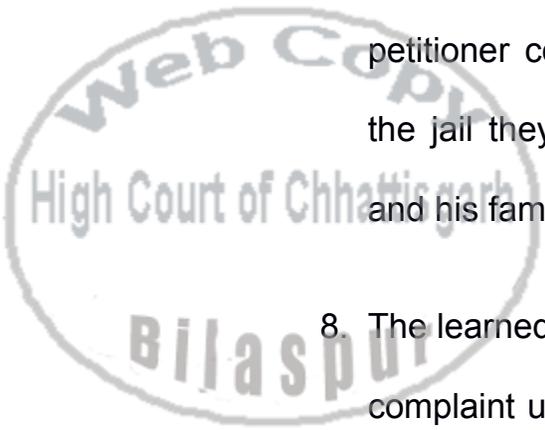


perused the record.

7. The facts which emerges out that respondents No.2 and 3, who were convicted in a trial under Section 302 of the IPC filed an appeal before the High Court. The Division Bench of this High Court in CRA No.664/2019, initially suspended the jail sentence of respondent No.2 Bhagwat Yadav on 26.3.2021 and subsequently, the jail sentence of respondent No.3 Rupesh Yadav was suspended on 06.9.2021. As a result of that both the accused came out of the jail. The petitioner contends that subsequently to their release from the jail they started threatening and intimidating the victim and his family members.

8. The learned Single Bench observed that petitioner may file a complaint under Section 156(3) or Section 200 of Cr.P.C. in case the Police has not taken cognizance of the report. The writ petition filed would show that it contained a prayer for cancellation of bail too, which is a major relief. The learned Single Bench, though had not deliberated on this issue, however considering the nature of relief claimed in facts of the case this requires adjudication.

9. The question which looms large as to which forum, the petitioner can approach for cancellation of bail as under Section 389 of the Cr.P.C., the proviso clause confers the





power only on the public prosecutor to file the application for cancellation of bail.

10. For the sake of brevity, relevant part of Section 389 of Cr.P.C. is reproduced herein below:-

“389. Suspension of sentence pending the appeal; release of appellant on bail.- (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]”

XXX XXX XXX

11. The Supreme Court in the like matter of the issue drawing the analogy in **Pampapathy** (supra) observed that in cases when the accused comes out of jail then after he may criminally intimidate the prosecution or witness or their counsel in act of violence and revenge, therefore, it cannot be presumed that the victim would not have any right to complaint or he do not have any forum to complaint. The Supreme Court further observed that in such situation the





inherent power of the Court will come into play and the victim would be within his rights to claim for cancellation of bail. At para 7 of its judgment, the Supreme Court observed as under:-

“7.....The argument is that once an order of suspension of sentence is made under Section 426 by the appellate court and the appellant is ordered to be released on bail, the subsequent conduct of the appellant, howsoever reprehensible it may be, cannot justify the appellate court in revoking the order of bail and ordering the re-arrest of the appellant. The appellant may commit further acts of violence; he may perpetrate once again the very same offences for which he has been convicted he may even threaten and criminally intimidate the prosecution counsel who may be in charge of the case in the appellate court; he may attempt to abscond to a foreign country to escape the trial; or he may commit acts of violence in revenge against the police and prosecution witnesses who have deposed against him in the trial Court, but the appellate court will have no power to cancel the suspension of sentence and the order of bail made under Section 426, Criminal Procedure Code. Such a situation could not have been in the contemplation of the legislature and, in our opinion, the omission to make an express provision in that behalf is manifestly due to oversight or inadvertence. In a situation of this description the High Court is not helpless and in a proper case it may take recourse to the inherent power conferred upon it under Section 561-A of the Criminal Procedure Code.”





12. The legislature in its wisdom brought an amendment in Criminal Procedure Code with effect from 31.12.2009 under Section 372 of the Cr.P.C. wherein right to file an appeal to victim was conferred. For the sake of brevity the Section 372 along with the proviso clause is reproduced herein under :-

“372. No appeal to lie unless otherwise provided.-

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:



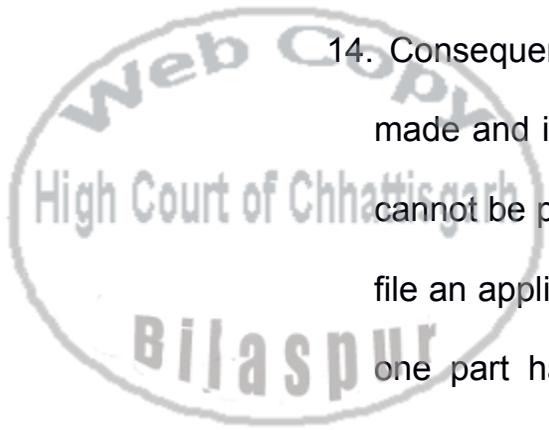
[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]”

13. The object to bring the amendment was to confer the victim such rights which puts the victim into a higher pedestal than the prosecution agency. It gives an unqualified right to the victim to prefer an appeal in its terms as against the enabling provision under Sections 377 and 378 of the Cr.P.C. which only gives liberty to the District Magistrate to file appeal. Reading of Sections would *prima facie* reflect that no limitation is also provided and the same yardstick is provided as contained in Section 378 of the Cr.P.C. The



yardstick laid down by the Judicial pronouncement for consideration of appeal under Section 378 of the Cr.P.C. would also apply to the appeal filed by the victim under the proviso, therefore, it would have an accrual of the right of the victim to file an appeal in all cases in which the victim thinks it proper that his right is being defeated. Accordingly, the analogy which comes out would show the victim has been given substantial right by the amendment in the Cr.P.C to file an appeal after trial.

14. Consequently, in a case where the conviction has been made and in an appeal the accused has been bailed out, it cannot be presumed that the victim will not have any right to file an application for cancellation of bail. The legislature on one part has given power to the victim to challenge the acquittal itself to file an appeal then simultaneously, it cannot be culled out that the victim would be remedy-less and no forum is available to him to make a complaint in a case for cancellation of bail/suspension of jail sentence in appeal. In a case, if the accused after coming out of the jail, during the bail, commits any offence or criminally intimidate the victim or the prosecution, the victim will have a right to apply for cancellation of bail. The Division Bench of the Madhya Pradesh in the matter of **Mahesh Pahade** (supra) has laid down the law to hold that once the right of the appeal is





given to the victim, it shall include the ancillary power which have attached to the right to appeal and as a natural corollary the claim for cancellation of bail shall also followed. The law laid down by the Madhya Pradesh High Court is reproduced as in herein under :-

- “Though it is the responsibility of the State to bring the accused to law but in such process the actual sufferer of crime cannot be permitted to stay outside the law and to watch the proceedings from hindsight. It will be travesty of justice if the victims of such heinous crime are denied right to address their grievances before the courts of law. - **Relied upon** – Declaration of “Basic Principles of Justice of Victim for Crime and Abuse of Power” adopted in 96th plenary meeting of the General Assembly on 29th November 1985.
- Once right of appeal has been given to a victim, it shall include all ancillary rights which are attached with the right to appeal. Such right to appeal will include right to seek cancellation of bail if the victim is aggrieved against such an order, as it is her rights and honour, which is in issue apart from the crime against humanity protected by the State.”

15. Therefore, after examination of the records, we are of the considered view that the victim shall have a right to file an application for cancellation of bail under inherent power of the High Court under Section 482 of the Cr.P.C. It would be



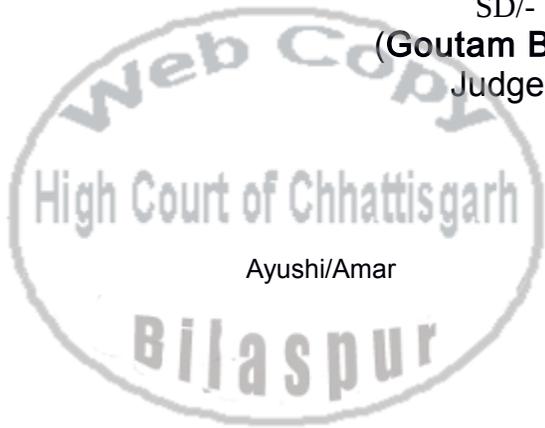


in proprietary to file an application, if so advised, before the Division Bench which granted the bail / suspended the jail sentence imposed upon the accused, so that the proper appreciation of facts can be arrived at. With respect to filing of separate complaint, the petitioner shall have the right and liberty as available under the common law of Cr.P.C.

16. With the aforesaid observations, the appeal stands disposed of.

SD/-
(Goutam Bhaduri)
Judge

SD/-
(N.K. Chandravanshi)
Judge



**Head Note**

WA No. 48 of 2022

Victim can seek relief for cancellation of bail granted in criminal appeal invoking the Section 482 of Cr.P.C. before the concerned Bench.

पीड़ित, दाण्डिक अपील में प्रदत्त जमानत निरस्तीकरण के लिए, संबंधित पीठ के समक्ष, दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत राहत की मांग कर सकता है ।

