Before Jasgurpreet Singh Puri, J.

KULWANT SINGH @ SAJAN—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CRM-M No.52620 of 2019

March 11, 2022

(A) ***Constitution of India, 1950—Art.21—Code of Criminal Procedure, 1973—S.439—Indian Penal Code, 1860—Ss.379-B(2) and 34—Cancellation of regular bail on ground of suppression of material fact regarding pendency of bail application before High Court— Held, in view of Supreme Court case in Arunima Baruah v. Union of India and others, 2007 (6) SCC 120, suppression of material fact of non-disclosure of pendency of bail application before High Court would be subservient to right of liberty granted to petitioners under Article 21 of the Constitution of India since bail orders were decided on merits—Petitions dismissed by imposing costs of Rs.10,000/- each to be paid by all accused persons instead of cancelling/annulling/setting aside of bail order.***

Held that, in Arunima Baruah Versus Union of India and others (Supra), the Supreme Court discussed the meaning and scope of the expression 'material fact' and the effect of suppression of the same. It was observed that a material fact would mean material for the purpose of determination of the lis and the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact which has been suppressed is not material for determination of the lis between the parties, then the Court may not refuse to exercise its discretionary jurisdiction. In the present cases although there was a suppression of material fact before the learned Additional Sessions Judge but that fact was not material for the purposes of determination of the and the orders of bail have been passed on their own merit. Therefore, the suppression of a material fact of non-disclosure of pendency of bail application before this Court would be subservient to the right of liberty granted to the petitioners under Article 21 of the Constitution of India since the bail orders were decided on merits.

(Para 38)

(B) ***Constitution of India, 1950—Art. 21—Code of Criminal Procedure, 1973—S.439— Indian Penal Code, 1860—Ss.379-B(2)***

and 34—Suppression of material fact regarding pendency of bail application before High Court—Safeguards to be adopted by trial Court/Sessions Court to check wrongful practice—Guidelines issued.

Held that, on the basis of suggestions made by learned amicus curiae and considering the aforesaid earlier directions/instructions issued by this Court, further guidelines are required to be issued, which are as follows:

1. It shall be ensured by all Sessions Judges of Punjab, Haryana and Union Territory, Chandigarh that in bail applications (regular/anticipatory) submitted in their Sessions Division, the Ahlmad attached with respective Court should verify from official website of Punjab and Haryana High Court, Chandigarh as to whether any bail application qua the same applicant in FIR/complaint is pending/decided before High Court or not and status of same, if any.
2. After verifying, report be placed on case file for perusal of concerned Court.
3. It must be mandatorily mentioned in every application for bail (regular/anticipatory) as to whether such or similar application for bail has or has not been made before any other Court - In case same was made, then its status be also mentioned.
4. Director Prosecution of State of Punjab, Haryana and Union Territory, Chandigarh shall instruct Public Prosecutors of their respective States that they shall be duty bound to supply necessary information to concerned Court regarding pendency or decision of any earlier bail application of accused in same offence after taking information from concerned I.O/police official.
5. Instructions issued by High Court from time to time be complied with meticulously.

(Para 44)

G.K. Mann, Senior Advocate assisted by
Gursewak Singh, Advocate,
for the petitioner in CRM-M-52620-2019.

Karan Nanda, Advocate
for the petitioner in CRM-M-17512-2019.

Rishu Mahajan, Advocate
for the petitioner in CRM-M-2593-2021.

Kanwaljit Singh, Senior Advocate and
R.S. Rai, Senior Advocate as Amicus Curiae.

Arun Kumar Kaundal, DAG, Punjab.

Shivam Joshi, Advocate
for Karanjit Singh, Advocate
for Vijay Bhaskar, Advocate in CRM-M-52620-2019.

JASGURPREET SINGH PURI, J.

(1) The present three petitions are being taken up together for final disposal since an important idential issue has arisen for consideration before this Court. However, all the three petitions arise from different FIRs and have different facts.

(2) The issue involved in the present set of cases is as to what is the effect of filing bail applications and passing of bail orders by the trial Court/Sessions Court during the pendency of bail application before High Court by the same accused without disclosing such pendency and what safeguards should be adopted by the trial Court/Sessions Court in this regard.

(3) On 27.09.2021 in CRM-M-52620-2019 this Court appointed Mr. Kanwaljit Singh, learned Senior Advocate and Mr. R.S. Rai, learned Senior Advocate as amicus curiae to assist this Court with regard to the further process to be taken in such like matters which are not only serious in nature but also affects the administration of justice. Both the learned amicus curiae have rendered their valuable assistance to this Court and have also given various suggestions in this regard.

(4) Before proceeding further, the facts of all the three cases are essential to be noted as follows:-

Kulwant Singh @ Sajan Versus State of Punjab CRM-M-52620-2019

(5) The present is the first petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0237 dated 08.09.2019, under Sections 379-B(2) and 34 of Indian Penal Code, 1860, registered at Police Station Sadar, Amritsar, District Police Commissionerate, Amritsar.

(6) As per the allegations contained in the FIR when the complainant was returning back to his home on his motorcycle, then two clean shaven young men came on scooter having muffled faces. They stopped their scooter in front of his motorcycle and by showing him knife, they snatched his mobile mark Vivo V-5 and Rs. 2300/- from his purse and fled away towards Batala road. Thereafter, the complainant suffered a supplementary statement on the same day and referred to the fact that at the time of snatching, the other accused was calling the name of the present petitioner as Sajjan and during investigation the police got recovered the mobile phone from the petitioner from the disclosed place.

(7) The relevant dates in the present case are as follows:-

23.11.2019	First bail dismissed by Additional Session Judge, Amritsar.
03.12.2019	The present bail application filed in High Court.
13.12.2019	Notice of motion issued by High Court and accepted by State counsel.
15.01.2020	Notice issued by High Court on interim bail on the ground of marriage of petitioner.
20.01.2020	Application for interim bail withdrawn.
07.02.2020	Adjourned to 24.03.2020 but thereafter the matter could not be taken up due to Covid restrictions.
07.07.2020	Petitioner filed bail application before Additional Sessions Judge, Amritsar.
10.07.2020	Petitioner granted bail by Additional Sessions Judge, Amritsar.
23.08.2021	High Court was informed by State counsel that hail has already been granted by the learned trial Curt. Therefore, report was called from the Additional Sessions Judge, Amritsar in this regard.

(8) A perusal of the aforesaid dates would show that even during the pendency of the bail application before this Court, the petitioner filed another bail application before the learned Additional Sessions Judge, Amritsar and was granted bail, even though the present application was pending before this Court. A report was sent by the Additional Sessions Judge, Amritsar dated 27.08.2021 to this Court in

which it was submitted that the petitioner had filed regular bail application through counsel Sh. Vijay Bhaskar, Advocate which was received by entrustment on 07.07.2020. In the bail application, it was not mentioned that any petition is pending before the High Court and rather Sh. Vijay Bhaskar, Advocate had submitted his own affidavit along with bail application duly attested by the Oath Commissioner, Amritsar by deposing that "no other similar bail application is either pending or decided by any Court of law in the present case". It was further stated in the report that it was never brought to the knowledge of the Additional Sessions Judge as to whether any petition was pending before the High Court or not. 4.

(9) A perusal of the order dated 10.07.2020 by which the learned Additional Sessions Judge, Amritsar granted bail to the petitioner would show that notice of the bail application was issued to the learned Additional P.P who opposed the bail but never stated anything with regard to the pendency of the present bail application before this Court. It is further evident from the order that the bail application has been decided by the learned Additional Sessions Judge, Amritsar on its own merits. The bail application was accompanied by an affidavit of an Advocate who had deposed that there is no other similar bail application either pending or decided by any Court of law. Therefore, this Court on 27.09.2021 issued notice to Sh. Vijay Bhaskar, Advocate to explain the true factual position and also as to under what circumstances he had filed his own affidavit along with bail application. The aforesaid Advocate appeared through counsel Sh. Karanjit Singh, Advocate and filed his affidavit in which he stated that the mother of the petitioner who is a widow approached him when she was in tears and was an old woman to file bail application of his son and also told him that she is illiterate and is not aware about the legal formalities and none of her family members have come forward to help her in the present circumstances. She told him that she had never approached any person or an advocate to file a bail application and there is no other bail application pending in any Court and handed over a power of attorney of his son to him and that he had on good faith on the basis of information given by the mother of accused signed the affidavit as per her instructions and that said act was performed only to help a poor widow. The aforesaid Advocate also tendered an unconditional apology for the negligence on his part by filing wrong affidavit which was totally unintentional.

Mandeep Singh versus State of Punjab CRM-M-17512-2019

(10) The present is the third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.114 dated 16.07.2018, under Sections 406 and 420 of Indian Penal Code, 1860, registered at Police Station Samana.

(11) As per the FIR, the allegation against the petitioner was that one person namely Shivdeep Sharma was being harassed by one girl and was being blackmailed by her and she had lodged FIR against him and the aforesaid Shivdeep Sharma and his family discussed the matter with the complainant who thereafter introduced him with some other person namely Vatanveer Singh who in turn introduced himself to be O.S.D of some influential person who is the petitioner and who has clout in the Police Department and will make sure that the present case against Shivdeep Sharma will be cancelled and in this way, the petitioner has taken Rs. 9,90,000/- and 7-8 tolas of gold ornaments for this purpose. The petitioner was arrested on 14.09.2018 and the petitioner is also allegedly involved in some other cases as well.

(12) The relevant dates in the present case are as follows:-

01.03.2019	Bail application filed by the petitioner dismissed by JMIC, SAmana under Section 437(6) Cr.P.C.
14.03.2019	Revision filed against the aforesaid order dismissed by Additional Sessions Judge, Patiala.
10.04.2019	Present bail petition filed before High Court.
30.04.2019 to 25.02.2020	Present petition/applications taken up by this Court.
28.04.2020	Bail application filed by the petitioner before learned Additional Sessions Judge, Patiala.
29.04.2020	Bail granted to the petitioner by Additional Sessions Judge, Patiala
02.07.2021 and 23.07.2021	No one caused appearance on behalf of the petitioner before High Court in present petition.
23.08.2021	High Court was informed by State counsel that bail has already been granted by the learned Additional Sessions Judge, Patiala. Therefore, report was called from the Additional Sessions Judge, Patiala in this regard.

(13) A perusal of the aforesaid dates would show that during the pendency of the present bail petition before this Court, the petitioner had filed a bail application before learned Additional Sessions Judge, Patiala and was granted bail. A report was called for in this regard from the learned Additional Sessions Judge, Patiala in which she reported that it was not brought to her knowledge with regard to the pendency of the bail application before this Court. A copy of the said bail order granted by learned Additional Sessions Judge, Patiala dated 29.04.2020 was taken on record by this Court on 23.08.2021.

(14) A perusal of the same would show that the petitioner had taken up a plea before the learned Additional Sessions Judge that he was in custody from 14.09.2018 and now compromise has been effected between the parties and they also intend to file a quashing petition before the High Court and the complainant has no objection in case the bail application is decided in the light of the said compromise. However, the learned Additional PP for the State had opposed the bail on the ground that the matter was serious in nature but nothing had come on the record that another bail application was pending before this Court. Learned Additional Sessions Judge, Patiala granted bail to the petitioner primarily on the basis of compromise between the parties.

Akashdeep Singh versus State of Punjab CRM-M-2593-2021

(15) The present is the first bail petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.10 dated 14.01.2020, under Sections 379-B and 411 of Indian Penal Code, 1860, registered at Police Station Ranjit Avenue, Amritsar, District Amritsar.

(16) As per the allegations contained in the FIR when the complainant was coming to his house by foot, then two clean shaven youths wearing masks were riding a bullet motorcycle and pillion rider youth came towards her and forcibly tried to snatch her purse by pushing her. She fell down and he snatched her mobile phone brand SAMSUNG NOTE-9 and fled away. The petitioner was arrested on 14.09.2020.

(17) The relevant dates in the present case are as follows:-

21.12.2020	Bail application dismissed by Additional Sessions Judge, Amritsar.
12.02.2021	Present bail petition filed in High Court.
22.01.2021	Notice of motion issued by High Court and accepted

	by State counse.
08.06.2021	Bail application filed by the petitioner before Additional Sessions Judge, Amritsar.
11.06.2021	Bail granted by Additional Sessions Judge, Amritsar
15.09.2021	This Court was informed by the counsel for the petitioner that petitioner has already been granted bail by the learned Additional Sessions Judge, Amritsar. Therefore, this court directed the learned Sessions Judge, Amritsar to send areport in this regard after taking comments from the learned Additional Sessions Judge as to whether the petitioner had disclosed the fact regarding the pendency of the present petition or not.

(18) A perusal of the aforesaid would show that the petitioner had filed bail application before the learned Additional Sessions Judge, Amritsar during the pendency of the present petition and was granted bail by the learned Additional Sessions Judge, Amritsar. As per the report of the learned District & Sessions Judge, Amritsar, the learned Additional Sessions Judge who had granted bail, had submitted that an affidavit of the brother of the petitioner was filed to the effect that the bail application of the accused is pending in the High Court and is under the process of withdrawal and the said fact was also mentioned in the bail application itself and when the matter was taken up on 11.06.2021, the counsel had orally stated that the bail application has been withdrawn from the High Court and the State did not bring to the notice of the Additional Sessions Judge anything with regard to the pendency of the bail application before the High Court and while believing that the bail application has been withdrawn from the High Court, the Additional Sessions Judge decided the bail application of the accused. On 21.10.2021 the present petitioner had also filed an additional affidavit before this Court by stating that it was a bona fide mistake on his part and he will not repeat the same and had sought pardon from this Court. The petitioner had also stated in the affidavit that he does not have any explanation on his part and had tendered unconditional apology before this Court. Furthermore, there is nothing on the record of the present case to show that the petitioner has ever filed any application for withdrawal of the present petition.

(19) Ms. G.K. Mann, Senior Advocate with Mr. Gursewak Singh, Advocate for the petitioner in CRM-M-52620-2019, Mr. Karan

Nanda, Advocate, for the petitioner in CRM-M-17512-2019 and Mr. Rishu Mahajan, Advocate, for the petitioner in CRM-M-2593-2021, have submitted that so far as the factual position in the present cases pertaining to the filing of the bail applications before the Sessions Court during the pendency of the bail petition before this Court is concerned, the same is correct. They have further submitted that the petitioners should not have filed another bail application during the pendency of the bail application before this Court and it was not proper on their part. However, they have submitted that once the learned Sessions Courts have granted bail to the petitioners on their own merits and the same have not been challenged by the State in any proceedings, the petitioners may be permitted to withdraw the present petitions or the present petitions may be disposed of as having become infructuous.

(20) Mr. Arun Kumar Kaundal, learned Deputy Advocate General, Punjab has submitted that since the petitioners have filed bail applications before the learned Sessions Courts during the pendency of the present bail applications in all the three cases, the present petitions deserve to be dismissed with costs. He further submitted that it is correct that in all the three petitions, the bail orders passed by the learned Sessions Court have not been challenged by the State and they have since attained finality.

(21) Mr. Kanwaljit Singh, learned Senior Advocate and Mr. R.S. Rai, learned Senior Advocate who were appointed as amicus curiae have also made their respective submissions and have also suggested various safeguards to prevent and minimize the menace of invoking two jurisdictions simultaneously in bail matters. Mr. Kanwaljit Singh, learned Senior Advocate has submitted that in the given circumstances in all the three cases, in order to send a correct message and to have a deterrent effect, the regular bails granted by the respective learned Additional Sessions Judges during the pendency of the bail applications before this Court deserve to be set aside by cancelling the order and the benefit granted to the petitioners should not be extended in view of the fact that they have suppressed material facts from the learned Additional Sessions Judge and for such a concealment which is in the nature of a fraud upon the Court, the bail granted to all the three petitioners by the respective learned Additional Sessions Judges should be cancelled/annulled. He referred to judgment of the Supreme Court in ***Dalip Singh*** versus ***State of Uttar Pradesh and others***[1] and ***Kishore***

[1] 2010(2) SCC 114

Samrite versus ***State of U.P. and others***[2] and submitted that a party who approaches the Court by suppressing the facts and to mislead the Court is not entitled to be heard on merits and that it is a bounden duty of anyone approaching the Courts to state the whole case fully and fairly and any attempt to mislead and approach with unclean hands should be dealt with severely. In view of the above, the litigants are not entitled to be heard on merits and are not entitled to any relief.

(22) However, Mr. R.S. Rai, learned Senior Advocate (amicus curiae) has assisted this Court by taking an altogether different perspective. He submitted that although all the three petitioners filed bail applications before the learned Additional Sessions Judge during the pendency of the bail applications before this Court without disclosing the same but the Court has to strike a balance between the liberty of an individual and the nature and level of misconduct on their part. He submitted that there is a difference between cancellation of bail and setting aside the bail order by a higher Court. In all the three cases, the bail applications have been decided by the respective learned Additional Sessions Judges on their own merits and subsequently, it was pointed out in this Court that their bail applications are also pending before this Court. However, at the same time, the parameters for cancellation of bail or for annulment/setting aside of the bail orders are not satisfied in the present set of cases and, therefore, instead of cancelling/setting aside of the bail orders passed by the learned Additional Sessions Judges, suitable costs may be imposed on the petitioners for their misconduct. He submitted that strict guidelines are required to be issued to check such a practice in future. He further submitted that fault can be attributed to the litigant or to his counsel or to the Public Prosecutor or any other person who files false affidavit but it becomes difficult to distinguish and fix responsibility. However, an action done by a counsel is done on behalf of a litigant and in case of suppression, costs should be imposed on the litigant. He has relied upon a judgment of Supreme Court in ***Mahipal*** versus ***Rajesh Kumar @ Polia and another***[3], ***Prashant Singh Rajput*** versus ***The State of Madhya Pradesh and another***[4], ***Neeru Yadav*** versus ***State of U.P***[5] and

---

[2] 2013(2) SCC 398
[3] 2020(2) SCC 118
[4] 2021(4) RCR (Criminal) 423
[5] 2014(16) SCC 508

Jagmohan Bahl and another versus ***State (NCT of Delhi) and another***[6].

(23) I have heard the learned counsels for the parties as well as both the learned amicus curiae.

(24) In all the present three cases, the petitioners filed regular bail applications before this Court and during the pendency of these cases, they filed regular bail applications before learned Additional Sessions Judge without disclosing the factum of pendency of the present bail applications except in one case where on the date of the decision of the bail application by the Additional Sessions Judge, he was orally informed that the bail application before this Court has been withdrawn although the same was never withdrawn. All the three applications decided by the learned Additional Sessions Judges have been decided on their own merits and admittedly, those orders have not been assailed by the State in any Court and they have thus attained finality. All the three petitioners are on bail as of now. In the case of Kulwant Singh @ Sajan, the allegations against the petitioner were pertaining to snatching of mobile phone and the bail application was filed before the learned Additional Sessions Judge alongwith the affidavit of the counsel in which it was stated that there was no other similar bail application pending or decided by a Court of law. The aforesaid Advocate who filed an affidavit along with the bail application was also issued notice by this Court and is being represented by a counsel before this Court and an affidavit has also been filed by him in this regard whereby he has given his explanation to show his bona fide and good faith. In the case of Mandeep Singh, the allegations against the petitioner were pertaining to cheating and breach of trust. The learned Additional Sessions Judge granted bail on the basis of compromise being arrived at between the parties and the pendency of present bail application was not disclosed to learned Additional Sessions Judge. In the case of Akashdeep, the allegations against the petitioner were snatching of mobile phone and while filing the bail application before the learned Additional Sessions Judge, an affidavit was also filed by the brother of the petitioner by stating that a bail application is pending before the High Court which is under the process of withdrawal and when the matter was taken up for final hearing, the counsel orally stated that the bail application has been withdrawn from the High Court and, therefore, the learned Additional

[6] 2015(3) SCC (Criminal) 521

Sessions Judge decided the bail application of the accused and granted him bail on its own merits. However, such kind of application for withdrawal of bail or any prayer in this regard was never made before this Court. Thereafter, the present petitioner has also filed an additional affidavit before this Court by stating that it was a bona fide mistake on his part and that he will not repeat the same and had also sought pardon from this Court.

(25) Two different aspects are required to be considered by this Court in the present case. Firstly, in the given factual background of the cases, whether bail granted to the petitioners by the respective learned Additional Sessions Judges should be cancelled/annulled/set aside on the basis of suppression and concealment of material fact regarding pendency of bail application before this Court or the petitioners be burdened with costs due to their misconduct. Secondly, what safeguards should be adopted to check such kind of practice in future.

(26) So far as the first aspect is concerned, in order to delve upon the issue, various judgments of Supreme Court are required to be referred in this regard. In ***Dalip Singh versus State of Uttar Pradesh and others*** (Supra), the appellant did not approach the High Court with clean hands and made misleading statement whereby an impression was created that the tenure-holder did not know about the proceedings initiated by the prescribed authority and succeeded in persuading the High Court to pass an interim order which resulted in frustrating the efforts made by the authority concerned to distribute the surplus land among landless persons. It was observed that it was clear that efforts to mislead the authorities and the conduct of the appellant to mislead the High Court and Supreme Court cannot but be treated as reprehensible.

(27) In ***Kishore Samrite versus State of U.P. and others*** (Supra), it was observed by the Supreme Court that the cases of abuse of process of Court and such allied matters have been arising before the Courts consistently and the Supreme Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the Court for redressal of any grievance and the consequences of abuse of the process of Court. Some of such principles were recapitulated and were reiterated. Apart from the same, it was also observed that in a given set of circumstances, one way to curb this tendency was to impose realistic and punitive costs. The relevant portion of the aforesaid judgment is reproduced as under:-

"29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

30. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured be a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most

basic 'human-right' of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs".

(emphasis supplied).

(28) In ***Mahipal Versus Rajesh Kumar @ Polia and another*** (Supra), it was held by the Supreme Court that an Appellate Court may justifiably set aside the order granting bail and is required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. The relevant portion of the judgment is reproduced as under:-

> 15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of Uttar Pradesh U.P. 2016(15) SCC 422 the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Justice Dipak Misra (as the learned Chief Justice then was) held: ".
>
> … It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the

contrary, delves into the justifiability and the soundness of the order passed by the Court."

"16. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order of the High Court in the present case, in so far as it is relevant reads:

"2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. Learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail."

The aforesaid judgment was again referred by the Supreme Court in ***Prashant Singh Rajput versus The State of Madhya Pradesh and another***(Supra).

(29) In ***Neeru Yadav Versus State of U.P*** (Supra), it was observed by the Supreme Court that it is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified,

illegal and perverse. In the latter case, the Court does not delve upon the violation of conditions by the accused or the supervening circumstances but on the contrary delves into the justifiability and the soundness of the order passed by the Court. It was further observed that liberty of an individual is a priceless treasure and is founded on the bed rock of constitutional right and accentuated further human rights principle but such a liberty is not absolute in nature. Such a liberty can be withdrawn if an individual becomes a danger to the societal order. The relevant portion of the aforesaid judgment is reproduced as under:-

> "13. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has mis conducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.
>
> 16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the

> fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law".

(30) In ***Jagmohan Bahl and another versus State of NCT Delhi and another*** (Supra), the Supreme Court deprecated the practice of the matter being heard by an Additional Sessions Judge, when the earlier bail application was dismissed by another Additional Sessions Judge. It was observed that the fundamental concept is that if the Judge who has decided the earlier bail application is available, then the matter should be heard by him. This will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law. However, the bail order was not set aside by the Supreme Court in view of the facts and circumstances of the case. The relevant portion of the judgment is reproduced as under:-

> "14. Though the said decisions were rendered in different context, the principle stated therein is applicable to the case of present nature. Unscrupulous litigants are not to be allowed even to remotely entertain the idea that they can

engage in forum-shopping, depreciable conduct in the field of law.

15. In the instant case, when the Additional Sessions Judge6 had declined to grant the bail application, the next Additional Sessions Judge-04 should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the concerned Judge that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law.

16. Having said what we have stated hereinabove, the natural corollary would have been to set aside the order as it has been passed in an illegal manner. Ordinarily we would have issued that direction but, a significant one, in the present case, the allegations, as we find, are quite different. The FIR was instituted under Section 420/34 IPC and relates to execution of an agreement. In such a situation, we do not intend to set aside the order and direct the appellants to move a fresh application for bail under Section 438 CrPC. We are only inclined to direct that the bail order granted in their favour shall remain in force and the appellants shall abide by the terms and conditions imposed by the Court and would not deviate from any of the conditions.

(31) In ***Dolat Ram and others*** versus ***State of Haryana***[7] it was observed by the Supreme Court 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 and the bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it

[7] 1995(1) SCC 349

no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. The relevant portion of the aforesaid judgment is reproduced as under:-

> 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 accused to retain his freedom by enjoying the concession of bail during the trial".

(32) In ***Arunima Baruah*** versus ***Union of India and others***[8] the Supreme Court discussed the effect the suppression of material facts and observed that if the fact suppressed is not material for determination of the lis between the parties, the Court may not refuse to exercise its discretionary jurisdiction. The relevant portion of the judgment is reproduced as under:-

> "11. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis

[8] 2007(6) SCC 120

> between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.
>
> (emphasis supplied).

(33) In ***Abdul Basit @ Raju and others*** versus ***Md. Abdul Kadir Chaudhary and another***[9], the Supreme Court discussed the provisions of Section 439(2) of the Code of Criminal Procedure pertaining to cancellation of bail. The relevant portion of the judgment is reproduced as under:- "

> 18. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation , (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last mentioned case, one would expect very strong grounds indeed. (Raghubir Singh and Ors. etc. v. State of Bihar, 1987 Cri.LJ 157)

---

[9] 2014(10) SCC 754

> 23. 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".

(34) In ***Maneka Gandhi*** versus ***Union of India***[10], the Supreme Court expanded the scope and ambit of right to life and personal liberty as enshrined in Article 21 of the Constitution of India which is an important fundamental right. Thereafter in a number of judgments the scope and ambit of Article 21 was explained in ***Madhav Hayawadanrao Hoskot*** versus ***State of Maharashtra***[11], ***Hussainara Khatoon and others*** versus ***Home Secretary, State of Bihar, Patna***[12], ***Sunil Batra*** versus ***Delhi Administration and others***[13], ***Francis Coralie Mullin*** versus ***The Administrator, Union Territory of Delhi and others***[14] and ***Bandhua Mukti Morcha and others*** versus ***Union of India and others***[15].

(35) While considering the first aspect regarding the fate of the present three petitions, a more realistic and pragmatic approach would be required in view of peculiar facts and circumstances of the present cases. The conduct of all the three petitioners in filing the bail application before the respective learned Additional Sessions Judges without disclosing the pendency of the bail application before this Court is highly disapproved and is deprecated. It was the solemn duty of the petitioners or their counsels to have disclosed this fact to the learned Additional Sessions Judge with truthfulness and honesty as these two elements are sacrosanct for imbibing purity in the administration of justice. At the same time, the effect of such a conduct upon the present bail applications needs to be considered from different

---

[10] 1978(1) SCC 248
[11] 1978(3) SCC 544
[12] 1980 (1) SCC 98
[13] AIR1978 SC 1675
[14] 1981 (1) SCC 608
[15] 1997(10) SCC 549

perspectives. Even both the learned amicus curiae have given their respective suggestions from different perspectives in this regard.

(36) Article 21 is the heart of the Constitution. It is a progressive and dynamic provision and is not static. The protection guaranteed therein attaches an element of not only life and liberty but also encompasses an element of dignity by conferring a Constitutional right on not only the citizens of India but also on any person including an alien. Although the right conferred is not absolute but there has to be legally justifiable reason for departure from the same. Therefore, the question as to whether bail granted to the petitioners by the respective learned Additional Sessions Judges should be cancelled/ annulled or not needs to be tested on the anvil of fundamental right guaranteed under Article 21 of the Constitution of India. It is an admitted position that bail granted to all the three petitioners by the respective learned Additional Sessions Judges during the pendency of the bail application before this Court have neither been assailed by the State in any proceedings nor the State has raised any argument before this Court that the bail orders granted to the petitioners should be cancelled/annulled on the basis of the accepted principles of cancellation/annulment of bail order. The well accepted principles for cancellation of the bail orders have been explained by the Supreme Court in a number of judgments. Although the grounds for cancellation of bail orders are not exhaustive in nature but broad principles include misuse of the liberty by indulging in similar criminal activity, interference in the course of investigation, attempt to tamper with evidence or witness, threatening of any witness, likelihood of fleeing from justice, attempt to make himself scarce by going underground or becoming unavailable to the investigating agency or attempt to place himself beyond the reach of his surety etc.

(37) Cancellation of bail and annulment/setting aside of bail orders are two different aspects. Cancellation of bail is based upon violation of terms and conditions of the bail order and other parameters as aforesaid but setting aside/annulment of bail order by a higher Court is based upon different parameters i.e. legality or perversity in the passing of the order of bail. In the present cases, the bail orders have been passed by the respective Additional Sessions Judges but there is neither any application for cancellation of bail nor any petition for setting aside of bail by the State or any other person. Therefore, the question that would remain is as to whether such bail orders should be set aside or cancelled by this Court on the ground of suppression of

material fact regarding the pendency of the bail application before this Court or not. All the orders granting bail have been passed on their own merits and there is no grievance raised by anybody to the effect that bail has been misused by the petitioners or that there is any illegality or perversity in the orders passed by the Courts. Therefore, the ground of suppression of material fact has to be considered on the threshold of right to liberty guaranteed under Article 21 of the Constitution of India.

(38) In ***Arunima Baruah versus Union of India and others*** (Supra), the Supreme Court discussed the meaning and scope of the expression 'material fact' and the effect of suppression of the same. It was observed that a material fact would mean material for the purpose of determination of the lis and the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact which has been suppressed is not material for determination of the lis between the parties, then the Court may not refuse to exercise its discretionary jurisdiction. In the present cases although there was a suppression of material fact before the learned Additional Sessions Judge but that fact was not material for the purposes of determination of the lis and the orders of bail have been passed on their own merit. Therefore, the suppression of a material fact of non-disclosure of pendency of bail application before this Court would be subservient to the right of liberty granted to the petitioners under Article 21 of the Constitution of India since the bail orders were decided on merits.

(39) However, at the same time this Court cannot ignore the misconduct on the part of the petitioners and, therefore, in order to secure the ends of justice, the petitioners are liable to be burdened with costs.

(40) The Hon'ble Supreme Court in ***Kishore Samrite versus State of U.P. and others*** (Supra) observed that it is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed. One way to curb this tendency is to impose realistic or punitive costs.

(41) Therefore, in the light of the aforesaid facts and circumstances of the present three cases, this Court is of the view that instead of cancelling/anuling/setting aside the three bail orders passed by the respective learned Additional Sessions Judges, the end of justice would be served to dismiss the present petitions by imposing costs upon the petitioners.

(42) In view of above, all the three petitions are hereby dismissed with costs of Rs. 10,000/- each to be paid by all the three petitioners. The petitioners are directed to deposit the said amount in the Court of learned Chief Judicial Magistrate concerned within two months from today. In the event of the deposit of the said amount, the same would be sent to the Punjab Legal Services Authority. In case the petitioners do not comply with the order passed by this Court regarding payment of costs, the concerned Chief Judicial Magistrate would take necessary steps to recover the amount in accordance with law. Such a course has been adopted only in view of the facts and circumstances of the present cases and would not mean that a bail order cannot be cancelled/set aside on the basis of such kind of suppression of fact from the Court as there can be no straight jacket formula regarding the same.

(43) The second aspect pertains to as to what safeguards and other measures should be adopted so as to check such kind of wrongful practice in future. This Court has considered various suggestions given by both the learned amicus curiae. With the advancement of Information and Technology, better safeguards can be adopted by optimal use of the same. In CRM-M-21526-2021 various directions were issued by this Court including directions that it should be mandatory to mention in the application before the Courts below as to whether such or similar application for bail under any of the provisions of Cr.P.C has or has not been made before any Superior Court and in case any application does not contain the aforesaid information, then the same shall not be accepted and would be returned for re-submission. Duty was also casted upon the Public Prosecutor/prosecuting agency after collecting the necessary information from the Investigating Officer with respect to the filing of any application/petition before any Court seeking concession of bail. Furthermore, in case of lapse/defeat on the part of the investigating agency/prosecution, it would be construed as a fraud played upon the Court and would invite departmental as well as penal action. Apart from the same, this Court had also issued instructions dated 24.02.2009 to all the District & Sessions Judges to the effect that at the time of filing of bail application before the Trial Court, an affidavit is required to be filed regarding pendency of bail application filed by the person concerned in any Court besides the statement regarding the decision of the earlier bail application by the accused OR by any other person familar with the facts or interested in the matter.

(44) On the basis of the suggestions made by learned amicus curiae and considering the aforesaid earlier directions/instructions issued by this Court, further guidelines are required to be issued which are as follows:-

1. It shall be ensured by all the Sessions Judges of Punjab, Haryana and Union Territory, Chandigarh that in the bail applications (regular/anticipatory) submitted in their Sessions Division, the Ahlmad attached with the respective Court should verify from the official website of the Punjab and Haryana High Court, Chandigarh as to whether any bail application qua the same applicant in FIR/complaint is pending/decided before the High Court or not and the status of the same, if any.

2. After verifying the aforesaid, a report be placed on the case file for the perusal of the concerned Court.

3. It must be mandatorily mentioned in every application for bail (regular/anticipatory) as to whether such or similar application for bail has or has not been made before any other Court. In case the same was made, then its status be also mentioned.

4. The Director Prosecution of State of Punjab, Haryana and Union Territory, Chandigarh shall instruct the Public Prosecutors of their respective States that they shall be duty bound to supply necessary information to the concerned Court regarding pendency or decision of any earlier bail application of the accused in the same offence after taking information from the concerned I.O/police official.

5. The instructions issued by this Court from time to time be complied with meticulously.

(45) Before parting with the judgment, this Court records its appreciation towards Mr. Kanwaljit Singh, Senior Advocate and Mr. R.S. Rai, Senior Advocate who were appointed as amicus curiae and Ms. Shiny Chopra, Legal Researcher of this Court for their valuable assistance.

(46) A copy of this order be circulated to all the District & Sessions Judges as well as Director Prosecution of the State of Punjab, Haryana and Union Territory, Chandigarh through the Registrar General of this Court.

Ritambhra Rishi