

**IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH**

**CRM-M-15540-2014(O&M)**

**Date of decision : 13.02.2015**

Shakuntla Devi

... Petitioner

Versus

State of Haryana and another

... Respondents

***CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.Rajesh Goyal, Advocate  
for Mr.Susheel Gautam, Advocate  
for the petitioner.

Mr.Rajesh Gaur, Addl. A. G.Haryana.

Mr.Tejinder Pal Singh, Advocate  
for respondent No.2.

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**REKHA MITTAL, J.**

The present petition under Section 439(2) of the Code of Criminal Procedure (in short 'Cr.P.C.') has been filed by the petitioner-complainant for cancellation of regular bail granted to respondent No.2 by the Judicial Magistrate, Panipat in complaint case No.38/1 of 30.07.2010 for offence punishable under Sections 323, 354, 388, 506 of the Indian Penal Code (in short 'IPC') and Section 3(i)(x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989 (in short 'the Act').

Counsel for the petitioner contends that in the aforementioned complaint, after conducting preliminary inquiry, the respondent-accused was summoned to face trial for offence punishable under Sections 323, 354, 506 IPC and under Section 3(i)(x) of the Act. The respondent surrendered in the Court and filed the application for grant of regular bail under Section 437

Cr.P.C. which was allowed by the summoning Court on the day, the accused

surrendered before the Court. The petitioner filed the application under Section 439(2) Cr.P.C. for cancellation of regular bail which was dismissed by the Additional Sessions Judge, Panipat vide order dated 21.04.2014.

The sole submission made by counsel for the petitioner is that no notice was given to the petitioner-complainant providing her an opportunity of being heard before allowing regular bail by the Judicial Magistrate, therefore, the order dated 23.12.2013 (Annexure P6) is liable to be set aside. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court of India *Gulabrao Baburo Deokar Vs. State of Maharashtra and others, 2014(1) RCR (Criminal) 459*. He has further cited judgment of the Rajasthan High Court *State of Rajasthan Vs. Kalu Ram 2001(1) RajCrl.C.231* and judgment of Calcutta High Court *B.N.Elias @ Co. LLP. Vs. ABCD, 2013(2) Calcutta Law Journal 631*. In addition, it is submitted that as the summoning Court had already initiated process for declaring the respondent as proclaimed offender, he was not entitled to be released on bail.

Counsel for the respondent would submit that as the petitioner has already availed remedy under Section 439(2) before the Court of Sessions that has a concurrent jurisdiction with this Court, the present petition is not maintainable. It is further argued that Judicial Magistrate (summoning Court) has jurisdiction to grant bail under Section 437 Cr.P.C. to an accused charged for committing offence under Section 3(i)(x) of the Act. For this purpose, he has referred to judgment of the Bombay High Court *Sanjay Narhar Malshe vs. State of Maharashtra 2005(4) RCR (Criminal) 252* and judgment of Allahabad High Court *Manoj Kumar*

***Sharma vs. State of U.P. & Ors., 2008(1) RCR (Criminal) 51.***

In reply, counsel for the petitioner fairly concedes that he does not challenge jurisdiction of the Judicial Magistrate to allow bail to an accused in regard to offence under Section 3(i)(x) of the Act.

I have heard counsel for the parties and perused the records.

Before advertng to the rival submissions made by counsels, it is appropriate to refer to the judgments relied upon by counsel for the petitioner. In ***Gulabrao Baburo Deokar' case (supra)***, the accused was charged for committing offence punishable under Section 13(2) of the Prevention of Corruption Act 1988 and Sections 409, 468, 471 and 420 of the Indian Penal Code for causing loss of Rs.160 crores to Municipal Corporation by illegal grant of construction contract. The bail granted to the accused without notice to the public prosecutor in compliance with proviso appended to Section 439(1) Cr.P.C. was cancelled as offence under Section 409 IPC is punishable with imprisonment for life. Counsel for the petitioner has failed to convince this Court as to how any observations made in the referred authority can be made applicable to the facts of the case in hand wherein none of the offences for which the accused has been summoned to face trial in a private complaint is punishable with imprisonment for life much less death sentence. In ***State of Rajasthan's case (supra)***, the matter pertains to grant of bail to an accused under the NDPS Act by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Cases, Pratapgarh Camp, Chittorgarh and for that reason the order of bail was held to be bad due to jurisdictional error committed by the Court. The judgment passed by the Calcutta High Court has no bearing on the facts of

the case in hand as in the said case, the bail was granted by a Single Bench though the matter was required to be heard by a Division Bench and hence the order was held to be passed in exercise of wrong jurisdiction. It appears that counsel for the petitioner did not bother to read these judgments, the issues involved therein and the findings recorded in view of peculiar facts and circumstances of those cases. In this view of the matter, the petitioner cannot gain any advantage to her contentions from the judgments cited by her counsel.

The main plank of the petitioner to assail the order passed by the Judicial Magistrate that no notice of the application was given to the complainant has been dealt in detail by the Additional Sessions Judge, Panipat before whom, counsel representing the complainant (petitioner herein) filed an affidavit that he was present at the time of hearing of the bail application in view of notice given by the Court. The respondent has been summoned in a private complaint triable by the Special Judge designated under the Act. The respondent is a police officer and it appears that he was posted as Deputy Superintendent of Police, District Karnal at the relevant time. As there is no possibility of his fleeing from the process of justice and no useful purpose would have been served by detaining him in custody, no fault can be found in the discretion exercised by the Judicial Magistrate relates him on bail subject to certain conditions.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed leaving the parties to bear their own costs.

**(REKHA MITTAL)**  
**JUDGE**

**February 13, 2015.**

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