

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-16732 of 2015 (O&M)

DATE OF DECISION: 21.09.2015

Sandeep

.....Petitioner

Versus

State of Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

Mr. Rajpal Singh, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Crl. Misc. No. 29285 of 2015

Allowed as prayed for.

Crl. Misc. No. M-16732 of 2015

The present petition has been filed under Section 439 (2) Cr.P.C. for cancellation of regular bail granted to respondent No.2 by Additional Sessions Judge, Faridabad vide order dated 4.4.2015 in case FIR No. 563 dated 23.7.2013 registered under Sections 420,467,468,120-B IPC at Police Station City Ballabgarh, District Faridabad.

Learned counsel for the petitioner contends that initially the

bail application moved by respondent No.2 before the trial Court was dismissed on 9.3.2015. Thereafter again an application was moved by respondent No.2. for grant of regular bail before the trial Court, which was allowed vide order dated 4.4.2015 i.e. within a period of less than one month. Learned counsel further contends that the allegations against respondent No.2 are serious in nature but subsequently without any development after 9.3.2015, bail has been granted to respondent No.2. No specific reason whatsoever has been mentioned in order dated 4.4.2015 while granting bail to respondent No.2. The allegations of forging of Will are also there against respondent No.2. Neither the nature of offence nor the factum of earlier dismissal of the bail application has been considered while granting bail to respondent No.2. Learned counsel also contends that the bail granted by the trial Court is liable to be cancelled.

Learned counsel for respondent No.2 submits that order of granting bail to respondent No.2 is based on reasoning and contentions of respondent No.2.

Learned counsel for the respondent-State submits that bail was granted to respondent No.2 after considering the FSL report.

Heard the arguments advanced by learned counsel for the parties and have also gone through the order passed in the earlier bail application as well as subsequent order dated 4.4.2015, vide which, regular bail has been granted to respondent No.2.

Admittedly, FIR No. 563 dated 23.7.2013 was registered under Sections 420,467,468,120-B IPC at Police Station City Ballabgarh, District Faridabad against respondent No.2 and some other persons. Respondent No.2 was arrested on 6.2.2015 and thereafter he moved an application before the trial Court for grant of regular bail, which was dismissed on 9.3.2015. The relevant portion of order dated 9.3.2015 is reproduced as

under:-

“Allegations against the applicant are serious in nature. Thumb impressions of the deceased were obtained from pension record. Investigation is at initial stage and remaining accused have not been arrested as yet. In case, the applicant is released on bail, he may try to win over the witnesses and hamper the trial. As such, the accused does not deserve the concession of bail.

Resultantly and in view of aforesaid discussion, the bail application is dismissed. File be consigned to the record room.

Announced in open Court:

9.3.2015

Sd/-

(Y.S. Rathor)
Additional Sessions Judge,
Faridabad”

Thereafter another application for grant of regular bail to respondent No.2 was moved, which was allowed on 4.4.2015. The relevant portion of the order is reproduced as under:-

“Without commenting on the merits of the case but in view of the contentions raised by learned counsel for the applicant as noticed above, the bail application is accepted and applicant is ordered to be released on bail on furnishing bail bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of Area/Duty Magistrate subject to compliance of following conditions:-

(i) that the applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(ii) that the applicant shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(iii)that the applicant shall not leave India without the previous permission of the Court.”

It is also relevant to mention here that when the earlier application of respondent No.2 for bail was dismissed then he did not file any petition before this Court for grant of bail, whereas, the remedy was available to him before this Court only. Again, after a period of 21 days only, second application for grant of regular bail was moved before the trial Court and the same was allowed vide order dated 4.4.2015 without mentioning any specific reason. Even no reasoning whatsoever has been given in the order granting bail to respondent No.2 as to what was the subsequent development after dismissal of earlier bail application. In the order of declining bail, it was mentioned that bail is declined keeping in view the seriousness of the offence as well as the fact that in case the applicant is released on bail he may try to win over the witnesses and hamper the trial. While granting bail neither the stage of the trial nor anything has been mentioned as to how the accused will not influence the witnesses. Not only serious and specific allegations of forgery but of procurement of fake Will are there against respondent No.2. Learned counsel for respondent No.2 has also not been able to show as to what were the changed circumstances due to which respondent No.2 was granted bail when earlier application for grant of bail was dismissed.

It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that bail can be cancelled where order of bail is perverse and has been passed by ignoring the evidence on record and by

taking into consideration the irrelevant material placed on record. While granting bail, the Court has to keep in mind not only the nature of allegations but also the punishment which can be awarded and the reasonable apprehension of the witnesses being tampered with or apprehension of there being a threat to the complainant. Hon'ble the Apex Court in the case of **Chaman Lal Vs. State of U.P. and another** 2004 (3) RCR (Criminal) 984 while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are; (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the Court in support of the charge.

Similarly Hon'ble the Apex Court in the case of **Prakash Kadam and others Vs. Ramprasad Vishwanath Gupta and another** 2011 (3) RCR (Criminal) 1, while making distinction between cancellation of bail and for consideration of grant of bail has held as under:-

“18. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt

important, is not the only factor. There are several other factors which may be seen while deciding to cancel the bail.”

Further Hon'ble the Apex Court in the case of **P.S.R. Sadhanantham Vs. Arunachalam and another** AIR 1980 SC 856 has held that crime is an act deemed by law to be harmful to the society in general, even though its immediate victim is an individual.

Similarly Hon'ble the Apex Court in the case of **Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another** AIR 1992 SC 979 a two-Judge Bench, has observed as under:-

“Crime is a revolt against the whole society and an attack on the civilization of the day. Order is the basic need of any organized civilized society and any attempt to disturb that order affects the society and the community.”

Keeping in view the aforesaid facts, which are to be borne in mind, while dealing with the application moved under Section 439 Cr.P.C., in respect of serious offences, the distinction between a 'perverse' or 'illegal' order and cancellation of bail or grant of bail, the definition of crime and the judgment of the Court, it is to be seen as to how in the case in hand the bail application has been dealt with by the lower Court. The order of grant of bail is admittedly cryptic and unreasonable as neither the nature of offence is mentioned nor the stage of the trial. Even earlier application of respondent No.2 for grant of regular bail was declined by the same Judicial Officer by passing a speaking order and considering certain factors. Immediately after 21 days, the bail has been granted without mentioning any reason. Even it has not been mentioned as to what were the factors due to which the bail was declined. Neither in the application for bail nor in the order, it has been mentioned as to how respondent No.2 was entitled for bail and what were the changed circumstances due to

which bail was granted. The trial Court was in the same stage on the dates of passing both the orders.

Accordingly, there is merit in the contentions raised by learned counsel for the petitioner. The present petition is allowed and order dated 4.4.2015 granting bail to respondent No.2 is set aside. The police authorities are directed to take respondent No. 2 in custody forthwith.

September 21, 2015
pooja

(DAYA CHAUDHARY)
JUDGE