

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-26972 of 2015 (O&M)

DATE OF DECISION: 28.09.2015

Jagroop Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. A.S. Brar, Advocate
for the petitioner.

Mrs. Ritu Punj, Addl. A.G., Punjab.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Vikram Gupta, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Crl. Misc. No. 31868 of 2015

This application has been filed for placing on record the reply filed on behalf of respondent No.2.

Application is allowed and reply filed on behalf of respondent No.2 is taken on record.

Crl. Misc. No. M-26972 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 in case FIR No. 38 dated 15.5.2013 registered under Sections 302,148,149,120-B IPC, Sections 25,54 of Arms Act and Sections 449 and 201 of IPC (added later on) at Police Station Tapa, District Barnala.

Aforesaid FIR was registered against respondent No.2 and other accused persons. During pendency of the proceedings, respondent No.2-Jaspal Singh @ Mohna filed a petition under Section 439 Cr.P.C. before this Court for grant of regular bail on the ground that he was not named in the FIR and no role was attributed to him and he might be in the category of 4-5 unidentified persons. It was also contended in the bail petition that even in the supplementary statement, the complainant did not name respondent No.2 and no role was attributed to him. Respondent No.2 was in the custody since 9.6.2013 and out of total 46 witnesses, only two witnesses were examined till that time. It was also brought to the notice of Court that an application was moved under Section 319 Cr.P.C., which was allowed and de novo trial had started. Respondent No. 2 was released on bail by this Court vide order dated 26.2.2015 in Crl. Misc. No. M-3986 of 2015. The relevant portion of order of bail is reproduced as under:-

“Admittedly, the petitioner was not named in the FIR and no role has been attributed to him. Even in the supplementary statement, the complainant has not named the petitioner. He is presumed to be one of the 4-5 unidentified persons, then also, allegations of giving stick blows on the shoulder and eyebrow of the deceased have been levelled on him.

Keeping in view the submissions made by learned counsel for the petitioner and also the fact that the the petitioner is in custody for the last more than 1 year and 8 months; out of 46 prosecution witnesses, only two have been examined so far; an application under Section 319 Cr.P.C. has been moved by the prosecution and in case, the same is allowed then it will be a case of *de novo* trial; no purpose would be served by

keeping the petitioner behind the bars; and moreover, the complainant and eyewitness have been examined and question of influencing them does not arise, the present petition is allowed and the petitioner (Jaspal Singh @ Mohna) is directed to be released on regular bail subject to furnishing bail/surety bonds to the satisfaction of the trial Court.”

The present petition has filed for cancellation of bail granted to respondent No.2 on the ground that the petitioner approached Hon'ble the Apex Court by way of filing Special Leave to Appeal (Crl.) No. 11198 of 2015, whereby, liberty was granted to him to apply for cancellation of bail before the appropriate forum, if occasion so arises.

Learned counsel for the petitioner submits that respondent No.2 should not have been released on regular bail as there was specific mention in the statement of PW-1 that respondent No.2 caused dang blow on the person of Resham Singh, which hit on his back side due to which he fell down on the ground. All the accused were present at the time of occurrence and were actively involved in commission of offence. Moreover, the petition filed by co-accused was also dismissed on 14.7.2014. Learned counsel further submits that a threat was also given to the complainant party and that the petitioner was not released on regular bail inspite of grant of bail by this Court as he could not furnish bail bonds to the satisfaction of trial Court and it is a sufficient ground to cancel the bail. Learned counsel has also relied upon the judgments of Hon'be the Apex Court in the cases of **Satish Jaggi Vs. State of Chhattisgarh and others** 2007 (3) RCR (Criminal) 964, **Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI through its Director** AIR 2008 Supreme Court, 942 and of Allahabad High Court in the case of **Ram Kunwar @ Ram Kumar Vs. State of U.P.** 2013 (7) RCR (Criminal) 667, in support of his contentions.

Learned senior counsel for respondent No.2 submits that bail was granted to respondent No.2 by considering certain facts and circumstances of the case as well as by taking into consideration the stage of the trial. The bail can be cancelled only in case the accused misused the concession of bail; or is involved in other case of similar nature; or attempts to tamper with the evidence or witness; or threatened the witnesses; or indulges in some activity, which would hamper smooth investigation; or in case there is likelihood of fleeing to other country but none of the factors are there in the present case for cancelling the bail of respondent No.2. Learned senior counsel further submits that SLP filed by the petitioner was dismissed by Hon'ble the Apex Court and liberty was given in case the situation arises for cancellation of bail. There was no direction by Hon'ble the Apex Court to file petition for cancellation of bail as nothing has come on record to show that respondent No.2 has misused the concession of regular bail or has given any threat to the petitioner. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Abdul Basit @ Raju and others Vs. Md. Abdul Kadir Chaudhary and another** 2014 (4) RCR (Criminal) 716, in support of his contentions.

Learned counsel for the respondent-State has also not brought to the notice of this Court any complaint that has been made by the petitioner alleging therein that respondent No.2 has given any threat to the complainant party after being released on bail.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, the petitioner has been ordered to be released on regular bail by this Court vide order dated 26.2.2015 by considering his role and stage of the trial. As per the arguments of learned counsel for the

petitioner (respondent No.2) in bail petition, the petitioner (respondent No.2) was not named in the FIR and no role was attributed to him. Even in the supplementary statement, the complainant did not mention the name of the petitioner. Respondent No.2 was presumed to be one of the 4-5 unidentified persons but then also allegations of giving stick blow on the shoulder and eyebrow of the deceased have been levelled qua to him. When bail was granted, respondent No.2 was in custody for more than one year and eight months and out of total 46 prosecution witnesses, only two witnesses were examined. Thereafter, an application under Section 319 Cr.P.C. was moved by the prosecution, which was allowed and it was a case of de novo trial. By considering this fact as well as the custody of respondent No.2 and also the fact that as the complainant and eye witnesses have already been examined, question of influencing the witnesses did not arise, bail was granted to respondent No.2.

Section 439 (2) of the Cr.P.C. provides for the powers of the High Court and the Court of Sessions regarding cancellation of bail granted to accused person. It reads as under:-

"Section 439 - Special powers of High Court or Court of Session regarding bail

(1) * * *

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

Since the submission made by the parties center round the interpretation to be placed upon Section 362 of the Code, it may be necessary to have a glance at the same. The heading of Section 362 of the Code provides for the "Court not to alter judgment" and the provision operates as a bar for the court to alter or review its decisions once

pronounced. It reads as under :

"Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Under Chapter XXXIII, Section 439 (1) empowers the High Court as well as the Court of Sessions 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 to be arrested. The power to cancel the bail granted to a accused person can be passed broadly on the ground i.e. (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.

The scope of this power to High Court under Section 439 (2) has also been considered by Hon'ble the Apex Court in the case of **Gurcharan Singh and others Vs. State (Delhi Administration)** 1978 (1) SCC 118, wherein, it has been held as under:-

"16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498, Cr.P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused

person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439 (2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under Sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 489(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so, it must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused, person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily,'

therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

Similarly in another judgment rendered in the case of **Puran Vs. Rambilas and another** 2001 (2) RCR (Criminal) 801, Hon'ble the Apex Court has held that concept of setting aside an unjustified, illegal or perverse order is absolutely different from the cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In **Dr. Narendra K. Amin Vs. State of Gujarat and another** 2008 (2) RCR (Criminal) 858, the three-Judge Bench of Hon'ble the Apex Court has also reiterated the aforesaid principle and a distinction has been drawn in granting of bail and cancellation of bail. In the said case, the High Court cancelled the bail granted to the accused in exercise of powers under Section 439 (2) of the Code. In appeal, it was contended that the High Court has erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle as laid down in **Puran's case (supra)** observed that when irrelevant materials have been taken into consideration by the Court granting bail, the same makes the said order vulnerable and subject to scrutiny by the appellate Court and no

review would lie under Section 362 of the Code. It was also held by Hon'ble the Apex Court that if the order of grant of bail is perverse, the same can be set at naught only by superior court and has left no room for a review by the same Court.

Similar view has been taken by Hon'ble the Apex Court in the case of **Ranjit Singh Vs. State of M.P. And others** 2013 (4) RCR (Criminal) 6090, wherein, it has been observed as under:-

"20....There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court."

Similarly, Hon'ble the Apex Court in the case of **Hari Singh Mann Vs. Harbhajan Singh Bajwa** 2000 94) RCR (Criminal) 650 has observed as under:-

"9. There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code.

10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a

court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. The reliance of the respondent on Talab Haji Hussain case is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561-A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7-1-1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

11. The impugned orders of the High Court dated 30-4-1999 and 21-7-1999 which are not referable to any statutory provisions, having been passed apparently in a review petition in a criminal case are without jurisdiction and liable to be quashed."

Hon'ble the Apex Court in the case of **Central Bureau of**

Investigation Vs. V. Vijay Sai Reddy 2013 (3) RCR (Criminal) 252 has cautioned that cancellation of bail necessarily involves the review of a decision, which has already been made and it should be exercised very sparingly by the Court of law.

It is a well settled proposition of law that what cannot be done directly, cannot be done indirectly. While exercising a statutory power a Court is bound to act within the four corners of the Statute. The statutory exercise of the power stands on a different pedestal than the power of judicial review vested in a Court. The same has been upheld by Hon'ble the Apex Court in **Bay Berry Apartments (P) Ltd. and Anr. v. Shobha and Ors., (2006) 13 SCC 737, U.P. State Brassware Corporation Ltd. and Anr. v. Uday Narain Pandey, 2006(1) S.C.T. 77 : (2006)1 SCC 479** and **Rashmi Rekha Thatoi and Anr. v. State of Orissa and Ors., 2012(2) R.C.R.(Criminal) 870 : 2012(2) Recent Apex Judgments (R.A.J.) 591 : (2012)5 SCC 690**. It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions which are permissible in law.

In the present case, learned counsel for the petitioner has not been able to show anything as to how the order of bail is perverse and how the concession has been misused by respondent No.2. Even no complaint has been made to the police authority or to the trial Court that respondent No.2 has tampered with the record/evidence or any threat was given to depose in his favour.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

September 28, 2015

pooja

(DAYA CHAUDHARY)

JUDGE

