

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-27224 of 2015
Date of decision: 17.08.2015**

Raj Kumar

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Daya Chaudhary, J.

The present petition has been filed under Section 439(2) Cr.P.C. for cancellation of anticipatory bail granted to accused-respondent No.2 in case FIR No.227 dated 19.05.2015 registered under Section 306 read with Section 34 of Indian Penal Code at Police Station Dharuhera, District Rewari.

Learned counsel for the petitioner submits that the concession of anticipatory bail is an extraordinary relief and the same is not to be granted in a heinous crime like Section 306 IPC. The petitioner is having apprehension that accused-respondent No.2 may tamper with the evidence and the bail granted to her be cancelled. Learned counsel also submits that the money was given by the son of

the petitioner to the parents of respondent No.2, which was to be recovered but without affecting any recovery, the bail has been granted.

Heard arguments of learned counsel for the petitioner and have also perused the order passed by learned Sessions Judge, Rewari, whereby, respondent No.2 has been granted anticipatory bail.

As per allegation levelled in the FIR, a complaint was made by the petitioner stating therein that Kajal (respondent No.2) was engaged with his son-Sandeep. Respondent No.2 told his son that she was having affair with somebody and she did not want to marry with him. His son was worried and this thing was told to the petitioner on various occasions. Father of respondent No.2 was not happy with the relation and son of the petitioner died by hanging because of harassment caused by respondent No.2 and her father-Dinesh Kaushik.

A suicide note was left by son of the petitioner and many a times messages were sent to the petitioner regarding harassment. It was mentioned in the suicide note that he died due to compulsion created by Kajal and her father and they are responsible for his death. Co-accused Dinesh Kaushik (father of respondent No.2) was arrested and respondent No.2 was granted anticipatory bail by learned Sessions Judge, Rewari vide order dated 23.07.2015.

The present petition has been filed for cancellation of anticipatory bail only on the ground that a suicide note was left

wherein names of both the accused were mentioned and an amount of ₹6 lacs was paid to father of respondent No.2 but the same was not returned. Without affecting any recovery, the bail has been granted to respondent No.2 whereas offence under Section 306 IPC is heinous.

It has been mentioned in the order of granting bail that mere mentioning the names in the suicide note is not sufficient and return of amount cannot be termed as abetment. It has also been mentioned that respondent No.2 is a young girl of 22 years of age and nothing has been mentioned to indicate that she will flee from justice or interfere in investigation.

It has been held in various judgments of this Court as well as Hon'ble the Supreme Court that bail can be cancelled in case, the order of bail is perverse and the same has been passed ignoring the evidence on record or by taking into consideration irrelevant material.

Hon'ble the Supreme Court in **Ram Govind Upadhyay vs. Sudarshan Singh and Others, 2002(2) RCR (Criminal) 250**, has held that the grant of bail though involves exercise of discretionary power of the Court, but such exercise of discretion has to be made in a judicious manner and not as a matter of course. It depends on the factual matrix of the matter. The factors have been mentioned in another judgment **Prahlad Singh Bhati vs. NCT, Delhi and Another, 2001(2) RCR (Criminal) 377**, which are as under: -

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but

the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. ”

Similarly in **Chaman Lal vs. State of U. P. and Another, 2004(3) RCR (Criminal) 984,** Hon'ble the Supreme Court 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.

The concept of setting aside an unjustified, illegal or perverse order is totally different from cancelling an order of bail on the ground that the accused had misconducted himself or because of some supervening circumstances warranting such cancellation. While considering the petition for cancellation of bail, the Court is to consider the gravity and nature of offence, *prima facie* case against the accused, the position and standing of the accused. 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. 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. There are several factors, which are to be seen while deciding the case of cancellation of bail. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal, which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. There cannot be any arithmetical formula for fixing the parameters in precise exactitude or to cancel the bail.

In **Sunil Fulchand Shah vs. Union of India and others,**

2000(2) RCR (Criminal) 176, Hon'ble the Supreme Court observed as under: -

“Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety.”

It is to be seen that the person to whom the bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulge in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. The rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu**

Yadav and Anr. (2004 (7) SCC 528), Hon'ble the Supreme Court held

as under: -

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from nonapplication of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the

complainant.

*(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh 2002(2) RCR (Criminal) 250 : (2002 (3) SCC 598)** and **Puran v. Rambilas 2001(2) RCR (Criminal) 801 : (2001 (6) SCC 338)**).*

A three-member Bench of this Court in **State (Delhi Administration) vs. Sanjay Gandhi 1978(2) SCC 411** made the following elemental distinction in defining the nature of exercise while cancelling bail:

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another, It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail Necessarily involves the review of a decision already made and can be and large by permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

(Emphasis supplied)”

As per allegations in the FIR, there was engagement

between son of the petitioner and respondent No.2 and even the marriage has not taken place. The question of abetment does not arise as respondent No.2 cannot be an instrument in abetting the son of the petitioner to commit suicide in any manner.

In view of the facts and law position as explained above, nothing has been brought to the notice as to whether the respondent No.2 has misused her concession of bail or how the offence is heinous in nature. Even there is no reasonable apprehension that any threat has been given to the complainant or she has tried to tamper with the evidence in any manner. Simply by mentioning that the name of respondent No.2 was mentioned in the suicide note and amount given to family members of respondent No.2 has not been recovered is not sufficient to cancel the bail already granted. The suicide note left by the deceased is in possession of the Investigating Agency and question of recovery of amount given to family members of respondent No.2 is not a question of recovery of amount in the case.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is, hereby, dismissed.

However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

17.08.2015
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(DAYA CHAUDHARY)
JUDGE