

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

(1)

**CRM M-36730 of 2014.
Decided on : 28.11.2015.**

State of Haryana and another

...Petitioners

Versus

Ajay Bhardwaj

...Respondent

(2)

CRM M-37043 of 2014.

Jyotsana Bhardwaj

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

**Present : Mr. Deepak Sabharwal, Addl. AG, Haryana,
for the petitioners-State in CRM M-36730 of 2014.**

**Mr. Gaurav Mohunta, Advocate,
for the petitioner in CRM M-37043 of 2014.**

**Mr. V.K. Jindal, Sr. Advocate with
Mr. Manish Soni, Advocate,
for the respondent-Ajay Bhardwaj.**

JITENDRA CHAUHAN, J.

**This judgment shall dispose of afore-mentioned two
petitions bearing CRM M-36730 of 2014 titled as 'State of Haryana and
another vs. Ajay Bhardwaj' and CRM M-37043 of 2014 titled as
'Jyotsana Bhardwaj vs. State of Haryana and another' seeking**

cancellation of bail granted to the respondent, Ajay Bhardwaj in case bearing FIR No. 341 dated 26.7.2014 under Sections 376 and 506 IPC registered at Police Station Sushant Lok, Gurgaon by Additional Sessions Judge, Gurgaon vide order dated 6.8.2014 (Annexure P-2). CRM M-36730 of 2014 has been filed by the State of Haryana whereas CRM M-37043 of 2014 has been filed by the complainant.

On behalf of the State, it is submitted that the complainant had filed a complaint before the Police on 26.7.2014 stating that the respondent Ajay Bhardwaj had falsely informed her that he was a divorcee and proposed her for marriage in the year 2008. Since 2010, the complainant and the respondent, Ajay Bhardwaj had been living together and they also have two children (twins) from the relationship. Despite repeated requests made by the complainant to the respondent to marry her, he kept on delaying the matter on one pretext or the other. In 2013, when the complainant came to know that marriage of respondent Ajay Bhardwaj was still subsisting, she took the matter with the petitioner and his family, who threatened her of the dire consequences. In addition to this, sexual intercourse was committed forcefully upon her. On the complaint made by the complainant, the FIR in question, Annexure P-1 was registered against the respondent.

The respondent was arrested and ultimately released on regular bail vide order dated 6.8.2014 passed by the Additional Sessions Judge.

The grounds on which the cancellation of bail are

sought are that the respondent in a fit of rage abused and hit the complainant in the Court premises on 13.8.2014 when she had gone to bring her lawyer. She was saved by a person, namely, Vishal Yadav, son of Ranvir, who was present there. In that regard, another FIR No. 650 dated 14.8.2014 under Sections 323, 506 IPC was registered against the respondent. The complainant was medically examined by the Doctors at Civil Hospital, Gurgaon. Thus, the respondent has violated the conditions of bail granted to him as enumerated under Section 437(3) Cr.P.C

The cancellation of bail has also been sought on the ground that the Court below has erred in not taking into consideration the statement of the complainant recorded under Section 164 Cr.P.C. It has been further pleaded that the Additional Sessions Judge has committed an error in not taking into consideration the material fact that the respondent had never any intention of marrying the complainant and obtained her consent for sexual relationship under misconception of facts. Section 90 IPC states that the consent is not consent when the same is given under misconception of facts. Reliance in this regard has been placed on **(i) Deelip Singh @ Dilip Kumar vs. State of Bihar 2005 AIR (SC) 203, (ii) Uday vs. State of Karnataka 2003 AIR (SC) 1639 and (iii) Deepak Gulati vs. State of Haryana 2013 (3) RCR (Criminal) 96.**

Apart from that, the complainant in her petition

bearing CRM M-37043 of 2014 has pleaded that the respondent

deceived her into parting away with all her alimony which she received from her ex-husband amounting to Rs.29,60,000/- and also gold worth Rs.8 lacs for setting up his business. The respondent had withdrawn an amount of Rs.50,000/- on 12.5.2011 and Rs.1 lac on 14.5.2012 from the account of the complainant. Allegations of criminal breach of trust, criminal intimidation and cheating have been leveled and substantiated but the Police has registered FIR under Sections 376 and 506 IPC only. For addition of offences, she has moved another application before the Director General of Police, Panchkula.

Learned counsel for the complainant-petitioner refers to Annexure P-3, the FIR registered on 14.8.2014, under Section 323 and 506 IPC against the respondent. He further contends that during the pendency of earlier case, the respondent has threatened the petitioner with dire consequences and also caused injury to the complainant. In this regard, he refers to Annexure P-5, the MLR of the complainant. He further refers to Annexure P-6 the application moved by the complainant to the In-charge Police Post Khandsa Road, Gurgaon lodging grievance that after attending court proceedings, the respondent threatened to kill the complainant while sitting in the jeep. He further refers to Annexure P-5, the statement of ASI Kanwar Singh, reiterating the instance of 5.6.2015. Reliance has further been placed on the report of Sh. Saurabh Singh, the Joint Commissioner of Police, Gurgaon, Annexure P-6, placed on record by way of CRM No. 37787

of 2015, vide which the allegations of threat leveled against the

respondent was found to be correct. He further refers to Annexure-E, a visiting card of Chanchal Bhardwaj, sister of the respondent on which the reference of Bharti Arora as 'Bharti Di' has been made. He contends that in view of the intimacy of the accused with the Inquiry Officer, Bharti Arora, the Joint Commissioner of Police, Gurgaon, the report submitted in favour of the accused is inconsequential.

Per contra, the learned Senior counsel for the respondent contends that during trial, PW-2, Vishal Yadav, the alleged witness of subsequent FIR No. 650 dated 14.8.2014, registered at Police Station Civil Lines, Gurgaon (Annexure P-3) has turned hostile. He refers to Annexure R-2 the statement of PW-2, Vishal Yadav, before the Court and contends that once the witness has turned hostile, the veracity of the allegations levelled by the complainant qua threatening her cannot be accepted as a gospel truth. He further refers to Annexure R-3, the inquiry report dated 10.8.2015 submitted by Bharti Arora, IPS, Joint Commissioner of Police (Traffic), Gurgaon opining that the prosecution is motivated against the respondent Ajay Bhardwaj and his family. He further refers to an e-mail dated 7.8.2015 sent by Nitika Gupta, a witness in the main case, stating that she wanted to declare that the witness given by her to Jyotsna was under emotional pressure and whatsoever she had stated and agreed was untrue. She has never seen her with her in-laws. He further refers to another e-mail sent by Navdeep Singh Virk, IPS, Commissioner of Police, Gurgaon to the complainant. He contends that the way the e-

mail has been sent by the Commissioner of Police suggests that the Police is hand in glove with the complainant.

Learned State counsel submits that once the trial Court has framed the charges against the accused, the inquiry reports, one favouring the complainant and the other in favour of the accused, are meaningless because once the Court is seized of the matter, the subsequent inquiries conducted without the permission of the Court are of no consequence. He further submits that an application was moved by the accused that inquiry should be marked to Bharti Arora, Joint Commissioner of Police only. He contends that though the accused has right of fair investigation but he does not have any right to have the inquiry conducted from a particular officer. This fact itself vitiates the inquiry report submitted by Bharti Arora, IPS. Lastly, it is contended that turning hostile of witness Vishal Yadav is circumstance and a ground to cancel the bail.

I have heard learned counsel for the respective parties and have gone through the case files carefully.

Before this Court starts pondering over the contentious issues raised by the parties, let this Court make it clear 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 this case, the cancellation of bail is

mainly sought on the ground that after the grant of bail, the accused has misused it. The Hon'ble Apex Court in **CBI, Hyderabad vs. Subramani Gopalakrishnan and another 2011(2) RCR (Criminal) 946** has held as under:-

“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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.”

During the course of hearing, it has also come to the notice of this Court that the parties lived together in a relationship for two years from 2008 to 2010. In the year 2010, differences arose between the parties. The matter was compromised but the same could not fructify. In fact, the real bone of contention is failure of the respondent to transfer the properties in the name of complainant as per MOU dated 20.4.2013 which led to the registration of the present FIR. A perusal of Annexure-E shows that the accused has some kind of relation with the Inquiry Officer, Bharti Arora. Further, allegations have been levelled against the Inquiry Officer, who gave a report in favour of the complainant. So, both the inquiry reports are being ignored for the limited purpose of deciding the present petitions. The sole contention for cancellation of bail i.e. threatening the complainant falls to the ground with the solemn deposition of PW-2 Vishal Yadav before the Court, which is a strong circumstance in favour of the respondent. The witness has not stated anything about the alleged incident. The contentions of learned counsel for the parties are mainly based upon the reports of respective Police Officers. Once the reports of the Police Officers are ignored, there remains nothing on the record to substantiate the case of the petitioner. During the course of arguments, learned Senior counsel for the respondent places on record the order passed by the Hon'ble Apex Court which is marked as

Annexure R-3. He states that the complainant of present case has also

levelled allegations of rape against one NRI Mansher Singh Ghuman. On the petition filed by Mansher Singh Ghuman, the Hon'ble Apex Court vide Annexure R-3 has stayed the investigation of the case. The matter does not rest here, the complainant of present case also levelled allegations of molestation against the brother of her ex-husband. This Court would not like to discuss the merits of the allegations levelled in the FIR. It is for the trial Court to decide the lis after holding a detailed trial.

In a criminal case, the antecedents and conduct of an accused for grant of bail and cancellation thereof is a important and relevant consideration. The conduct of the person who approaches the Court for seeking some relief also assumes importance. In the present FIR, in which the cancellation of bail is sought, it has been alleged by the complainant herself that she met the respondent through her colleague as she was in need of help in her divorce case against her ex-husband. In 2008 when her divorce was about to finalize, Ajay Bhardwaj-respondent proposed her for marriage and made physical relation on the promise of marrying her. Before her divorce was finalized, she made physical relationship with the respondent. In other words, the marriages of both the complainant and the respondent were subsisting when they entered into relationship. Lest any expression of opinion made by this Court should affect the merits of the case pending before the competent Court, in the given context, it is suffice to say that

not a case where the priceless liberty of the respondent should be taken away. Therefore, no ground to cancel the bail is made out. Consequently, both the petitions are dismissed.

28.11.2015.
SN

(JITENDRA CHAUHAN)
JUDGE