

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-42160 of 2014

.....

Date of decision:20.1.2015

Shivani

...Petitioner

v.

State of Haryana and another

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh.**

.....

Present: Mr. Manoj Kaushik, Advocate for the petitioner.

Mr. Deepak Grewal, Deputy Advocate General, Haryana  
for the respondent-State.

Mr. Gurmohan Singh Bedi, Advocate for respondent No.2.

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**Inderjit Singh, J.**

This petition has been filed under Section 439(2) Cr.P.C. for cancellation of bail granted in FIR No.182 dated 2.8.2014 registered for the offences under Sections 376 and 506 IPC and (Sections 363, 366 and 342 IPC, which were added later on) at Police Station S.G.M. Nagar, District Faridabad, whereby the learned Additional Sessions Judge, Faridabad has wrongly entertained the second bail application without any fresh ground and has wrongly granted bail to respondent No.2/accused vide order dated 20.10.2014 (Annexure-P.3).

Notice of motion has been issued in this case.

Mr. Deepak Grewal, learned Deputy Advocate General,

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Haryana has put in appearance on behalf of the respondent-State and Mr. Gurmohan Singh Bedi, learned Advocate has appeared on behalf of respondent No.2/accused and contested this petition.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana appearing for the respondent-State as well as Mr. Gurmohan Singh Bedi, learned counsel for respondent No.2/accused and have gone through the record.

From the record, I find that in the above noted FIR, Manish Kapoor respondent No.2 filed first regular bail application in the Court of Shri D.R. Chalia, Additional Sessions Judge, Faridabad. The learned Additional Sessions Judge, Faridabad observed in para 7 of the order dated 30.9.2014 as under:-

“7. Perusal of file shows that there are allegations that applicant-accused has kidnapped the prosecutrix and committed rape upon her without her consent and also tender threat to kill her family members. Though, challan in this case has already been filed, but prosecutrix and other witnesses are yet to be examined. Apprehension of the prosecution that the applicant-accused may abscond and/or try to over-aw (sic. - overawe) the prosecution witnesses does not seem unjustified. Therefore, without commenting on the merits of the case, the bail application is dismissed. File be consigned to record room after due compliance.”

Again the second bail application was filed in the same Court by the

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same accused on 17.10.2014, which was decided on 20.10.2014 by giving the following findings:-

“7. There are allegations that applicant-accused has kidnapped the prosecutrix and committed rape upon her without her consent and also tender threats to kill her family members. Perusal of file further shows that earlier bail application has already been dismissed, but same was filed by the applicant-accused prior to filing of challan. Now challan has been filed and one witness has already been examined. Learned defence counsel has produced certificate issued by Dr. P.K. Maggu, Apurva Hospital, Faridabad, regarding hospitalization of his mother who is seriously ill. It cannot be presumed that applicant-accused if released on bail would tender threats to the prosecution witnesses. Applicant-accused continuing in judicial custody since 2014 and no useful purpose would be served to keep the applicant-accused in judicial custody as trial of the case is likely to take long time. Hence, without commenting anything on the merits of the case, bail application in hands is allowed and applicant-accused is admitted to bail in furnishing bail bonds in the sum of Rs.50,000/- with one local surety in the like amount to the satisfaction of this court. Papers be tagged with the main file.”

A perusal of both the orders shows that on 30.9.2014, the learned

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Additional Sessions Judge, Faridabad, held that though challan in this case has already been filed, but the prosecutrix and other witnesses are yet to be examined. There is also every apprehension of the prosecution that the applicant-accused may abscond and/or try to overawe the prosecution witnesses does not seem unjustified and the bail application was dismissed. Just within 20 days, it is the same Additional Sessions Judge, who granted bail by stating that now challan has been filed and one witness has already been examined. The findings of the learned Additional Sessions Judge vide order dated 20.10.2014 that earlier bail application has been filed prior to filing of the challan are incorrect because in the order itself, it has been written that at that time challan has already been filed. There is nothing in this order whether the prosecutrix has been examined or not. As regards, prosecutrix has not been examined so far, there is nothing in the order dated 20.10.2014 that if the bail is granted whether the accused will not abscond or he will not tamper with the evidence. In the earlier order dated 30.9.2014, the Additional Sessions Judge has stated that there are allegations that applicant-accused has kidnapped the prosecutrix and committed rape upon her without her consent and also tendered threats to kill her family members. But, nothing has been discussed in the order dated 20.10.2014 to show whether now there is no threat to the family members of the prosecutrix. A perusal of the order dated 20.10.2014 shows that the Additional Sessions Judge, Faridabad within 20 days of passing the first order rejecting the bail application has granted the bail to the accused-respondent No.2 without

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there being any changed circumstances. Nothing has happened within these 20 days to change the view by the same Additional Sessions Judge, Faridabad for granting the bail. On the face of it, it looks that this order is not as per law, is illegal and has been passed for extraneous considerations. The mere fact that a certificate has been produced by the accused-respondent No.2 regarding hospitalization of his mother, who is seriously ill cannot be a ground for grant of regular bail. If the Court was satisfied that the mother of the accused/respondent No.2 was so seriously ill and the presence of the accused was required in the hospital, then interim bail could have been granted on that ground, but a perusal of the order dated 20.10.2014 itself nowhere shows that the presence of the accused-respondent No.2 was necessary and there is no other person to look after her.

In view of the above discussion, I find that the order dated 20.10.2014 passed by the learned Additional Sessions Judge Faridabad granting bail within 20 days after the decision of the first bail application rejecting bail to the accused-respondent No.2 cannot be sustained. The observation of the Court in the order dated 20.10.2014 that it cannot be presumed that the applicant-accused (respondent No.2 herein) if released on bail would tender threat to the prosecution witnesses is totally contradictory with the order passed on 30.9.2014.

Therefore, finding merit in the petition filed under Section 439(2) Cr.P.C, the same is accepted. The order dated 20.10.2014 is set aside. Respondent No.2-accused Manish Kapoor is directed to surrender

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before the Court of learned Additional Sessions Judge, Faridabad immediately otherwise, the Court will get him arrested by issuing non-bailable warrants.

In view of the above discussion, I find that this matter be put up before Hon'ble the Acting Chief Justice to get the matter inquired and for taking necessary action.

January 20, 2015.

**(Inderjit Singh)**  
**Judge**

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