

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

Crl. Misc. No.M-14059 of 2015
Date of Decision: 04.05.2016

Kiran Bala

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the 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. A.P.S. Rehan, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. A.G., Punjab
for the respondent-State.

Mr. Vipin Mahajan, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

This petition has been filed under Section 439(2) read with Section 482 Cr.P.C for cancellation of anticipatory bail granted to respondent No.2 vide order dated 18.09.2013 passed by Additional Sessions Judge, Gurdaspur, in case, FIR No.175 dated 13.12.2006 registered under Sections 498-A and 406 IPC at Police Station City Gurdaspur.

Briefly, the facts of the case are that the petitioner and respondent No.2 solemnized marriage on 18.01.2003. However, on the basis of complaint made by the petitioner, the FIR, in question, was registered, wherein, certain allegations of demand of dowry and harassment were alleged. Respondent no.2 was declared as a proclaimed

offender by the Chief Judicial Magistrate, Gurdaspur vide order dated 03.11.2007 and thereafter, he filed a petition under Section 438 Cr.P.C for grant of anticipatory bail. Learned Additional Sessions Judge, Gurdaspur directed respondent No.2 to surrender before the trial Court within a period of seven days and in case of his surrender, he was ordered to be released on bail on his furnishing bail/surety bonds to its satisfaction with certain conditions. A finding was also recorded that the accused was declared as a proclaimed offender and challan was presented at his back but he never appeared in the Court and jumped the bail. He was to join the proceedings and accordingly, he was directed to surrender before the trial Court.

The present petition has been filed for cancellation of bail contending therein that respondent No.2 was declared as a proclaimed offender and in spite of that, anticipatory bail was granted to him, whereas, he was not entitled for the same.

Learned counsel for the respondent-State submits that after surrender, respondent No.2 was released on interim bail and he never misused the concession of bail. The intention of the Court while passing the order of interim bail was to seek the presence of respondent No.2.

The cancellation of bail has been sought only on the ground that respondent No.2 was declared as a proclaimed offender. It is not disputed that the challan was presented and respondent No.2 was required by the Investigating Agency during investigation. Even the factum of declaring respondent No.2 as proclaimed offender was also mentioned in the bail application. On issuing direction to surrender before the trial Court, the period of more than two years was passed and that concession was never been misused by respondent No.2.

Undisputedly, there are different parameters for grant of bail and cancellation of bail. It has been held in various judgments of Hon'ble

the Apex Court as well as of this Court that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Once the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether any circumstances are there to show that he has misused the concession of bail or jumped the bail. Certain principles have also been laid down in judgment of Hon'ble the Apex Court in case **Abdul Basit @ Raju and others etc. vs Mohd. Abdul Kadir Chaudhary and another 2015(1) SCC (Criminal) 257**, which are as under :-

“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 be arrested and committed to custody, i.e the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are (1) 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.”

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 specific factors, which have to be considered before granting bail, have been mentioned in another judgment titled as ***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 existence 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, it cannot be cancelled. It can 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 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.”

In case, 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 indulges 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 non-application 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 Hon'ble the Supreme 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 by large be 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)”

In the present case, none of the conditions has been violated.

Even the petitioner has failed to show that respondent No.2 has ever misused the concession of bail or tampered with the evidence after grant of interim bail by the Additional Sessions Judge, Gurdaspur on 18.09.2013. The only ground for cancellation of bail is that respondent No.2 was declared as a proclaimed offender whereas this fact was mentioned in the bail application also. Moreover, no purpose would be served, in case, respondent No.2 is sent to jail.

In view of the facts and law position as explained above, 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.

04.05.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE