

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

Crl. Misc. No.M-16214 of 2014

Date of Decision: 11.08.2016

Sumitra DeviPetitioner
Versus
State of Haryana and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gulshan Mehta, Advocate
for the petitioner.
Mr. Rama Kant Sharma, A.A.G., Haryana
for the respondent-State.
Mr. R.N. Lohan, Advocate
for respondent No.2.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed under Section 439(2) Cr.P.C for cancellation of regular bail granted to respondent No.2 in ***Criminal Misc. No.M-6310 of 2013*** vide Order dated 09.09.2013 in case FIR No.108 dated 22.05.2012 for offence under Sections 302/328/342/148/149/323/325 IPC at Police Station Agroha, District Hisar.

Learned counsel for the petitioner submits that a wrong statement was made by respondent No.2 that not even a single witness has been examined by the prosecution, whereas, the statements of four witnesses were recorded at that time. Accused-respondent No.2 also threatened the complainant party. A complaint was also made to the police authority but no action was taken thereupon.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Panchanan Mishra vs Digambar Mishra 2005(1) RCR (Criminal) 712*** in support of his arguments.

Learned counsel for the respondent-State, on instructions from

Sub Inspector Ram Chander, submits that all prosecution witnesses have been examined and now the case is fixed for recording of statement of the accused.

Learned counsel for respondent No.2 submits that only two formal witnesses were examined. A false complaint has been made just to file a petition for cancellation of bail, whereas, no threat was ever given.

Heard the arguments of learned counsel for the petitioner as well as learned counsel for respondent No.2 including the submissions made by learned counsel for the respondent-State.

While granting bail on 09.09.2013, the following order was passed :-

“ Learned counsel for the respondent-State has opposed the bail but has not disputed the custody period as well as recording of even a single prosecution witness.

In view of the submissions made by learned counsel for the petitioner and keeping in view the facts that allegations against the petitioner are that she along with other accused gave danda blows but no specific injury has been attributed to her; husband of the petitioner, who was one of the co-accused, has expired during pendency of proceeding; no elder member is there in the family to look after minor grandchildren; petitioner is widow of more than 63 years of age and is in custody since 26.05.2012 and out of total 32 PWs not even a single witness has been examined and as per proviso of Section 437 Cr.P.C., lenient view is to be taken, being a woman accused of 63 years of age, the present petition is allowed. Petitioner-Chando Devi is directed to be released on bail on furnishing bail and surety bond to the satisfaction of trial Court.”

The bail was granted not only on the ground that no witness had been examined but other factors were also taken into consideration like the husband of respondent No.2 was one of the accused, who died during pendency of the proceedings while he was in custody; two sons of respondent No.2 were also in custody and no elder member was there in the family to look after the grandchildren, who were minor; respondent No.2 was widow of more than 63 years of age and no specific role was attributed to her. Moreover, she was in custody since 26.05.2012. As on today, all witnesses have been examined and now there is no possibility that respondent No.2 may influence the complainant party while on bail.

Keeping in view the order passed by this Court while granting bail to respondent No.2 and the reasons recorded therein, no ground is made out to cancel the bail. The factors to be taken into consideration for grant of bail and cancellation of bail are totally different. Simply on the ground that the statement was wrongly got recorded to the effect that not even a single witness had been examined, the other factors which were taken into consideration could not be ignored.

Accordingly, by considering the role of respondent No.2 and other circumstances as mentioned above while granting her bail, no ground is made out to cancel the bail. The petition, being devoid of any merit, is hereby dismissed.

However, in case, any complaint is moved by the petitioner, the local police is directed to consider the same.

(DAYA CHAUDHARY)
JUDGE

11.08.2016

gurpreet

Whether speaking/reasoned

Whether Reportable

Yes

Yes