

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.23124 of 2016
Date of decision: 13.07.2016

Neha

... Petitioner

vs.

State of Haryana & another

... Respondents

CORAM : HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

Present : Mr. Vimal Kumar Gupta, Advocate for the petitioner

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ANITA CHAUDHRY, J.(ORAL)

The petitioner is seeking cancellation of bail allowed to respondent No. 2 in FIR No. 41 dated 07.06.2016 under Sections 498A, 406, 323, 354, 376, 506, 34 IPC registered at women police station, Yamuna Nagar.

Neha was married to Gaurav in April 2014 and the FIR was registered against the husband, his parents, brother-in-law and sister-in-law. The complainant made allegations of the rape against the father-in-law. That incident is said to have taken place on 22.8.2015. The FIR was lodged nine months later. The trial Court allowed bail to the husband on 24.6.2016.

The petitioner is seeking cancellation of bail on the ground that the offence was triable by the Sessions Court and the Magistrate should not have allowed bail to respondent No. 2.

Learned counsel for the petitioner contends that the allegations under Section 376 IPC have been levelled and the case was triable by the Sessions Court and objection has been raised before the Magistrate that the husband had good relations with senior police officials and would misuse the concession of bail but the Magistrate allowed the bail despite their opposition.

Administration Vs. Sanjay Gandhi AIR 1978 SC 961 and Raghbir and another Vs. State of Bihar AIR 1987 SC 149, which deals with the grounds on which bail can be cancelled under Section 439(3) Cr. P. C. In Sanjay Gandhi's (supra) case it was held that rejection of bail is one thing and cancellation of bail already granted is quite another.

Cancellation of bail necessarily involves review of a decision already made and can be large be permitted only if by reasons of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during trial.

In *Raghbir Singh's* case (supra) it was held that the grounds for cancellation under Section 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where: (i) 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) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency and (vii) attempts to place himself beyond the reach of his surety, etc. It was held that rejection of bail stood on one footing but cancellation of bail was a harsh order as it interfered with liberty of the individual and could not be lightly resorted to. The petition is dismissed.

Perusal of the FIR shows that the allegations against the husband are under Sections 406, 498A, 323, 506, 34 IPC. These offences are triable by the Magistrate. The allegations under Section 376 IPC are against the father- in-law which are being investigated.

The petition is dismissed as not maintainable.

(ANITA CHAUDHRY)
JUDGE

July 13, 2016