

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25596-2015 (O&M)

Date of decision: 13.12.2016

Sardara Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ankur Mittal, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab
assisted by HC Balbir Singh.

Mr. H.S.Randhawa, Advocate for
Mr. P.S.Ahluwalia, Advocate for respondent Nos.2 and 3.

Jitendra Chauhan, J. (Oral)

CRM-29360-2016

Application is allowed as prayed for.

Annexures R1 and R-2 are taken on record subject to all just exceptions.

CRM-24565-2015

Application is allowed as prayed for.

Annexures P-1 to P-11 are taken on record subject to all just exceptions.

CRM-33496-2016

Application is allowed as prayed for.

Annexure P-12 is taken on record subject to all just exceptions.

CRM-M-25596-2015

The instant petition has been preferred under Section 439 (2)

Cr.P.C. seeking cancellation of anticipatory bail granted to respondent Nos.2 and 3 by learned Sessions Judge, SBS Nagar vide order dated 11.09.2014 (Annexure P-2) in FIR No.31 dated 27.08.2014 registered under Sections 420, 465, 467, 468, 471 and 120-B of Indian Penal Code at Police Station City Banga, District SBS Nagar.

Learned counsel for the petitioner contends that accused-respondent Nos.2 and 3 after having been granted pre-arrest bail, have been extending threats to the petitioner for withdrawal of the case. He further contends that petitioner is not in a position to pursue his case due to continuous telephonic threats and false complaints made by respondent Nos.2 and 3 against him. Learned counsel further refers to Annexure P-12 i.e. copy of application under Section 437(5) and 439(2) Cr.P.C. filed by the petitioner before learned Sessions Judge, SBS Nagar to contend that there was real threat to the life of the petitioner. The police had also initiated preventive proceedings under Sections 107 and 151 of Cr.P.C against the accused persons/respondent Nos.2 and 3.

On the other hand, learned State counsel on instructions states that there is no truth in the allegations of the petitioner and opposes the cancellation of bail application.

Learned counsel appearing on behalf of respondent Nos.2 and 3 submits that all the material witnesses in the present case stand examined and only the official witnesses remain to be examined, therefore, respondent Nos.2 and 3 being ladies cannot cause any interference in the process of law. He further submits that bail cannot be cancelled on the ground that any

threat has been caused to the petitioner and in case, any threat is there to the petitioner, he is at liberty to move representation to the authorities concerned. In support of his contentions, he has placed reliance upon **Madan Lal Vs. State of Haryana and another, 2016 (3) R.C.R. (Criminal) 620 (P&H)**. He has further relied upon **Devinder Singh Vs. Harbans Singh 1999 (3) R.C.R. (Criminal) 325(P&H)** and urged that cancellation of bail sought after more than one year of grant of bail, is a factor to be taken into consideration in favour of the accused.

I have heard learned counsel for the parties and perused the record.

In **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr., 2004 (2) R.C.R.(Criminal) 254: 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 circumstance, 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.”

A three-member Bench of this Court in *State (Delhi Administration) V. 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 by and 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.”

In the instant case, nothing has been brought on record to substantiate the fact that respondent Nos.2 and 3 are misusing the concession of bail granted to them. Otherwise also, telephonic conversation which was recorded in the CD by the petitioner was only between one Jaspinder Singh @ Jassa and the petitioner and the conversation was initiated only by the petitioner himself. Both respondent Nos.2 and 3 were not involved in the conversation.

Moreover, in view of the law laid down in *Madan Lal's case* and *Devinder Singh's case* (supra), no case for cancellation of bail is made out at this stage.

Furthermore, the petitioner cannot avail the benefit of Annexure P-12 i.e. copy of application under Section 437(5) and 439(2) Cr.P.C. filed by him before learned Sessions Judge, SBS Nagar, since the grounds taken before learned Sessions Judge and this Court are different. The petitioner is now estopped from taking the grounds which were already available to him before learned Sessions Judge but were not taken by him for the reasons best known to him. Therefore, he cannot be now allowed to set up a new case before this Court since he has not approached this with clean hands.

Consequently, the instant petition is devoid of merit and is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

December 13, 2016

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No