

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.29642 of 2016 (O&M)
Date of decision : 08.09.2016

Dalvar Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Gurcharan Dass, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, Addl. AG, Punjab.

AJAY TEWARI, J. (Oral)

This is a petition for cancellation of bail on the ground that the bail was obtained by the respondent by misleading this Court by fabricating a document.

At the very outset, I confronted the learned counsel for the petitioner with the judgment of the Supreme Court in the matter of *Abdul*

Basit @ Raju and others etc. Vs. Md. Abdul Kadir Chaudhary and

another reported as 2015 (1) SCC (Cri) 257, wherein it was held as follows :-

20. In Gurcharan Singh case (supra) this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short, “old Code”) and elucidated the position of law vis-à-vis powers of the Courts granting and cancelling the bail. This Court observed as under:

“16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498, Cr.P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under Sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High

Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 489(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIIL by any Court including the Court of Session to custody, if it thinks appropriate to do so, it must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused, person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it

is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”

21. In this context, it is profitable to render reliance upon the decision of this Court in **Puran v. Rambilas and Anr., 2001 (2) RCR (Criminal) 801 : (2001) 6 SCC 318**. In the said case, this Court held that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from the cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In **Dr. Narendra K. Amin v. State of Gujarat and Anr., 2008 (2) RCR (Criminal) 858 : 2008 (3) Recent Apex Judgments (RAJ) 339 : (2008) 13 SCC 584**, the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran* case (*supra*) has observed that when irrelevant materials have been taken into consideration by the Court

granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate Court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same Court.

22. *Reverberating the aforesaid principle, this Court in the recent decision in **Ranjit Singh v. State of M.P. and Ors., 2013 (4) RCR (Criminal) 600 : 2013 (5) Recent Apex Judgments (RAJ) 492 : 2013 (12) SCALE 190** has observed that:*

“20....There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.”

23. *Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of*

being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court.

24. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the Court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.”.....

30. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the accused-petitioners. Even though the cancellation of bail rides on the satisfaction and discretion of the Court under Section 439(2) of the Code, it does not vest the power of

review in the Court which granted bail. Even in the light of fact of misrepresentation by the accused-petitioners during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

31. Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction onto itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside.”

Learned counsel has relied upon the judgment of this Court in the matter of **State of Punjab Vs. Paramjit Singh Chahal, 2015 (4) RCR (Criminal) 724** to contend that in this case this Court had cancelled the bail granted by itself after noticing the judgment in ***Abdul Basit @ Raju (supra)***. It may be mentioned here that in that case a Single Judge had originally granted anticipatory bail and that order was challenged by the State of Punjab before the Supreme Court wherein it was held as follows :-

“We accordingly dispose of the special leave petitions reserving liberty to the petitioners to approach the Division Bench before whom the writ petitions mentioned above and

connected matters are listed for hearing. We make it clear that even the State of Punjab shall be free to approach the Division Bench for cancellation of the bail granted to Jagjit Singh Chahal and Parmjit Singh Chahal, if so advised.”

It was thereafter that the matter was referred to the Division Bench of this Court who then cancelled the bail.

In these circumstances, the case of ***State of Punjab Vs. Paramjit Singh Chahal (supra)*** has to be held to be distinguishable.

The petition is accordingly dismissed as not maintainable before this Court.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

08.09.2016
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No