

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

Crl. Misc. No. M-35720 of 2016

Date of Decision:- 15.12.2016

Charanjeet Singh

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashok K. Khunger, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

This application has been moved under Section 439(2) Cr. P.C. for cancellation of bail granted by this Court vide order dated 30.3.2016 to respondent No. 2 in case FIR No. 154 dated 23.09.2015 under Sections 305, 306/34 IPC registered at Police Station City Sri Muktsar Sahib.

Petitioner was married with one Sarabjeet Kaur in the year 1997 and out of the said wedlock, one daughter namely, Jaspreet Kaur was born. A matrimonial dispute arose between them and they filed a petition under Section 13-B of the Hindu Marriage Act for grant of divorce with mutual consent, which was allowed and divorce was granted in the year 2002. Thereafter, the petitioner solemnized second marriage with respondent No. 2-Kirandeep Kaur in the year 2003 and out of said wedlock,

one son, namely, Parminder Singh was born. After the birth of Parminder Singh, the dispute arose between petitioner and respondent No.2 and also due to harassment at the hands of respondent No.2, her mother and sister. Jaspreet Kaur, the daughter of the petitioner, committed suicide on 20.9.2015. Thereafter, on the basis of statement of petitioner, FIR No. 154 dated 23.9.2015 was lodged under Sections 305, 306/34 IPC against respondent No.2 and other co-accused at Police Station, City Sri Muktsar Sahib. After lodging of said FIR, respondent No. 2 and her mother Gurmeet Kaur were arrested and challan was presented against them. However, other accused were not challaned by the police as they were found innocent. Subsequently, respondent No. 2 approached this Court for grant of anticipatory bail by filing Crl. Misc. No. M-114 of 2016, which was allowed vide order dated 30.3.2016. Thereafter, charges were framed against respondent No. 2 and other co-accused and the examination-in-chief of the petitioner and prosecution witness Gural Singh was also recorded. Thereafter, the prosecution filed an application under Section 319 Cr.P.C. for summoning of co-accused, namely, Kulwinder Kaur and Manpreet Singh as an additional accused.

The present petition has been filed by petitioner-husband for cancellation of bail of his wife-respondent No. 2 on the ground that she, in order to put pressure upon him, she came at his house and torn her clothes and made a false and frivolous complaint to the police for lodging of case against the petitioner and others so that he and other prosecution witnesses may not depose against her. Learned counsel further submits that complaint was inquired into by the Deputy Superintendent of Police and the

allegations were found to be false. At the end, learned counsel for the petitioner submits that bail granted to respondent No.2 is liable to be cancelled as she is misusing the concession of bail granted by this Court vide order dated 30.3.2016.

Heard arguments of learned counsel for the petitioner and have also perused the order of grant of bail by this Court in Crl. Misc. No. M-114 of 2016 on 30.3.2016, which is reproduced as under:

“This petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.154 dated 23.09.2015 registered under Sections 306/34 IPC (offence under Section 305 IPC added later on) at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case. Neither any suicide note was left by the deceased nor any other connecting evidence is there to show the involvement of the petitioner. The FIR has been registered by the complainant, who is the police official. Not only, the challan has been presented but charge has also been framed and the complainant, being police official, cannot be influenced by the petitioner, who is a lady. Learned counsel further submits that the petitioner is behind bars since 24.09.2015 and trial may take long time to conclude.

Learned counsel for the respondent-State has not disputed the custody period as well as the fact that the complainant is a police official.

In view of the submissions made by learned counsel for the petitioner that the petitioner is in custody since 24.09.2015 and there is no possibility that she may influence the complainant; other witnesses are formal witnesses and trial may take long time to conclude, the present petition is allowed and the petitioner is directed to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court.”

On perusal of said order, it has transpired that FIR was registered at the instance of the complainant, who is a police official, whereafter, challan was presented and charges were also framed. It was also recorded therein that the complainant being police official, cannot be influenced by the petitioner, who is a lady and moreover she was behind the bars since 24.09.2015. Now, as on today, the statement of the petitioner has also been recorded. The prayer of the petitioner is for cancellation of bail already granted by this Court on 30.3.2016 only on the ground that respondent No. 2 may misuse the concession of bail as complaint was made just to put pressure on them, whereas, there is nothing on record to show that any threat was ever given to the petitioner. Moreover, during the pendency of the trial, an application has been moved by prosecution under Section 319 Cr.P.C. for summoning the persons who were put in column No.

2 of the challan as an additional accused.

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 nonbailable 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 (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) 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 or 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 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.

(Emphasis supplied)”

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

Even the petitioner has failed to show as to how respondent No.2 has

misused the concession of bail or tempered with the evidence after the grant of bail. Moreover, no purpose would be served in case respondent No.2 is sent to jail by cancelling the bail as trial is likely to take some time and the application for summoning of additional accused under Section 319 Cr.P.C. has also been moved.

Accordingly, keeping in view the facts, circumstances 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.

December 15, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned **Yes**

Whether reportable **Yes**