

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-39584 of 2015

Date of decision : 17.05.2016

Manisha Sharma

... Petitioner

versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. I.S. Pabla, Advocate for the petitioner

ANITA CHAUDHRY, J. (ORAL)

The petitioner is seeking cancellation of bail allowed to respondent No. 2.

Few facts are essential. The petitioner had given a complaint upon which FIR No. 250 was registered on 24.7.2014 . The petitioner has alleged that the SHO concerned had twisted the facts while registering the FIR and had deleted the allegations of rape and the allegations regarding the MMS recorded by the accused and she had moved an application to the senior officers. The petitioner claims that the accused had filed an application for anticipatory bail which was dismissed as withdrawn and he had surrendered before the trial Court and had applied for regular bail which was allowed on 24.09.2015 but the Court had granted bail by referring to wrong facts and therefore, the bail should be cancelled.

The petitioner was asked to make his submissions regarding maintainability of the petition.

Learned counsel for the petitioner urges that wrong facts were

presented and bail was allowed and they are noted in para 5 of the order. The counsel urges that the Court had noted that no obscene photographs were retrieved but the fact was that the data could not be extracted as set was not available in the device manual of XRY Software.

It would be necessary to reproduce para 5 of the order which reads as under:-

“It has been brought to the notice of the court that earlier on the basis of mobile phone recovered from accused no obscene photographs were retrieved and therefore, offences under Sections 384 and 328 of Indian Penal Code were deleted in this case. Though, prosecutrix in her subsequent statement recorded under Section 164 of Code of Criminal Procedure has levelled allegations that her obscene photographs were clicked by the accused, however again no such data has been retrieved by the police in this case. Supplementary challan filed against the accused also nowhere contains any such alleged obscene photographs of the victim. The fact as to why prosecutrix has been not initially levelled accused under Sections 376,377 of Indian Penal Code, are yet to be adjudicated at trial. At this stage wherein from the initial version of prosecutrix, it has come that she has not levelled allegations of her ravishment or unnatural intercourse against the accused, rather she herself had given in writing that she is not willing for her medical examination. Subsequent allegation levelled by her need adjudication at trial. Moreover, there is much delay in registration of First Information Report. Accused is languishing in jail since 04.09.2015. He is stated to be a student of M.B.B.S. The trial is likely to take time.

The copy of the FIR is available on record as Annexure P-2 wherein no allegations of rape or taking of MMS were contained. It is subsequently that the complainant has levelled those allegations. The complainant was not ready for her medical examination and considering all the circumstances bail was allowed to the accused.

It is necessary to refer to two decisions of the Supreme Court i.e. ***Delhi Administration Vs. Sanjay Gandhi AIR 1978 SC 961 and Raghubir 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 by 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 ***Raghubir Singh's*** case (supra) it was held that the grounds for cancellation under [Sections 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) 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 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 the liberty of the individual and could not be lightly resorted to.

The petitioner has sought cancellation of bail on grounds which are not available.

The petition is dismissed as being not maintainable.

(ANITA CHAUDHARY)
JUDGE

May 17, 2016
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