

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

Crl. Misc.-M No.42047 of 2014 (O&M)
Date of Decision: 08.12.2016

Rajni ...Petitioner
Versus

State of Punjab and another ...Respondent

with

Crl. Misc.-M No.42052 of 2014(O&M)

Rajni ...Petitioner
Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Nirbhay Garg, Advocate
for the petitioner(s).

Mr. Deep Singh, A.A.G. Punjab,
counsel for the respondent-State.

Mr. Sham Lal Bhalla, Advocate
for respondent(s) no.2.

ANITA CHAUDHRY, J.

By this order, I propose to dispose off two petitions filed by the complainant seeking cancellation of anticipatory bail granted to the private respondents.

The counsel for the petitioner urges that bail allowed to the petitioners should be cancelled as dowry articles had not been recovered. He also says that there are chances of settlement and the matter be sent for mediation.

The counsel for the private respondents urges that these petitions are pending since 2014 and the petitioner side had been asking for adjournments and the previous orders are evidence to this fact and costs were also imposed. The counsel refers to ***Devender Kumar & Anr. Vs. State of Haryana & Ors. 2010(6) SCC 753*** and urges that non-recovery of dowry articles is not a ground to cancel the bail and there appear to be no chances of mediation now.

Anticipatory bail had been allowed to the private respondents by the Additional Sessions Judge. There are no allegations that after the bail was allowed, it has been mis-used or any attempt has been made by the private respondents to tamper with evidence.

It is necessary to refer to two decisions of the Supreme Court i.e ***Delhi 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 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.

In ***Devender Kumar's*** case (supra), the Apex Court had held:-

“Bail had been granted to the appellants by the learned Magistrate, Palwal, on 10th October, 2008 and as indicated hereinbefore, there is no allegation that the same had been misused or that any attempt had been made after the appellants were granted bail to recover the articles alleged to have been given to the appellant no.1 at the time of marriage with the complainant. The reason given by the High Court for cancellation of the orders granting bail and directing the arrest of the appellants on the ground that disclosures have been made by the appellants and that their police custody was necessary for recovery of the same, is in our view, not sufficient for the purpose of cancellation of bail granted earlier.”

In my opinion, non-recovery of the articles is not a valid
ground for cancellation of bail. Both the petitions are dismissed as not
maintainable.

08.12.2016

'Sunil'

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No