

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-5293 of 2015 (O&M)

DATE OF DECISION: 04.04.2016

Ekta

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Arpandeeep Narula, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Gourave Bhayyia Gilhotra, Advocate
for respondent No.4.

DAYA CHAUDHARY, J.

Crl. Misc. No. 31176 of 2015

This application has been filed for placing on record Annexures P-11 to P-16.

Application is allowed and Annexures P-11 to P-16 are taken on record.

Crl. Misc. No. M-5293 of 2015

The present petition has been filed under Section 439 (2) read with Section 482 Cr.P.C. for cancellation of regular bail granted to respondent No.4 by Judicial Magistrate Ist Class, Ludhiana in case FIR No. 91 dated 6.9.2013 registered under Sections 406,498-A IPC at Police Station Women Cell, District Ludhiana.

Learned counsel for the petitioner contends that a wrong

statement was made by the Investigating Officer that recovery has been effected, whereas, all the dowry items were not recovered.

Learned State counsel submits that it has specifically been mentioned in the order passed by the Court below while granting bail that recovery was effected as per recovery memo and thereafter a statement was made that the accused was not required by the investigating agency.

The allegations levelled in the FIR are disputed questions of fact and the same can be decided during trial and it cannot be said at this stage as to whether actually the dowry articles as mentioned in the complaint/FIR were given or not. Even the plea regarding the payment of amount in cash is also an allegation, which is also matter of evidence. The bail granted to respondent No.4 cannot be cancelled simply on this ground that some of the dowry articles were not recovered. Moreover, now the challan has been presented, charges have also been framed and the case is fixed for recording of statements of PWs.

The ground for granting the concession of bail and for cancellation of bail are totally different.

It has been held in various judgments of this Court as well as of Hon'ble the Supreme Court that bail can be cancelled in case, the order of bail is perverse and the same has been passed by ignoring the evidence on record or by taking into consideration irrelevant material.

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 as 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."

Hence if the person to whom the bail has been granted either tries to interfere with the course of justice or attempts to tamper with the 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, whereas, cancellation of bail is a harsh order because it takes away the liberty of an individual 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 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 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 view of the facts 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.

April 04, 2016
pooja

(DAYA CHAUDHARY)
JUDGE