

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

**Criminal Misc. No. M-5369 of 2015
Date of decision: 23.09.2016**

Hardeep Singh

..Petitioner

Versus

Gurmeet Singh @ Kala and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for respondent No.1.

Mr. Avinit Avasthi, AAG, Punjab
for respondent No.2-State.

Daya Chaudhary, J.

The present petition has been filed under Section 439(2) Cr.P.C. for cancellation of anticipatory bail granted to respondent No.1 by this Court vide order dated 19.12.2014 (Annexure P-1) in case FIR No.48 dated 09.08.2014 registered under Sections 307, 325, 323, 427 and 506 of Indian Penal Code at Police Station Nandgarh, District Bathinda.

The aforesaid FIR was registered at the instance of the petitioner against respondent No.1, who moved an application for grant of anticipatory bail before the Sessions Court, Bathinda, which was dismissed by Additional Sessions Judge, Bathinda vide order dated 09.09.2014. Aggrieved by said order passed by Additional Sessions Judge, Bathinda, respondent No.1 moved Criminal Misc. No. M-37994 of 2014 before this Court under Section 438 Cr.P.C. for grant of anticipatory bail and interim bail was granted to him vide order dated 10.11.2014, which was made absolute vide order dated 19.12.2014.

Learned counsel for the petitioner submits that the petitioner

was abused and threatened by respondent No.1 to face the dire consequences just to put pressure upon him so that he may not give evidence against him in the Court. The complaint was made to the Police authorities and proceedings under Sections 107 and 151 Cr.P.C. were initiated against respondent No.1. Learned counsel further submits that respondent No.1 has misused the liberty granted to him by giving threat to the petitioner and as such, he is not entitled for concession of bail. Learned counsel also submits that respondent No.1 has violated the terms and conditions, which have been imposed upon him while granting interim bail. Learned counsel for the petitioner has also relied upon judgments of Hon'ble the Supreme Court in ***Mehboob Dawood Shaikh vs. State of Maharashtra, 2004(3) RCR (Criminal) 343, Ram Govind Upadhyay vs. Sudarshan Singh, 2002(2) RCR (Criminal) 250, Mandata Singh vs. State of Rajasthan and another, 2004(2) RCR (Criminal) 14*** as well as judgment of this Court in ***Ram Singh vs. State of Haryana and others, 2005(1) RCR (Criminal) 36*** in support of his contentions.

Learned counsel for respondent No.1 opposes the submissions made by learned counsel for the petitioner and submits that respondent No.1 was discharged in the proceedings initiated under Sections 107 and 151 Cr.P.C., which shows that a false complaint was made. Learned counsel for respondent No.1 has also relied upon judgment of this Court in ***Surinder Kaur vs. Kashmir Singh and another, 1994(4) CCR 2430*** wherein the accused was arrested and was released on bail. Thereafter, he threatened the complainant and her minor son, who was 14 years of age. The incident was reported to the Police and thereafter, the accused was discharged after taking up the proceedings under Sections 107 and 151 Cr.P.C. It was held

that the accused did not misuse the concession of bail and the petition for cancellation of bail was dismissed.

Heard arguments of learned counsel for the parties and have also perused the order of granting interim bail by this Court.

The complainant made a complaint to the Police and proceedings under Sections 107 and 151 Cr.P.C. were initiated against respondent No.1. The ground raised for cancellation of bail is that respondent No.1 has misused the concession of bail and as such, his bail be cancelled. The stand of respondent No.1 is that proceedings under Sections 107 and 151 Cr.P.C. were initiated against him but subsequently, he was discharged as the proceedings initiated against him were found to be without any base, which shows that the complaint was made falsely just to get his bail cancelled. The power to take back an accused in custody, who has been enlarged on bail, is to be exercised with care and circumspection.

In the present case, there is no averment that respondent No.1 has interfered in the course of justice by tempering with the witnesses or he was in any way delaying the proceedings by not appearing in Court at proper time, which shows that respondent No.1 has not misused the concession of bail granted to him.

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's case (supra)**, 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 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 or 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 evidence or witnesses or threatens witnesses or indulge 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.

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.

23.09.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No