

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.6944 of 2016

Date of decision:11.07.2016

Shameem Abdali

... Petitioner

VS.

State of Punjab & another

... Respondents

CORAM : HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the digest?

Present : Mr. Jai Bhagwan, Advocate
for the petitioner

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ANITA CHAUDHRY, J.(ORAL)

This is a petition for cancellation of bail allowed to the petitioner in FIR No.115, dated 12.12.2015 registered under Sections 498-A/406 IPC at Police Station City-I Malerkotla.

Learned counsel for the petitioner contends that anticipatory bail had been allowed to the petitioner even though recovery had not been effected, therefore, the bail should be cancelled. He refers to *Sarita versus State of Rajasthan 2011(1) Crl. L. R. 353*.

Bail was allowed to the accused vide order dated 01.02.2016 (Annexure-P-2). The Court had referred to the facts that the complainant had accompanied the Investigating Officer to the house of the complainant to identify her articles which were later recovered. The complainant then alleged that she was not permitted to enter into one of the rooms and alleged that some articles were lying in the house of the neighbours and she was not permitted to go there. A dispute was thus raised. It was clarified that room which the complainant wanted to

enter was in possession of the elder brother. The Investigating Officer had told the

Court that one of the room in which the complainant was not allowed to enter was in possession of elder brother and the complainant was alleging that some articles were lying in the house of neighbours. Keeping these rival contentions in view the Additional Sessions Judge, Sangrur allowed the anticipatory bail to the petitioner.

The list of articles recovered are contained in Annexure P-4.

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 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 ***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. The petition is dismissed.

There is nothing on record or mentioned by Investigating Officer to the

Court to suggest that the accused had not cooperated with the investigation or had hampered in any way.

In my opinion, non recovery of the articles is not a valid ground for cancellation of bail. It is a matter of trial and it will have to be proved as to how much dowry was given and in whose custody the same were. The petition is dismissed as not maintainable.

(ANITA CHAUDHRY)
JUDGE

July 11, 2016
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