

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

CRM No. M-1468 of 2017 (O&M)

Date of Decision: 15.05.2017

State of U.T. Chandigarh

--Petitioner

Versus

Bijender Nain & another

--Respondents

2. CRM No. M-8997 of 2017 (O&M)

State of U.T. Chandigarh

--Petitioner

Versus

Dinesh Kumar Yadav

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. J.S. Toor, Additional P.P., U.T. Chandigarh and
Mr. Sukant Gupta, Additional P.P., U.T. Chandigarh.

Mr. R.S. Cheema, Senior Advocate with
Mr. R.K. Trikha, Advocate for respondent No.1.

Mr. Sajjan Singh, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of CRM-M-1468-2017 (State of U.T. Chandigarh Vs. Bijender Nain & another) and CRM-M-8997-2017 (State of U.T. Chandigarh Vs. Dinesh Kumar Yadav) as both these petitions have been preferred by Union Territory, Chandigarh under Section 439(2) Cr.P.C. seeking cancellation of regular bail granted to the respondents herein in case FIR No.128, dated 29.07.2016, under Sections 409/420/120-B IPC and Sections 8/9/13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Sector-11, Chandigarh.

Bijender Nain and Ravinder @ Baniya were arrested on

02.11.2016 and 27.11.2016 respectively. Dinesh Kumar Yadav was arrested in this case on 19.08.2016.

Bijender Nain and Ravinder @ Baniya are the respondents in CRM-M-1468-2017 and who were granted bail vide order dated 07.12.2016 passed by learned Sessions Judge, Chandigarh. Dinesh Kumar Yadav is the respondent in CRM-M-8997-2017 and who has also been granted bail by the learned Sessions Judge, Chandigarh vide order dated 24.10.2016. Even though the respondents herein have been granted bail vide different orders dated 24.10.2016 and 07.12.2016 but the reasoning adopted in both these orders is identical.

Briefly, it may be noticed that the FIR in question came to be registered on the complaint of Director, Vigilance, Punjab stating that Dinesh Kumar Yadav was arrested in FIR No.5 dated 24.5.2016, under Sections 409, 420, 120-B of the Indian Penal Code and 8, 9, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, registered at Police Station Mohali and during the course of investigation of such FIR, it surfaced that Dinesh Kumar Yadav was the main conduit and accomplice of the master mind Mithlesh Pandey @ Guruji @ Master ji and who had provided the leaked question papers to numerous candidates pertaining to recruitment exams conducted in Punjab and other States and Dinesh Kumar Yadav also revealed that the question papers for the examination of the post of JBT and TGT under Chandigarh Administration which were conducted in the months of January-February 2015 had also been leaked 2-3 days prior to the examination. Allegations are that Dinesh Kumar Yadav on the directions of Mithlesh Pandey @ Guruji @ Master ji had contacted Bijender Nain and

had asked him to seek aspiring candidates for the post of JBT and TGT and who were willing to have access to the leaked question papers prior to the examination and for a consideration of Rs.7 lacs per candidate. Bijender Nain, in turn, is alleged to have further contacted two persons, namely, Satish and Ravinder @ Baniya who were running a Coaching Centre in Sonapat. Bijender Nain and his associates are alleged to have arranged 24-25 aspiring candidates for JBT and TGT posts and then all these candidates were taken from Sonapat to Lucknow. The candidates were made to submit their original educational certificates to Dinesh Kumar Yadav, who further handed over the same to Mithlesh Pandey. On the following day, the candidates were allegedly taken to Hanuman Setu Mandir, Lucknow and from where Mithlesh Pandey took the candidates in batches of 5-6 to some unknown place and where they were provided the leaked question papers so as to memorize the contents. The examination is stated to have been conducted by Punjab University, Chandigarh and the printing of the question papers was done at a Printing Press in Delhi.

Cancellation of bail granted to the respondents is sought on the ground that investigation of the case is still under way and other accused persons are yet to be arrested. It is asserted that after grant of bail, the **'accused persons'** are threatening the witnesses, tutoring the remaining accused, who are likely to be arrested. It has further been asserted in both the petitions that the accused beneficiaries and other witnesses are being threatened. In the additional affidavit dated 06.04.2017, placed on record of the Senior Superintendent of Police (SSP), U.T. Chandigarh, a tabulation has been furnished of nine candidates who are stated to have been selected

as a result of the present scam and who initially gave statements to Chandigarh Police disclosing the mode and manner in which the co-accused had executed their game plan but after the respondents herein were enlarged on bail, such candidates have resiled from the earlier statements. The tabulation gives out the dates of recording of confessional statements of the candidates as also the corresponding dates on which the earlier statement has been resiled from. Submission raised is that the respondents are interfering in the course of investigation and as such, the concession of bail granted be cancelled.

Counsel appearing for U.T. Chandigarh has further contended that the scam is of immense magnitude. 422 posts of JBT and 800 posts of TGT were filled up by U.T., Chandigarh. The investigation process is stated to have covered only the JBT posts. Investigation is stated to be still at the nascent stage. While seeking cancellation of bail it is contended that the present recruitment scam pertaining to U.T. Chandigarh may be inter linked with the scam involving the Professional Examination Board (P.E.B.) in Madhya Pradesh which infamously came to be known as the 'Vyapam Scam' and which was also an admission and recruitment scam involving politicians, senior officials and businessmen in the State of Madhya Pradesh. It is argued that the learned Sessions Judge, Chandigarh, while granting concession of bail to the respondents herein has overlooked the magnitude of the scam and the possible impact, it would have over the public and society at large.

Per contra, counsel representing the respondents in CRM-M-1468-2017 would contend that the instant petition seeking cancellation of

bail has been filed with malafide intention and just to harass and humiliate the respondents. There is a categoric denial coming forth on behalf of the respondents that they have never tried to influence or interfere with the investigation of the case and that they have not threatened or tutored any of the witnesses or other beneficiaries, who are yet to be arrested. It is argued on behalf of the respondents that the orders passed by the learned Sessions Judge, Chandigarh granting concession of bail is a well considered and reasoned order after careful examination of the facts and circumstances of the case in the true perspective and the same, as such, does not call for any interference. Reliance has been placed upon a judgment of the Hon'ble Supreme Court of India in the case of **State Vs. Sanjay Gandhi, AIR 1978 (SC) 961**, wherein it was held that cancellation of bail involves review of a decision already made and can be permitted only, if by reason of intervening circumstances, it would no longer be conducive to a fair trial to allow the accused to retain his freedom during trial.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

The principles governing grant of bail are by now well crystalized. In **Prasanta Kumar Sarkar Vs. Ashis Chatterjee & another, 2010(4) RCR (Criminal) 909**, it was observed that the factors which are to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour,

means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger of justice being thwarted by grant of bail.

Insofar as cancellation of bail is concerned in **Puran Vs. Rambilas & another, 2001(2) RCR (Criminal) 801**, The Apex Court noted that the concept of setting aside an unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself or because of some supervening circumstances warranting such cancellation.

In Dr. Narendra K. Amin v. State of Gujarat and another, 2008(2) RCR (Criminal) 858, a three- Judge Bench has observed that when irrelevant materials have been taken into consideration the same makes the order granting bail vulnerable. If the order is perverse, the same can be set at naught by the superior court.

In Prakash Kadam and others v. Ramprasad Vishwanath Gupta and another, (2011) 6 SCC 189 while making a distinction between cancellation of bail and consideration for grant of bail, this Court opined thus: -

“18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. 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. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

Adverting back to the case in hand, cancellation of bail granted to the respondents is sought on the basis that investigation of the case is still going on, other accused persons are yet to be arrested and the '**accused persons**' after grant of bail are threatening the witnesses and tutoring the remaining accused, who are likely to be arrested. A case is also sought to be made out that the '**remaining accused**' are trying to create hindrance for the police to arrest the remaining beneficiaries and other co-accused/agents involved in the scam. Dinesh Kumar Yadav (respondent in CRM-M-8997-2017) is stated to be named as an accused in FIR No.1734/2007 registered at Police Station Kotwali, District Mainpuri (U.P.) under Sections 302/201/364/120-B IPC and as such, poses a threat to the life and liberty of the candidates selected as a part of the present scam.

The averments contained in these two petitions as regards respondents hampering the course of a free and fair investigation are general and vague in nature. No details in support of such assertion have been furnished. It stands conceded by learned counsel representing U.T. Chandigarh that Dinesh Kumar Yadav has already been granted benefit of bail in aforenoticed FIR No.1734/2007 registered at Police Station Kotwali, District Mainpuri (U.P.).

The only specific material sought to be relied upon to seek cancellation of bail of the three respondents in these connected petitions is a tabulation of nine candidates (unnamed) and who were beneficiaries of the recruitment examination pertaining to the scam in the instant FIR and who have stated to have got their statements recorded and thereafter having resiled from the statements. Even such submission would not stand good insofar as Dinesh Kumar Yadav (respondent in CRM-M-8997-2017) is concerned. It has gone uncontroverted that even though Dinesh Kumar Yadav was granted concession of bail by the learned Sessions Judge, Chandigarh in the present case vide order dated 24.10.2016, yet he was in custody in relation to FIR No.6563, dated 08.09.2009, registered at Police Station Barnahai, District Mainpuri (U.P.) and his date of release in such FIR was 11.01.2017. Even if the contents of the tabulation as regards candidates having resiled from their statements is taken to be correct at its face value, yet it would be discernible that almost all the candidates had resiled from their statements prior to the date of release of Dinesh Kumar Yadav i.e. 11.01.2017. Even as regards Bijender Nain and Ravinder @ Baniya (respondents in CRM-M-1468-2017), there is no cogent and credible material coming forth to link their role as regards certain candidates having resiled from their earlier statements recorded by the Investigating Agency. Suffice it to observe that the candidates, a reference to which has been made in the tabulation are stated to be beneficiaries of the recruitment scam and as such, would be viewed as accused in this case and even if they have resiled from their earlier statements, one of the plausible reason for the same would be to protect the employment that they have secured.

While accepting the prayer for cancellation of bail, it would be imperative for the Court to record its satisfaction on the basis of material placed on record as regards any supervening circumstances that may have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. No such material has been placed on record by U.T. Chandigarh and neither has any such material been adverted to during the course of hearing.

This Court finds that these two petitions preferred by U.T. Chandigarh seeking cancellation of concession of bail to the respondents is founded more on apprehension as opposed to any concrete material/evidence from which an inference may be drawn that the respondents have actually hampered the course of a free and fair investigation. In the additional affidavit of the Senior Superintendent of Police, U.T. Chandigarh dated 06.04.2017, it has been averred that the present case may '**possibly**' be inter linked with the infamous 'Vyapam scam' relating the State of Madhya Pradesh. The Senior Superintendent of Police, U.T. Chandigarh further deposes in the additional affidavit that there is a '**possible link**' of the co-accused in the present case with some accused in the Vyapam's case. Counsel appearing for U.T., Chandigarh, however, has not been able to rebut the factual position that none of the persons named as accused in the present FIR figures as accused in the 'Vyapam's case'. It appears that the attempt is only to enhance the magnitude of the alleged scam. Be that as it may, this Court is in no way observing that the allegations in the present case pertaining to recruitment of large number of posts of JBT and TGT under U.T., Chandigarh are not grave. These are

matters which certainly would require a deep and thorough probe. U.T. Chandigarh, however, is seeking custody of the respondents till the finalization of the investigation process. In the same breath, a stand is being taken that the investigation is at the nascent stage. Under such circumstances, this Court would have to maintain a balance between the societal interest viz-a-viz personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent Court.

Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. It is also not the case made out by U.T. Chandigarh, that the orders passed by the learned Sessions Judge, Chandigarh granting benefit of bail to the respondents herein are perverse or have been passed by ignoring relevant material/circumstances.

Furthermore, this Court finds weight in the submission raised by counsel appearing for Bijender Nain and Ravinder @ Baniya (respondents in CRM-M-1468-2017) that the filing of the petition seeking their concession of bail is ill-motivated. On a previous date of hearing i.e. on 09.03.2017, this Court had called upon U.T. Chandigarh to clarify their stand as to why the aforementioned two respondents were being singled out while praying for cancellation of bail and whereas no such petition had been filed qua co-accused, Dinesh Kumar Yadav, whose role in the alleged scam was just as prominent. The observations made by this Court in an order passed on 09.03.2017 are in the following terms:

“This Court is finding it difficult to fathom the reasons and justification for UT Chandigarh in singling out the

respondents herein while praying for cancellation of bail and not praying for the same as regards co-accused Dinesh Kumar Yadav whose role in the alleged scam is as prominent and grave if not more and who also has been granted bail.”

The response to the query has come in the shape of a supplementary affidavit dated 23.04.2017 of the Senior Superintendent of Police, U.T. Chandigarh and in which it has been averred that a status report dated 17.03.2017 is being furnished under sealed cover.

The status report dated 17.03.2017 has been perused. The stand taken is that the petition for cancellation of bail qua Dinesh Kumar Yadav was not moved as he had been put under surveillance to check out his movements and to verify his association with the kingpin Mithlesh Pandey and who is yet to be arrested. It is stated that the Special Investigation Team (SIT) duly constituted looking towards the gravity of the offence had taken a decision to delay the filing of the petition seeking cancellation of bail to Dinesh Kumar Yadav.

The stand taken on behalf of U.T. Chandigarh does not inspire confidence. No explanation is coming forth as to why the same course of action and strategy was not adopted qua Bijender Nain and Ravinder @ Baniya and who actually had been released from custody prior in point of time. Even the timing of the filing of CRM-M-8997-2017 i.e. the petition seeking cancellation of bail to Dinesh Kumar Yadav is not lost to this Court. It was on 09.03.2017 that this Court had passed an order seeking clarification from U.T. Chandigarh as regards singling out Bijender Nain and Ravinder @ Baniya for cancellation of bail and not praying for the same qua Dinesh Kumar Yadav and whose role was equally grave and prominent.

It is the order dated 09.03.2017 passed by this Court that virtually pushed U.T. Chandigarh in a corner and led to the filing of CRM-M-8997-2017 seeking cancellation of bail of Dinesh Kumar Yadav on 14.03.2017.

This Court would be constrained to observe that filing of these two petitions seeking cancellation of bail to the respondents herein is not bonafide.

For the reasons recorded above, the prayer made in these two petitions seeking cancellation of bail to the respondents, namely, Bijender Nain, Ravinder @ Baniya and Dinesh Kumar Yadav is declined.

Petitions are dismissed.

15.05.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |