

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-22435 of 2016

DATE OF DECISION:24.03.2017

Meenakshi Sharma

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Anurag Chopra, Advocate
for the petitioner.

Mr. Nilesh Bhardwaj, DAG, Punjab.

Mr. Rajan Bhargav, Advocate
for respondent No.2.

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.2 in case FIR No. 5 dated 15.1.2013 registered under Sections 498-A/406/506/323/34 IPC at Police Station PS Bhawanigarh, Sangrur.

Briefly, the facts of the case are that aforesaid FIR was registered against respondent No.2 and his family members. The bail application filed by respondent No.2 was dismissed by Additional Sessions Judge, Sangrur vide order dated 18.2.2013. Thereafter, respondent No.2 approached this Court for grant of anticipatory bail by way of filing Crl. Misc. No. M-8754 of 2013. During pendency of the bail petition before this

Court, an amicable settlement was arrived at between the parties and on the statement made by counsel for the petitioner with regard to compromise, interim order passed in the petition for grant of bail was made absolute on 30.9.2013. Subsequently some differences arose between the parties and now the present petition has been filed by the complainant under Section 439 (2) Cr.P.C. for cancellation of anticipatory bail granted to respondent No.2 on the ground that she was being harassed by respondent No.2 and compromise was effected just to obtain anticipatory bail.

Learned counsel for the petitioner contends that the petitioner was assaulted by respondent No.2 and she was given merciless beatings, which resulted into abortion, which is clear from report dated 29.1.2016. Learned counsel further contends that due to the beatings, there was severe bleeding and the injuries caused to the petitioner were corroborated with the ultrasound report issued by Rajindra Hospital, Patiala. A written representation was also made to SSP, Sangrur in this regard but no action was taken thereupon. Learned counsel also contends that because of the compromise, no investigation of the case was conducted and till date no challan has been presented. Even no action has been taken on the subsequent complaint made by the petitioner. At the end, learned counsel for the petitioner submits that there are sufficient grounds to cancel the bail granted to respondent No.2.

Notice of motion was issued in the case on 8.7.2016 and thereafter the case was adjourned on the request made by learned State counsel to file reply.

Learned counsel for respondent-State as well as respondent No.2 have opposed the submissions made by learned counsel for the

petitioner.

Learned counsel for respondent-State submits that there was no progress in the investigation as the matter was compromised between the parties.

Learned counsel for respondent No.2 submits that respondent No.2 is still ready to compromise and the complaint has been made just to harass him, whereas, no such incident has ever occurred.

Heard the arguments advanced by learned counsel for the parties and have also gone through the order passed by this Court on 30.9.2013 and other documents available on the file.

After issuance of notice of motion, case came up for hearing before this Court on 6.12.2016 and following order was passed:-

“Learned counsel for respondent No.2 seeks time to get instructions in the case.

At the time of granting bail, it was mentioned that the matter has been compromised between the parties and the interim direction issued by this Court was made absolute but subsequently, again a dispute has arisen between the parties.

In view of the submissions made by learned counsel for the parties and by considering the nature of offence, the parties are directed to appear before the Mediation and Conciliation Centre of this Court on 13.01.2017.

In pursuance to aforesaid order, both the parties appeared before the Mediation and Conciliation Centre of this Court but no fruitful result has come as the petitioner was reluctant to go with respondent No.2 because of his conduct and harassment caused to her.

The facts relating to lodging of FIR and grant of anticipatory bail to respondent No.2 are not disputed. It is also not disputed that because of compromise arrived at between the parties, the interim bail granted to respondent No.2 was made absolute by this Court on 30.9.2013. Thereafter some dispute arose between the parties as the petitioner-wife was not treated properly and was given beatings. Not only injuries were caused to her but due to that she has to face abortion, which is clear from the medical report. A written complaint was also made by the petitioner to the police authorities but no action has been taken thereupon. It has been alleged that respondent No.2 has misused concession of bail and this petition has been filed for cancellation of anticipatory bail granted by this Court.

Undisputedly, there are different parameters for grant of bail and cancellation of bail. It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that rejection of bail in a nonbailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Once the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether any circumstances are there to show that he has misused the concession of bail or jumped the bail. Certain principles have also been laid down in judgment of Hon'ble the Apex Court in case ***Abdul Basit @ Raju and others etc. vs Mohd. Abdul Kadir Chaudhary and another*** 2015(1) ***SCC (Criminal)*** 257, which are as under :-

“Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Sessions to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail

under Chapter XXXIII of the Code be arrested and committed to custody, i.e the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are (1) 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) there is likelihood of his fleeing to another country (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive.”

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. 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.”

In case, 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 indulges 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.

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 the present case, interim bail was granted to respondent No.2 and the same was made absolute as compromise was effected between the parties. Thereafter, the petitioner-complainant was harassed by respondent No.2 and physical injuries were caused to her. It has been stated in the present petition that conduct of respondent No.2 was never cordial towards petitioner and his children. The petitioner was subjected to mental cruelty and was physically assaulted also on various occasions. No voice was raised by the petitioner as she was interested in matrimonial alliance. It is also an allegation that the petitioner was physically assaulted by respondent No.2, which led to her forced abortion. A report dated 29.1.2016 certifying

pregnancy of the petitioner has also placed on record as Annexure P-4 with the petition. Copy of the MLR dated 26.5.2016 has also been annexed with the petition as Annexure P-5, which corroborates the assertion made by the petitioner. The MLR has been corroborated with the ultrasound report dated 26.5.2016 (Annexure P-6) issued by Rajindra Hospital, Patiala, which shows that the petitioner was physically assaulted and threatened abortion was there. It has also come on record that a written representation was made to SSP Sangrur on 31.5.2016 but because of compromise no action has been taken thereupon.

It is well settled law that bail once granted can be cancelled in case the accused has misconducted himself or some supervening circumstances warranting such cancellation have occurred. In the present case, nothing was said on merits while granting bail and the bail was granted because of the compromise arrived at between the parties being the matrimonial dispute but thereafter the conduct of respondent No.2 was not cordial with the petitioner, she was assaulted on various occasions, given merciless beatings resultantly she was aborted upon.

In view of facts and circumstances as well as law position as explained above, the present petition is allowed and order dated 30.9.2013 granting bail to respondent No.2 is set aside. The police authorities are directed to take respondent No.2 in custody forthwith.

March 24, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes