

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

CRL. MISC. No.M-25019 OF 2017
DATE OF DECISION : 13 SEPTEMBER, 2017

Hukam Singh

.... Petitioner

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Viraj Gandhi, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. Pratham Sethi, Advocate for respondent No.2.

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A. B. CHAUDHARI, J. (ORAL)

This petition is filed by the complainant for cancellation of regular bail granted by this Court on July 5, 2017, to respondent No.2- Joni. The cancellation of bail is prayed especially on the ground that respondent No.2 violated the condition imposed by this Court not to enter the District Panipat.

Learned counsel for the petitioner vehemently contended that the fact that the petitioner entered the village is further corroborated by the police department. According to him on 06.07.2017 i.e. the very next day of the order granting bail by this Court, respondent No.2 along with his friends entered the village falling in District Panipat while the petitioner was going towards his house from bus stand respondent No.2 threatened openly that his son was murdered and he would also destroy

the entire family and they will be released from jail within one month. He also got registered FIR No.137 dated 07.07.2017 under Section 506 IPC at Police Station Saloni, District Panipat. He therefore, prayed that there is breach of condition deliberately made by respondent No.2 and therefore, he is required to be pushed in the jail again by canceling his bail. In support of his statement he has filed number of affidavits. He has tendered a certificate from Sarpanch of Gram Panchayat, Chajipur Khurd, Panipat and other affidavits of the residents of that village, which have been taken on record.

Per contra, learned counsel for respondent No.2 opposed the petition for cancellation of bail and submitted that all the allegations made by the petitioner herein for cancellation of bail are false and that is evident from various affidavits of the villagers i.e. Annexures A-1 to A-10 filed by respondent No.2. There are number of affidavits of the villagers which clearly falsify the version of the petitioner for cancellation of bail. He then submitted that the false report was lodged by the petitioner. It is improbable that on the very next date the respondent No.2 would enter the village when this Court has passed bail order on 05.07.2017. He therefore, prays for dismissal of the petition.

The State has filed reply in the form of affidavit of Sh. Jagdeep Singh, HPS, Deputy Superintendent of Police (H.Q.) Panipat. Following are the salient features stated in the reply:

“1. That the brief facts of the present case are
that on the complaint of Hukam Singh petitioner

the case F.I.R. No.180 dated 12.06.2016 U/S 148/149/323/324/325/302/307/506 IPC was registered in Police Station Sadar Panipat, against 15 persons all residents of village Chhajpur Distt. Panipat. During the investigation, the respondent no.2 was arrested in the present case on dated 23.09.2016 but after thorough investigation/enquiry, the respondent no.2 was found innocent, hence the report U/S 173(8) of Cr.P.C. was filed in the Ld. Court vide which the respondent no.2 was exonerated hence the request of discharging the accused was made.”

xxx... xxx... xxx... xxx...

8. xxx... xxx... xxx... xxx...

On the complaint of petitioner the case FIR No.137 dt. 07.07.2017 U/S 506 IPC was registered in Police Station Sanoli Distt. Panipat and during the investigation the respondent no.2 was arrested on 20.07.2017 and was produced before the Court of Ld. Illaqa Magistrate, Panipat.

xxx... xxx... xxx... xxx...

11. That in reply to the contents of para no.11 of the petition, it is submitted the respondent no.2 was arrested and produced in the court of Ld.

Illaqa Magistrate, Panipat and the matter is still under investigation.”

Thus, upon perusal of the above report from the police department, it is clear that the petitioner was arrested for threatening the petitioner on 06.07.2017 for offence under Section 506 IPC and was released on bail on 21.07.2017. The matter is said to be still under investigation.

It is seen from the entire record that respondent No.2-Joni, during investigation against several accused persons, was found to be innocent by the investigating officer and therefore the cancellation report was submitted before the trial Court. The trial Court rejected the cancellation report not on merits but only on the ground that the investigation that was made by the police qua Joni and others was without the permission from the Magistrate. This Court, while granting bail to respondent No.2 referred to the decision in the case of ***Vinay Tiyaagi Vs. Irshad Ali @ Deepak 2013 (2) RCR (Criminal) 197***, rendered by Supreme Court that there is no requirement under law for obtaining a permission from the Magistrate for further investigation. The trial Court has dealt with the matter on merits and therefore this Court found that the petitioner, having been declared innocent by the police, was entitled to be released on bail in the absence of any evidence being considered by the trial Court. However, this Court found that it was necessary to put a condition for grant of regular bail and that is why the condition not to enter the District Panipat was imposed.

It is true that police department has stated that petitioner had committed the offence under Section 506 IPC and therefore arrested and released on bail thereafter for the aforesaid incident on 06.07.2017 when he said to have entered the village. Therefore, there is reason to believe that respondent No.2 must have entered the village but then that is the matter of further investigation which is pending and the trial in the main case is also pending.

In the above factual scenario this Court finds that the petitioner having been declared innocent by the police and the trial Court having rejected his petition for regular bail on the point of permission from the Magistrate, it would be harsh to cancel his bail only because he violated the condition. But then he was arrested on 06.07.2017 and was released on bail in that case on 21.07.2017. I am, therefore, not inclined to cancel the bail for the said reason as respondent No.2 appears to have over acted. However, care will have to be taken not to allow him go unpunished.

In that view of the matter, I think the additional condition is required to be imposed on respondent No.2. Hence, I make the following order:

ORDER

- (i) The petition for cancellation of bail of respondent No.2 is not entertained and is disposed of.
- (ii) Respondent No.2 shall deposit non-refundable fine in the sum of ₹30,000/-, with the trial Court which shall be forfeited to the State of Haryana for breaching the condition

imposed by this Court for regular bail, within a period of six weeks from today, failing which the respondent No.2 shall surrender before the trial Court which shall take him in custody.

(iii) Respondent No.2 shall not enter the limits of District Panipat.

(iv) Respondent No.2 shall report to the Police Station concerned outside the district Panipat which he would inform to the trial Court, on every Monday, Wednesday, Friday and Sunday from 11.00 am to 4.00 pm.

13th SEPTEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*