

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-2666 of 2017 (O&M)

Date of decision : April 27, 2017

Rahul Harchand

..... Petitioner

VERSUS

State of Punjab & anr.

..... Respondents

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

PRESENT: Mr. R.S. Manhas, Advocate, for the petitioner.
Ms. Rajni Gupta, Additional Advocate General, Punjab.
Mr. Ritesh Pandey, Advocate, for respondent No.2.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

Following is the prayer in the present petition :-

“Petition under section 439(2)Cr.P.C. for cancellation of Regular Bail granted to respondent no.2 by this Hon'ble Court in CRM-M-42462 of 2016 in FIR No.38 dated 01.06.2016 under sections 324, 148, 149 IPC later on added offence Under Sections 302 IPC on 01.06.2016, registered at police Station Behrampur, Distt.Gurdaspur vide order dated 07.12.2016.”

This Court had granted regular bail to respondent No.2-Karan Singh by order dated 07.12.2016, passed in CRM-M-42462 of 2016. While granting regular bail to respondent No.2, this Court had made the following observations in the order granting regular bail and imposed conditions:-

“Learned counsel for the complainant while opposing the bail petition submitted that the witnesses have a threat perception from the petitioner and therefore, some condition will have to be imposed. In response learned counsel for the petitioner states that the petitioner would not enter the Tehsil Gurdaspur except the date of appearance before the Sessions Court and would report to the concerned Police Station. He further undertakes that the petitioner would not apply for modification of the condition not to enter the Tehsil Gurdaspur at any point of time till the trial is completed.

In view of the statement made by learned counsel for the petitioner, I am inclined to grant bail to the petitioner. Hence, I make the following order:

ORDER

- (i)The petition is allowed.
- (ii)The petitioner be released on bail to the satisfaction of the CJM/Duty Magistrate, Gurdaspur.
- (iii)The petitioner shall not enter the limits of the Tehsil Gurdaspur except the date of appearance before the Sessions Court.
- (iv)The petitioner shall not apply for modification of the above condition to stay out of Tehsil Gurdaspur till the trial is over as per the statement made.
- (v)The petitioner shall not tamper or influence the prosecution witnesses.
- (vi)The petitioner shall report to the concerned Police Station on every last Sunday of the month from 10.00 am to 1.00 pm.
- (vii)In case of violation of the above condition the liberty is reserved to apply for cancellation of bail.”

Learned counsel for the petitioner-complainant submits that respondent No.2-Karan Singh not only violated the conditions imposed by this Court but also issued threats and is, therefore, guilty of violation of conditional order of regular bail made by this Court and, therefore, the regular bail order made by this Court will have to be cancelled. In support of his contention, he invited my attention to Kalandra (Annexure P-5) under Sections 107/151, Indian Penal Code, and contended that threats to kill Rahul Harchand-petitioner were given by respondent No.2 clearly with a view to tamper the evidence, in violation of the conditions for grant of bail incorporated by this Court. He, therefore, prayed for cancellation of the regular bail.

Per contra, learned counsel for respondent No.2 vehemently opposed the petition for cancellation of bail and invited my attention to the reply filed by respondent No.2 that the entire Kalandra is false and well managed by the petitioner and respondent No.2 is being unnecessarily targeted by the petitioner. He submitted that there is no reason to cancel the regular bail order for the reasons advanced by the petitioner. He, therefore, prayed for dismissal of the petition.

I have gone through the entire record as also the Kalandra (Annexure P-5) filed by the police against respondent No.2 and the reply filed by respondent No.2 in this Court. I have already reproduced a part of the order granting regular bail and the conditions imposed against respondent No.2. It is in this background that I quote the following portion from the

Kalandra :-

“..... I ASI along with HC Harjidner Singh No.1888/GSP present at village Jhabkra for the investigation of the above application. When we reached near the house of Karan Singh then Karan Singh was making noise and threatening of kill has been given to Rahul Harchand. After my repeated persuasion he did not mend his ways and if the police party did not reach on the spot then some serious offence could have taken place. That on looking no other alternate on that the accused was taken in custody karan Singh son of Dhian Singh caste Rajput resident of Jhabkra has been proceeded under section 107/151 CrPC and has been taken in custody.”

The reply filed by respondent No.2 and, in particular paras 3 to 5, read thus:-

“3. That answering respondent is a rustic villager and on 18.12.2016 he thought that it was a last Sunday (actually it was third Sunday) and he was going to police Station to mark his presence, when he was going to police Station on the way petitioner met and he dragged the answering respondent to police Station and in connivance of police file a calendra against the answering respondent.

4. That from the perusal of Ann P-4 it transpires that no time has been mentioned by the police even no statement of independent witness has been recorded which clearly shows that the calendra has been prepared with a malaflde intention to cancel the bail.

5. That it is pertinent to mention here that the age of answering respondent is 62 years whereas the age of petitioner is just 27 years and all male family members of answering respondent are residing outside distt Gurdaspur as per the conditions of the bail order.”

From the perusal of the above pleadings of the parties, it is clear that respondent No.2, despite being aware about the conditions imposed on him for grant of regular bail, endeavoured to enter the village. He started moving in the village. Not only that, he started making noise in the village and threatened to kill the petitioner. Not only that, the police had to reach the village to take him in custody. The explanation given by respondent No.2 in his reply is not at all acceptable and appears to be a lame excuse to avoid the order of cancellation of bail. The aforesaid explanation given by respondent No.2 will have to be rejected.

In view of the above, I find that respondent No.2 clearly violated the conditions for grant of regular bail, as aforesaid. Hence, the regular bail order granted to him is required to be cancelled.

In the result, I make the following order:-

ORDER:

- i) Criminal Misc. No.M-2666 of 2017 is allowed;
- ii) Regular bail granted to respondent No.2 by order dated 07.12.2016, passed in CRM-M-42462 of 2016, stands cancelled;
- iii) Respondent No.2 is directed to surrender to custody within six weeks.

April 27, 2017
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(A.B. CHAUDHARI)
JUDGE