

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37686 of 2016
Date of Decision: 01.11.2017

Rajeev Gupta

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Tanu Bedi, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Gautam Dutt, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

In case bearing FIR No. 97 dated 23.03.2016, registered at Police Station Sushant Lok, Gurgaon (now Gurugram) for offences punishable under Sections 406, 420, 467, 468, 471 read with Section 120-B of Indian Penal Code (for short 'IPC'), the petitioner was allowed regular bail vide order dated 01.09.2016 (Annexure P-5) passed by learned Judicial Magistrate, Ist Class, Gurgaon.

2. State moved application before the Additional Sessions Judge, Gurugram, which was allowed vide order dated 13.10.2016 with observations in para 35 of order as follows:-

“35. Rajeev Gupta is main accused. If accused Rajeev Gupta is the main accused then it can be safely said that granting of bail to accused Rajeev Gupta by the learned JMJC was not only illegal but perverse when learned ACJM had dismissed the bail application of accused

Rajeev Gupta including others. The learned JMIC had already dismissed the bail application of Shubham Goyal being one of the accused in the same FIR, then how he could give regular bail to accused Rajeev Gupta and the learned counsel for accused Rajeev Gupta withdrew the application for regular bail of accused Rajeev Gupta from this Court. It can not be said that once bail granted can not be cancelled and it can be cancelled only on the ground when accused tampered with the prosecution evidence or threatens the prosecution witnesses or violates the conditions of bail granted to him. The higher court can always cancel the bail, if it feels that it was granted at irrelevant on material.”

3. Learned counsel for the petitioner has argued that the petitioner was arrested in this case on 08.06.2016. He applied for regular bail before the Magistrate, which was declined vide order dated 26.06.2016. He filed application before Additional Sessions Judge for regular bail, which was permitted to be withdrawn vide order dated 13.07.2016 (Annexure P-4). Thereafter, investigation was completed and challan was presented on 29.08.2016 and the petitioner again filed application seeking regular bail, which was allowed by learned Magistrate vide order dated 01.09.2016. In the application seeking cancellation of bail (Annexure P-6), complainant/APP for the State of Haryana took the plea that petitioner is the main accused. The bail application of co-accused was declined. While seeking cancellation of bail, it was wrongly represented that application of

the petitioner under Section 439 Cr.P.C. was also withdrawn on 07.06.2016 as by that time the petitioner was not even arrested. In fact he had moved application for anticipatory bail, which was not allowed. He withdrew the same on 07.06.2016 and surrendered before the police on 08.06.2016. After the grant of bail, the petitioner had not misused the liberty allowed to him or in any manner had attempted to tamper with prosecution evidence or tried to prevail upon witnesses. Learned Additional Sessions Judge has passed the order cancelling the bail as if he was hearing the appeal against order of learned Magistrate granting bail to the petitioner. The norms for grant of bail are altogether different than the norms for allowing or declining the anticipatory or regular bail. The mere fact that the petitioner is main accused and other accused have not been allowed bail is no reason for cancellation of bail.

Learned State counsel has argued that it is a case where allegations against petitioner are of fraud and duping the complainant-company of more than ₹6 crores. A Special Investigating Team was constituted in this case, which has verified the fraud to the tune of ₹3.2 crores. The entire case is based on documentary evidence. The petitioner had earlier withdrawn his application seeking regular bail before Additional Sessions Judge on 13.07.2016 and there was no reason for the trial Court to extend the bail to the petitioner without looking into the evidence collected by the police during investigation, which was made part of the challan.

So far as dismissal of application for bail of petitioner by learned Magistrate vide order dated 26.06.2016 and withdrawal of his application filed before the Additional Sessions Judge on 13.07.2016 seeking regular bail are concerned the same has no relevance while

granting regular bail to the petitioner. Learned Magistrate while allowing the bail to petitioner had looked into the fact that earlier bail application was declined as at that time investigation was pending but before the date of his order granting regular bail, the challan had already been filed. The custody period of petitioner was approximately three months and it was an economic offence based on documentary evidence, which are yet to be proved. While allowing regular bail to petitioner, learned Magistrate observed in para 9 of the order as follows:-

“9. In the present case there is no gain saying the fact that the applicant is charged of an economic offence of some magnitude. However, the fact that the investigating agency has already completed investigation and the charge-sheet has already been filed cannot be lost sight of. Furthermore, there is no hint or allegation that the accused is a flight risk; nor is there any material to suggest that he will tamper with the evidence. Therefore, in my view, the presence of the applicant in further custody is not necessary coupled with the facts that the applicant has already been in custody for almost three months. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions.”

The norm seeking cancellation of bail under Section 439 (2) Cr.P.C. is different from grant of bail under Section 439 (1) Cr.P.C. The order of lower Court granting bail, can be interfered by the higher Court if the same is perverse order passed in a heinous crime without assigning any

reason. The cancellation of bail can be sought on several grounds including the grounds where (i) the accused misuses his liberty by indulging in similar criminal activity; (ii) interferes with the cause 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. Above mentioned grounds are, of course, illustrative and not exhaustive. Generally speaking the grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is not a case where order passed by learned Magistrate is perverse or illegal. Learned Magistrate had exercised his discretion looking into facts of the case and after filing of challan. The case is based on documentary evidence which the petitioner cannot tamper with. On enquiry, it has been disclosed that other co-accused have by now been allowed regular bail. Learned Additional Sessions Judge while cancelling the bail has observed that the petitioner is main accused and the order of learned Magistrate is illegal and perverse as earlier learned ACJM had dismissed the bail application of petitioner and other co-accused. The application of petitioner was dismissed by learned ACJM vide order dated 26.06.2016 as the investigation was pending at that time. Circumstances have changed after presentation of challan in Court. Even application for regular bail filed before Additional Sessions Judge was withdrawn on 13.07.2016 and by that

time also the investigation was pending. Both these facts have no impact on the order passed by learned Magistrate and learned Additional Sessions Judge has committed grave error while observing that the same is illegal and perverse.

In view of facts and circumstances discussed above, the instant petition has merit and the same is allowed. Order dated 13.10.2016 passed by learned Additional Sessions Judge, Gurugram is set aside and order dated 01.09.2016 passed by learned Judicial Magistrate, Ist Class, Gurgaon allowing regular bail to the petitioner is restored.

November 01, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No