

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

CRM-M-3846-2017

Date of decision: 16.05.2017

Mukesh Kumar

..... Petitioner.

Versus

Gauri @ Gaurav Singh and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kuldip Singh, Advocate for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of orders dated 21.11.2016 and 30.11.2016 (Annexures P-7 and P-8) passed by the learned Additional Sessions Judge, Ambala, granting concession of anticipatory bail to respondent No. 1-Gauri @ Gaurav Singh in case FIR No. 64 dated 17.05.2016 registered under Sections 363 and 366 (A) of the IPC at Police Station Barara, District Ambala.

The above said FIR was registered on the basis of a statement of petitioner- Mukesh Kumar to the effect that his daughter aged about 17 ½ years went missing from home on the intervening night of 16/17th of May 2016. An apprehension was raised that she has been enticed away by respondent No. 1. It is further mentioned by the petitioner/complainant that his daughter while leaving took away all her school certificates, gold and some money from the house. It is submitted that interim bail was granted to respondent No. 1 by the learned Additional Sessions Judge, Ambala on 21.11.2016 (Annexure P-7) primarily on the ground that this Court on 14.07.2016 in Criminal Miscellaneous No. M-23227 of 2016 had directed that the final report under Section 173 Cr.P.C be not filed till further orders. Interim bail afforded to respondent No. 1 was affirmed by learned Additional Sessions Judge, Ambala on 30.11.2016. Learned counsel for the

petitioner vehemently argues that the interim bail was obtained by respondent No. 1 by misleading the Court inasmuch as the stay regarding presentation of challan was vacated by this Court on 22.10.2016. Therefore, in this situation the bail orders obtained on an incorrect premise are not justified. Bail afforded to respondent No. 1 should, therefore be cancelled.

Learned counsel relies upon judgment of Hon'ble Supreme Court in *Abdul Basit @ Raju and others Vs. Md. Abdul Kadir Chaudhary and another 2015 (1) SCC (Criminal) 257* to submit that once it is shown that an incorrect, unjustified or illegal order has been passed, it should be set-aside by a Court superior to the one, which has granted bail. Therefore, the impugned orders granting bail to respondent No. 1 should be set aside.

I have heard learned counsel for the petitioner.

It is not in dispute that the petitioner's daughter solemnized marriage with respondent No. 1 on 25.05.2016. It is not in dispute that the petitioner's daughter and respondent No. 1 approached this Court by filing Criminal Miscellaneous No. M-20003 of 2016 seeking protection of their life and liberty at the hands of the petitioner and others, though this petition was ultimately dismissed as withdrawn on 14.07.2016. It is further not denied that the petitioner's daughter in her statement under Section 164 Cr.P.C. recorded on 29.11.2016 accepted the fact of solemnization of marriage with respondent No. 1. She clearly stated that she wishes to reside with her husband and not with her parents. The petitioner's daughter produced a certificate issued by Board of School Education, Haryana reflecting her date of birth to be 07.11.1996.

Criminal Miscellaneous No. M-23227 of 2016 has been preferred by respondent No. 1 for quashing of the above mentioned FIR. In the said

petition, the present petitioner, who is arrayed as respondent No. 2 had expressed his desire to meet his daughter. It was directed by this court in the said petition that the petitioner (respondent No. 2 in the said petition) as well as his daughter (arrayed as respondent No. 3 in the said petition) along with the petitioner's wife be present in Court. The present petition was directed to be listed along with Criminal Miscellaneous No. M-23227 of 2016. Today when Criminal Miscellaneous No. M-23227 of 2016 was taken up for hearing, it was stated that the present petitioner or his wife could not come present. The following order was passed today in the abovesaid petition:

“Respondent No. 3 is present in Court. She is duly identified by her counsel. Respondent No. 2 as well as his wife were directed to be present in Court. Learned counsel for respondent No. 2 submits that his client and his wife could not come present. However, Sh. Mam Chand, father of respondent No. 2 and grand-father of respondent No. 3 is present in Court. Sh. Mam Chand initially expressed reservation at meeting his grand-daughter (respondent No.3). However, time was afforded to them for interaction but no head way is stated to have been made.

Respondent No. 3 has reiterated that she has solemnized marriage with the petitioner out of her own free will and volition. She is a major as on date. She wishes to continue residing with her husband, the petitioner.

On request of learned counsel for respondent No. 2, adjourned to 04.07.2017.”

It is not in dispute that this Court on 22.10.2016 had vacated the stay regarding presentation of challan granted on 14.07.2016. It is not denied by learned counsel for the petitioner that the petitioner's daughter is married to respondent No.1 as on date, though it is submitted that the Secondary Education Certificate produced by her is not correct. Clarification was sought

by the petitioners subsequently from the Board and her date of birth is clarified to be 07.11.1998. Learned counsel is further unable to deny that the petitioner's daughter, as on date is a major and she has duly expressed her wish to stay with her husband i.e. respondent No. 1.

Be that as it may, keeping in view the peculiar facts and circumstances of the case as mentioned above, I do not find any ground, whatsoever to cancel the bail afforded to the respondent No. 1 vide the impugned orders.

At this stage, learned counsel for the petitioner submits that he may be permitted to withdraw this petition with liberty to approach the learned Additional Sessions Judge, Ambala seeking cancellation of the bail granted to respondent No.1 specially keeping in view the fact that respondent No. 1 had initially approached this Court for grant of anticipatory bail straightaway and he was afforded liberty to approach the learned Sessions Judge vide order dated 06.09.2016. Therefore, on the same analogy it is urged, the petitioner should also be permitted to withdraw this petition and approach the learned Additional Sessions Judge, Ambala for cancellation of bail.

Apart from the fact that such an argument is clearly misconceived, this cannot be a ground for permitting the petitioner to withdraw this petition at this stage with liberty to approach the learned Additional Sessions Judge, Ambala seeking cancellation of bail granted to respondent No. 1.

This petition is accordingly dismissed.

(LISA GILL)
JUDGE

16.05.2017

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Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*