

Crl. Misc. No. M-11370 of 2018

(1)

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

Crl. Misc. No. M-11370 of 2018

DATE OF DECISION:26.11.2018

Kulwant Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Ms. Nisha, Advocate for  
Mr. S.S. Sarwara, Advocate  
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. S.S. Gurna, Advocate  
for respondent No.2.

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**DAYA CHAUDHARY, J.**

Petitioner-Kulwant Singh has filed the present petition under Section 439 (2) Cr.P.C. for cancellation of bail granted to accused-respondent No.2-Barinder Kumar vide order dated 5.2.2018 in case FIR No. 34 dated 1.2.2018 registered under Sections 419,420,465,467,468,471 IPC at Police Station City Rajpura, District Patiala by Addl. Sessions Judge, Patiala.

Learned counsel for the the petitioner contends that wrong averments were made that marriage of son of respondent No.2 was fixed for 5.2.2018, whereas, there was no marriage and it was a case of

misrepresentation. Learned counsel further contends that wrong facts were mentioned just to take benefit of concession of bail. Learned counsel also contends that respondent No.2 committed a serious offence as he has duped an amount of Rs. 19 lacs due to which great loss was caused to father of the petitioner and because of that reason he had died. It is also the contention of learned counsel that custodial interrogation of respondent No.2 was required but still bail was granted to him.

Learned counsel for respondent-State submits that bail was granted to respondent No.2 not only on the ground of marriage of his son but other factors were also taken into consideration. There is no ground for cancellation of bail as after thorough consideration of all the factors, bail was granted to respondent No.2 and the present petition is not maintainable.

Similarly, learned counsel for respondent No.2 submits that it was not a case of misrepresentation as marriage of son of respondent No.2 was there but because of arrest in the present case it was broken and marriage did not take place. Learned counsel further submits that a detailed order has been passed while granting bail and not only custody period, nature of offence and other factors were taken into consideration.

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

The present petition has been filed for cancellation of bail only on the ground that there was misrepresentation of facts that marriage of son of respondent No.2 was stated to be fixed for 5.2.2018, whereas, there was no marriage. In order dated 5.2.2018 passed by learned Additional Sessions Judge, Patiala, it has been mentioned that both the parties are making

allegations and counter allegations, which are to be determined during trial. The FIR was registered on 1.2.2018 and accused-respondent No.2 was arrested on that very day and remanded to judicial custody. It is also mentioned in the order that marriage of son of accused-respondent No.2 is there where presence of respondent No.2 was required; that investigation has been completed and trial may take long time to conclude and no purpose would be served by keeping the accused in custody for an indefinite period. By mentioning that offence is triable by Magistrate, bail was granted to respondent No.2, meaning, thereby, bail was granted to respondent No.2 on the ground of custody, nature of offence and stage of the trial as well as mentioning that the offence is triable by Magistrate. It was one of the ground that marriage of son of respondent No.2 was also there and his presence was required. It cannot be said that bail was granted only on the ground that marriage of son of respondent No.2 was there.

There are different parameters for grant of bail and cancellation of bail. Once, the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether there are certain circumstances to show that the accused has misused the concession of bail or jumped the bail. While granting bail, the Court is to keep in mind not only the nature of accusations but the severity of the punishment and also other factors, which are necessary for grant of bail i.e. reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant party. Apart from this it is to be seen that prima facie case is made out for grant of bail by considering the custody and nature of offence.

There is no absolute rule that once the bail is granted to the

accused, it cannot be cancelled. It can be cancelled if there is likelihood of misuse of bail. The nature of offence is also a factor to be considered that in case the petitioner is released on bail, he may influence the witnesses or tamper with the evidence.

In the present case, none of the conditions has been violated. Learned counsel for the petitioner has failed to show that respondent No.2 has ever misused the concession of bail or tampered with the evidence after grant of bail. The only ground for cancellation of bail is that fact of marriage of respondent No.2 was wrongly mentioned whereas there was no marriage. Investigation of the case has already been completed and challan has been presented. Nothing was to be recovered from respondent No.2 and by considering the period of custody, nature of offence and other factors, bail was granted to him.

In view of the above, no ground is made out to cancel the bail granted to respondent No.2.

Accordingly, the present petition being devoid of any merit is hereby dismissed.

November 26, 2018  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
Yes