

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

**CRM-M No.20391 of 2016 (O&M)
Decided on: 21.03.2018**

HDFC Bank Limited

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. Lokesh Vohra, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for cancellation of bail granted to respondent No.2/accused by the Additional Sessions Judge, Ferozepur vide order dated 29.03.2016 in FIR No.185 dated 24.09.2015 registered under Sections 409 and 420 of the Indian Penal Code (in short 'IPC') at Police Station Zira.

Brief facts of the case are that the petitioner – Bank, got the aforesaid FIR registered against respondent No.2 with allegation that he was employed as Sales Officer in the Zira Branch where the bank has started a group scheme and sanctioned loan to various groups. The petitioner was absent from duty since 21.09.2015 and some of the complainant have given affidavit that the employee of the bank has withdrawn the amount of their loan account by using the ATM card illegally.

After registration of the FIR, the Additional Sessions Judge, Zira granted interim bail to respondent No.2 vide order dated 09.10.2015 and he was directed to join investigation. After joining of the investigation, the Additional Sessions Judge vide order dated 29.03.2016 confirmed the interim bail of respondent No.2 by observing that the anticipatory bail cannot be refused only on the allegation that certain documents are yet to be recovered from him.

This petition was filed on 01.06.2016 and notice was issued to the respondent – State as well as respondent No.2/accused.

Counsel for the petitioner has submitted that there are serious allegation against respondent No.2 that he has misused the ATM cards of customers and has withdrawn huge amount of the loan money. It is also stated that the petitioner is also challenging the merits of the order passed by the Additional Sessions Judge granting interim bail and has relied upon the judgment of the Hon'ble Supreme Court “***Brij Nandan Jaiswal vs Munna @ Munna Jaiswal and another***”, 2009(1) RCR (Criminal) 529 to submit that the Hon'ble Supreme Court has held that while allowing a plea of the complainant praying for cancellation of the bail, it is now well settled principle of law that the complainant can always question the merits of order granting bail if the said order is not validly passed. The facts of ***Brij Nandan Jaiswal' case (supra)*** are that the accused was granted bail in an FIR registered under Section 302 IPC and the complainant asked for cancellation of bail on the grounds that the accused is misusing the concession as he apprehend threat at his hand and in this regard son of the complainant had already filed application before the Court seeking protection. The

second ground was that another case of assault was registered against him and even, the wife of the deceased has filed application that accused was threatening to kill her and thus, he was misusing the concession of bail and the High Court while granting bail has not considered these aspects.

Reply on behalf of the Deputy Superintendent of Police, Zira, District Ferozepur by way of an affidavit is also filed in which it is stated that as per the investigation, the respondent No.2 has collected loan installments from 128 customers and has withdrawn the amount by using their ATM cards and, thus, has committed the offence of embezzlement.

In reply to the submissions made by counsel for the petitioner, counsel for the State has submitted that challan has already been presented before the trial Court and investigation is complete.

Counsel for respondent No.2, on the other hand, has submitted that a period of about 02 years has already been lapsed when anticipatory bail was granted to respondent No.2 and there is no allegation by the complainant/petitioner – Bank that in the intervening period, he has either misused the concession of bail or has tried to influence any of the witness. It is further submitted that in pursuance to the order dated 16.08.2017 passed in the present petition the respondent No.2 has again joined the investigation and no recovery was effected from him. Counsel for respondent No.2 has also relied upon the judgment ***“Doalt Ram vs State of Haryana” 1995(1) SCC 349*** wherein the Hon'ble Supreme Court has held that for cancellation of bail, there should be cogent and overwhelming circumstances and by assigning

reasons for cancellation of bail an order can be passed. Counsel for the accused/respondent No.2 has further relied upon another judgment ***“Hazari Lal Das vs State of West Bengal and another”***, 2009(4) RCR (Criminal) 340 wherein while relying upon the judgment passed in ***Doalt Ram's case (supra)***, the Hon'ble Supreme Court has set-aside the order of the High Court vide which the bail granted by Sessions Court was cancelled by holding that the consideration which should be in the mind of the Court while considering the prayer for grant of bail are not the same for the purpose of cancellation of bail.

After hearing counsel for the parties, I find no merit in the present petition for cancelling the anticipatory bail granted to respondent No.2 for the following reasons:-

1. In the FIR, no specific details are given as to when the respondent No.2 has committed the alleged embezzlement and no enquiry has been conducted by the bank prior to registration of the FIR to hold him guilty.

2. The accused has joined the investigation in pursuance to the interim directions given by the Sessions Court vide order dated 09.10.2015 as well as even during pendency of the present petition vide order dated 16.08.2017.

3. The anticipatory bail was granted to the accused/respondent No.2 on 29.03.2016 and it is not the case of the petitioner/complainant that he has misused the concession of bail as till date, no document has been placed on record that any complaint was made to any police authority that the accused has either misused the concession of bail or has tried to influence the investigation or the witnesses.

4. The report under Section 173 Cr.P.C. is

*already presented before the trial Court and the trial is going on. The only ground taken by the petitioner/complainant – Bank, that the embezzlement is of huge amount, can only be decided during the course of trial and, therefore, I find no ground for cancellation of bail in view of the judgment of Hon'ble Supreme Court **Doalt Ram's case (supra)** and **Hazari Lal Das's case (supra)** are made out. The judgment of the Hon'ble Supreme Court passed in **Brij Nandan Jaiswal's case (supra)** is not applicable in the present case in view of the facts of the said case.*

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

21.03.2018
yakub

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