

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

CRM-M No.24497 of 2018

Date of Decision: 10.09.2018

Parminder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. D.A.G., Punjab.

Mr. Rajiv K. Kapila, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Petitioner-Parminder Singh has filed the present petition under Section 439(2) Cr.P.C for cancellation of bail granted to respondent No.2 by learned Additional Sessions Judge, Ludhiana vide order dated 24.05.2018 passed in case FIR No.276 dated 04.10.2017 registered under Sections 307, 326, 452, 506, 148 and 149 IPC (Section 302 IPC added later on) at Police Station Daba, Ludhiana.

Learned counsel for the petitioner submits that the anticipatory bail has been granted to respondent No.2 only on the ground that the State has failed to get the Identification Parade done as the Deputy Commissioner did not appoint any Magistrate to get the same done in spite of request made by counsel for the petitioner and the Court below allowed bail to respondent No.2. Learned counsel also submits that the bail application was adjourned by the Court below and finally, it was allowed vide order dated 24.05.2018

without saying anything on merits. There were a number of accused in the case and one of the accused, namely, Deepak Rana i.e respondent No.2 filed anticipatory bail and the same was allowed only on the ground that there might be number of Deepak Rana in Ludhiana. Nothing was mentioned as far as the allegations are concerned. The bail granted to respondent No.2 was not on merit and after considering the allegations mentioned in the FIR.

Learned counsel for the State as well as of respondent No.2 have opposed the submissions made by learned counsel for the petitioner on the ground that a well reasoned order has been passed. He further submits that respondent No.2 has joined investigation. The name of respondent No.2 was not mentioned in the FIR but it came in the supplementary statement. Accordingly, by considering all the facts and circumstances of the case, respondent No.2 was released on interim bail and thereafter, it was made absolute.

Heard the arguments of learned counsel for the parties and have also perused order dated 24.05.2018 passed by the Additional Sessions Judge, Ludhiana, whereby, the petitioner was released on regular bail.

Admittedly, respondent No.2 was accused in case FIR No.276 dated 04.10.2017 registered under Sections 307, 326, 452, 506, 148 and 149 IPC (Section 302 IPC added later on) at Police Station Daba, Ludhiana. Said FIR was registered at the instance of complainant-petitioner stating therein that his elder brother, namely, Gurcharan Singh @ Charna and younger brother Gurpal Singh @ Jyoti, Bittu Kumar, Harpreet Singh @ Amba and Kamaljit Singh were present in the factory when Ashok Kumar, Cheena, Santy, Kaka, Buntty Bajwa, Mehtab Buntty, Lakha, Ravi Kumar, Kala and Bhau along with 30/40 unknown persons armed with *dangs*,

kirpans, dahs came in Swift Car and motorcycles and entered in the factory of the complainant. Accused Ashok Kumar raised *lalkara*. Accused Ashok Kumar gave *Dah* blow which hit on the face of brother of complainant. Cheena gave *kirpan* blow on the head of Harpreet Singh. Santy gave *Dah* blow on the head of brother of the complainant and Kaka gave *rod* blow to the complainant which hit on his left finger. Bunty Bajwa gave *Dah* blow on the head of Bittu Kumar and Mehtab Bunty, Lakha, Bhau, Ravi Kumar and Rana gave *Dang* blows to everyone. Accused Ashok Kumar picked *durmut* lying in the factory and gave blow on the head and neck of brother of the complainant-Gurpal Singh and he became unconscious. Remaining 30/40 persons caused damage to the factory with *brick bats* and also gave *fists blows* to the complainant. All said accused also threatened to kill and by raising alarm, they ran away with their respective weapons on their vehicles. A number of people gathered over there. Neighbourer of complainant-Ravinder Kumar took all the injured to Apolo Hospital after arranging the vehicle, where, the condition of injured Gurpal Singh and Gurcharan Singh became serious. They took treatment in the hospital. Injured Bittu Kumar was admitted in Ajay Hospital and Kamaljit Singh was referred to Baba Hospital. Injured Harpreet Singh was discharged. On the basis of statement made by complainant on 04.10.2017, the FIR was registered. Respondent no.2-Deepak Rana approached the Court of Sessions for grant of anticipatory bail, which was allowed vide order dated 19.03.2018. The orders passed on three different dates i.e 19.04.2018, 27.04.2018 and 24.05.2018 are reproduced as under :-

“ Order dated 19.04.2018

*Investigating Officer appeared and submitted
that applicant-accused has joined investigation. At this*

stage, there is no material on record with the Investigating Agency to connect the applicant-accused as Deepak Rana involved in the occurrence. Learned Addl. PP for the State requested that bail be adjourned to some other date so that Investigating Agency may get a chance to get identification parade effected.

Considering the request of learned Addl. PP for the State, bail application is adjourned to 27.4.2018. Interim order is extended till then. In case applicant-accused is required for Test Identification Parade, he should made himself available on notice served by Investigating Officer.”

“Order dated 27.04.2018

Investigating Officer submitted that he has applied for appointment of Magistrate for getting conducted identification parade, but the learned Deputy Commissioner has not appointed any Magistrate as yet. So, more time is required. Considering the request, the bail application is adjourned to 10.5.2018. Till then interim bail is extended.”

“ Order dated 24.5.2018

Investigating Officer has submitted that Identification Parade could not be got conducted as vide application dated 19.4.2018 request for getting conducted Identification Parade but till date the Officer for getting Identification Parade could not be obtained.

In this case, applicant-accused has joined investigation since long. He was not named in the FIR initially and in supplementary statement, name of one Deepak Rana r/o Street No.9, Guru Angad Dev Colony, Ludhiana was mentioned whereas present applicant-accused is resident of House No.10316/1, Street No.18, New Angad Dev Colony, Miller Ganj, Ludhiana.

Considering all the facts and circumstances and that applicant-accused is on interim bail since

19.3.2018 and has joined investigation, his interim bail order is hereby confirmed. File be consigned to the record room.”

Vide order dated 19.04.2018, it was mentioned that the Investigating Officer appeared in the Court and stated that accused has joined investigation and finding no material on record with the Investigating Agency to connect respondent No.2 with the occurrence, the case was adjourned to 27.04.2018 and the interim order was also extended. Thereafter, on 27.04.2018, the Investigating Officer requested the Court for appointment of Magistrate for getting conducted identification parade but the Deputy Commissioner did not appoint any Magistrate. The time was sought by the Investigating Officer and thereafter, the case was adjourned to 10.05.2018 and the interim bail was also extended. Thereafter, on 24.05.2018, by mentioning that the accused had joined investigation and his name has come in the supplementary statement and two different addresses were given, the interim order was made absolute. The relevant portion of said order is reproduced as under :-

“ Considering all the facts and circumstances and that applicant-accused is on interim bail since 19.3.2018 and has joined investigation, his interim bail order is hereby confirmed. File be consigned to the record room.”

On perusal of order granting bail to respondent No.2, it appears that the same has been passed without any proper application of mind and without considering the material available on record. The orders have been passed on irrelevant considerations and it cannot be said that the Court below has exercised the discretionary power in an appropriate manner. The order has been passed by considering the irrelevant factors that two

different addresses have been given. Even a single word has not been stated on merits of the case and especially in a case, where the offence is serious in nature i.e the case of murder. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case is necessary. While granting bail, some *prima facie* reasons for concluding why bail was being granted are necessary to be indicated. It has been held by Hon'ble the Apex Court in case ***Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav 2004(2) RCR (Criminal) 254*** that the Appellate Court has every right to know the basis for granting bail. The discretion of granting bail is to be exercised by giving reasons but no such reason has been given.

The law with regard to grant or refusal of bail is very well settled and the Court while granting bail should exercise its discretion in a judicious manner and not as a matter of course. The observations made in para Nos.10 and 11 of said judgment are reproduced as under :-

“ 10. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of

punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge;

11. In regard to cases where easier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.”

It has further been observed in said judgment of Hon'ble the Apex Court that an accused has a right to make successive applications for grant of bail and the Court while entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record as to what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

It is a settled law that complainant can always question the order of granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. The complainant can question the merits of the order granting bail. In case, no reasons are given by the learned Judge while granting the bail and it appears that orders have been passed mechanically without considering the pros and cons of the matter, then the complainant has a right to challenge. While

granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.

At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken but it does not mean that while granting bail, some reasons for *prima facie* concluding why bail is being granted is not required to be mentioned. The 'expression of *prima facie*' reasons for granting bail is a requirement of law. The accused has a right to make successive applications for grant of bail and the Court has also a duty to consider the reasons and grounds on which the earlier bail applications were dismissed/rejected. The Court has also a duty to record as to what are the fresh grounds which persuade it to take a view different from the view already taken in the earlier applications. The Court has granted interim bail without proper application of mind and without consideration of the materials available from the case diary and the orders are based on irrelevant considerations. It cannot be said that there is proper exercise of discretionary power in the matter. While declining the bail by the lower Court, no such reasons/grounds have been mentioned. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. The cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. The grounds of cancellation of bail are not exhaustive and 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. In normal course, the bail once granted should not be cancelled in a

mechanical manner without considering as to whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial as has been held in judgment of Hon'ble the Apex Court in case ***Dolat Ram vs State of Haryana 1995(1) SCC 349***.

It is also relevant to mention here that the considerations relevant on a motion to cancel bail already granted are somewhat different from those relevant to the rejection of an application for bail. The reason is that cancellation of bail necessarily involves the review of a decision already made.

The bail granted by the lower Court is without any application of mind and without consideration of the material available from the case diary. The orders appeared to be based on irrelevant considerations and it cannot be said by any stretch of imagination that the discretionary power has been properly exercised.

In the present case, neither any reason has been recorded nor any justification has been made as nothing has been said on merits. Simply by saying that the correct address has not been mentioned, the interim order passed earlier was made absolute.

Accordingly, in view of facts and circumstances of the case and the law position as discussed above but without expressing anything on the merits of the case, the present petition is allowed and order dated 24.05.2018 passed by the Additional Sessions Judge, Ludhiana in favour of respondent No.2 is set aside with a direction to decide the bail application afresh by considering the merits. However, the accused shall immediately surrender before the trial Court within a period of one week from the date of

receipt of certified copy of the order. In case, he does not surrender, the non-bailable warrants shall be issued against him. After his surrendering, the bail application shall be considered and decided by the trial Court afresh without being influenced by the observations as made above.

However, the application shall be decided within a period of two weeks from the date of surrendering the accused or as the case may be of his arrest.

10.09.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No