

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

**Criminal Misc. No. M-34409 of 2018
Date of decision: 03.10.2018**

Rakesh Kumar

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Arjun Kundra, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for respondent No.1-State.

Mr. G.S. Sidhu, Advocate
for respondent No.2.

Daya Chaudhary, J.

Petitioner-Rakesh Kumar has approached this Court by way of filing the present petition under Section 439(2) read with Section 482 Cr.P.C. for cancellation of bail granted to accused-respondent No.2 by the Additional Sessions Judge, Barnala vide orders dated 09.02.2018 and 06.03.2018 in case FIR No.71 dated 29.02.2016 registered under Sections 323, 324, 325, 326, 452 read with Section 34 of Indian Penal Code at Police Station City Barnala, District Barnala.

Respondent No.2 filed bail application under Section 438 Cr.P.C. for grant of anticipatory bail, which was allowed and he was released on bail vide order dated 09.02.2018. The aforesaid order was made absolute on 06.03.2018. The petitioner moved an application for

cancellation of bail granted to respondent No.2, which was dismissed vide order dated 28.05.2018.

Learned counsel for the petitioner submits that there was concealment on the part of respondent No.2 at the time of filing application for anticipatory bail, he mentioned his name as Sukhjit Singh son of Sardara Singh whereas at different places and also Uttam Singh son of Sardara Singh or Uttam Singh @ Surjit Singh son of Sardara Singh and it was done just to get benefit of bail.

Learned counsel further submits that respondent No.2 played an active role in the occurrence and caused grievous injury to the petitioner. Even respondent No.2 has not complied with the terms and conditions as laid down under Section 438 Cr.P.C. The petitioner was given threat by respondent No.2 and pressure was also put upon him to settle the matter. All these factors have not been taken into consideration while deciding the application for cancellation of bail and the same was dismissed without mentioning any reason.

Learned State counsel as well as counsel for respondent No.2 have opposed the submissions made by learned counsel for the petitioner.

Heard arguments of learned counsel for the petitioner, learned State counsel as well as counsel for respondent No.2 and have also perused impugned orders dated 09.02.2018 and 06.03.2018 as well as other documents available on the file.

Respondent No.2 was summoned to face trial as an additional accused in an application moved under Section 319 Cr.P.C. by the prosecution as earlier he was found innocent in the investigation.

Respondent No.2 was ready to join the proceedings before the trial Court and was released on pre-arrest interim bail on furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount subject to his appearance before the trial Court. In pursuance of order dated 09.02.2018, respondent No.2 appeared before the trial Court and interim order passed in his favour was made absolute vide order dated 06.03.2018.

The bail granted to respondent No.2 has been sought to be cancelled only on the ground that respondent No.2 was wrongly declared innocent in the investigation whereas a specific role was attributed to him as he caused grievous injury.

Undisputedly, there are different parameters for grant of bail and cancellation of bail. Once the bail has been granted, the same cannot be cancelled in a mechanical manner without considering as to whether there are circumstances to show that the accused has misused the concession of bail or jumped bail but no such ground has been raised by learned counsel for the petitioner.

The grant of bail is a discretionary power to the Court and such discretion has to be exercised in a judicious manner and not as a matter of course. It depends on various factors not only the nature of accusation but also the specific role. It is to be seen as to whether such circumstances exist at the time of cancellation of bail or not. The Court is to consider the nature of offence and also as to whether *prima-facie* case is made out against the accused.

While cancelling the bail already granted, it is to be seen whether the accused has misused the discretionary relief granted to him. The

bail can be cancelled if there is likelihood of misuse of the bail. It is to be seen that the person to whom the bail has been granted, has either tried to interfere with the course of justice or attempted to tamper with evidence or witnesses or threatened witnesses or has also indulged in similar activities which may hamper smooth investigation or trial.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is, hereby, dismissed.

03.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes