

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

**Criminal Misc. No. M-45090 of 2017 (O&M)
Date of decision: 03.08.2018**

Baldev Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Karan Garg, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab
for respondent No.1-State.

Mr. G.B.S. Dhillon, Advocate
for respondents No.2 and 3.

Daya Chaudhary, J. (Oral)

The present petition has been filed by the complainant-Baldev Singh under Section 439(2) Cr.P.C. for cancellation of anticipatory/pre-arrest bail granted to respondents No.2 and 3 by Additional Sessions Judge, Ludhiana vide order dated 30.10.2017 in case FIR No.0173 dated 01.10.2017 registered under Section 306 read with Section 34 of Indian Penal Code at Police Station Doraha, District Khanna.

Learned counsel for the petitioner submits that there were specific allegations against respondents No.2 and 3 that they hatched a conspiracy and as a result of which, Sarabjeet Singh committed suicide. It was specifically mentioned in the suicide note that both respondents No.2 and 3 were responsible for his death. The custodial interrogation of accused-

respondents No.2 and 3 was required. Learned counsel further submits that while granting anticipatory bail by Additional Sessions Judge, Ludhiana, it has not been taken into consideration that deceased-Sarabjeet Singh has ended his life due to conspiracy hatched by respondents No.2 and 3. It was also not taken into consideration that in case, respondents No.2 and 3 were released on anticipatory bail, they might have caused interference in the Investigation and tamper with the evidence and may also influence the witnesses. Learned counsel also submits that there were specific allegations of abetment to commit suicide by respondents No.2 and 3. At the end, learned counsel for the petitioner submits that order of granting bail is totally non-speaking and is not based on any reasoning and as such, the bail granted to respondents No.2 and 3 is liable to be cancelled.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that various factors are to be seen at the time of cancellation of bail like; the accused has misused the liberty by indulging in similar criminal activities or tampering with the evidence or influencing the witnesses and also that there is likelihood that the accused may flee from the country just to avoid the Court proceedings or that any threat is given to the witnesses but none of the factors have been mentioned by learned counsel for the petitioner.

Learned counsel for respondents No.2 and 3 has also opposed the submissions made by learned counsel for the petitioner on the ground that the order of granting bail to respondents No.2 and 3 has been passed by giving a well detailed reasoning. It has also been mentioned in the order of granting bail that dead body of Sarabjeet Singh was not found and there was

no abetment on the part of respondents No.2 and 3. Nothing was to be recovered from them and they were ready to join investigation.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and counsel for respondents No.2 and 3 and have also perused the documents available on the file.

The cancellation of bail has been sought only on the ground that there were specific allegations against respondents No.2 and 3 and their names were also mentioned in the suicide note.

Undisputedly, there are different parameters for grant of bail and cancellation of bail. It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that rejection of bail in a nonbailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Once the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether any circumstances are there to show that he has misused the concession of bail or jumped the bail. Certain principles have also been laid down in judgment of Hon'ble the Apex Court in case ***Abdul Basit @ Raju and others etc. vs Mohd. Abdul Kadir Chaudhary and another*** 2015(1) SCC (Criminal) 257, which are as under :-

“Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Sessions to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e the power to

cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are (1) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation (v) there is likelihood of his fleeing to another country (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive.”

Hon'ble the Supreme Court in ***Ram Govind Upadhyay vs. Sudarshan Singh and Others, 2002(2) RCR (Criminal) 250***, has held that the grant of bail though involves exercise of discretionary power of the Court, but such exercise of discretion has to be made in a judicious manner and not as a matter of course. It depends on the factual matrix of the matter. The specific factors, which have to be considered before granting bail, have been mentioned in another judgment titled as ***Prahlad Singh Bhati vs. NCT, Delhi and Another, 2001(2) RCR (Criminal) 377***, which are as under: -

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail. (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge. (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. ”

Similarly in ***Chaman Lal vs. State of U. P. and Another, 2004***

(3) RCR (Criminal) 984, Hon'ble the Supreme Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are; (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the Court in support of the charge.

The concept of setting aside an unjustified, illegal or perverse order is totally different from cancelling an order of bail on the ground that the accused had misconducted himself or because of existence of some

supervening circumstances warranting such cancellation. While considering the petition for cancellation of bail, the Court is to consider the gravity and nature of offence, *prima facie* case against the accused, the position and standing of the accused. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. There is no absolute rule that once bail is granted to the accused, it cannot be cancelled. It can be cancelled if there is likelihood of misuse of the bail. There are several factors, which are to be seen while deciding the case of cancellation of bail. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal, which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. There cannot be any arithmetical formula for fixing the parameters in precise exactitude to cancel the bail.

In ***Sunil Fulchand Shah vs. Union of India and others, 2000***

(2) RCR (Criminal) 176, Hon'ble the Supreme Court observed as under: -

“Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such

constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety.”

In case, the person to whom the bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. The rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr. (2004 (7) SCC 528)***, Hon'ble the Supreme Court held as under: -

“11. 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 or 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 with the witness or apprehension of threat to the complainant.

*(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh 2002(2) RCR (Criminal) 250 : (2002 (3) SCC 598)** and **Puran v. Rambilas 2001(2) RCR (Criminal) 801 : (2001 (6) SCC 338)**).*

A three-member Bench of Hon'ble the Supreme Court in ***State (Delhi Administration) vs. Sanjay Gandhi 1978(2) SCC 411*** made the following elemental distinction in defining the nature of exercise while cancelling bail:

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another, It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail Necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. (Emphasis supplied)”

In the present case, none of the conditions has been violated. Even the petitioner has failed to show that respondents No.2 and 3 have ever misused the concession of bail or tampered with the evidence after grant of anticipatory bail. The only ground for cancellation of bail is that there were specific allegations against respondents No.2 and 3 and their names were mentioned in the suicide note. The bail was granted to respondents No.2 and 3 on the ground that the dead body of Sarabjeet Singh was not found and there was no abetment on the part of respondents No.2 and 3. Nothing was to be recovered from respondents No.2 and 3 as suicide note is already in possession of the Investigating Agency. Respondents No.2 and 3 were directed to join investigation and accordingly, they joined investigation. Respondents No.2 and 3 were not required for any further investigation and thereafter, interim order passed in their favour, was made absolute and they were directed to be released on bail with certain terms and conditions on furnishing bail/surety bonds to the satisfaction of the trial Court.

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.

03.08.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes