

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-45172 of 2017

Date of Decision: April 30, 2018

Harwinder Singh

.....Petitioner

versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Sarju Puri, Advocate
for the petitioner

Mr. Amandeep S. Gill, DAG Punjab

Mr. Parvinder Singh, Advocate
for respondent No. 2

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Sudhir Mittal, J. (Oral)

The petitioner seeks cancellation of anticipatory bail granted to respondent No. 2 vide order dated 23.10.2017 passed by the learned Additional Sessions Judge, SBS Nagar.

2. The petitioner submitted a complaint to the police, on the basis of which FIR No. 76 dated 23.06.2017 was registered at Police Station Rahon, District SBS Nagar under Sections 323, 324, 326, 452, 34 IPC .

3. Briefly the contents of the FIR are that respondent No. 2 stealthily entered the house of the petitioner armed with a dagger. He gave a blow in the stomach, on the right hand and below the right eye with the reverse side of the dagger. The reason for the enmity was stated to be a dispute regarding ancestral property.

4. Interim anticipatory bail was granted to respondent No. 2 by Additional Sessions Judge vide order dated 12.09.2017 (Annexure P-4) and the same was

confirmed vide order dated 23.10.2017 (Annexure P-5). Thereafter, a complaint dated 07.11.2017 (Annexure P-6) was made by the petitioner stating therein that respondent No. 2 had threatened him and had also assaulted him physically. Based upon that a DDR was recorded by the police.

5. Learned counsel for the petitioner states that orders (Annexures P-4 and P-5) are non speaking. They have been passed without application of mind to the facts of this case. Moreover, the incident of 07.11.2017 shows that respondent No. 2 has violated the conditions of grant of anticipatory bail and, therefore, his anticipatory bail should be cancelled. Reliance is placed upon a Division Bench judgment of this Court in *State of Punjab vs. Jagjit Singh Chahal, 2015(4) RCR(Criminal) 724* and judgment in *Sadhu Ram vs. Satish Kumar and another, 2005(4) RCR(Criminal) 904*.

6. Learned counsel for respondent No. 2 states that the petitioner and respondent No. 2 are real brothers. There is a dispute going on between them regarding ancestral property. On 22.06.2017 about three hours before registration of the FIR about 10-11 people including the petitioner had attacked him and his family by trespassing into their residential house and DDR was registered on this basis. Respondent No. 2 received simple injuries in that incident alongwith other family members. He states that the case in which anticipatory bail has been granted to respondent No. 2 is a cross version. Reference is also made to order dated 27.06.2017 and 04.07.2017 (Annexure R-2/1 and R-2/2) respectively to state that before Section 326 IPC had been added, he had applied for anticipatory bail and the same learned Additional Sessions Judge had passed a speaking order taking into consideration the fact there was an on going family dispute and that DDR had been registered against the petitioner earlier in point of time. Subsequently, when Section 326 IPC was added, the same file was put up before the learned Additional Sessions Judge, judgment and orders were passed taking into consideration the

orders passed earlier. Thus, it can not be said that there was no application of mind by the learned Additional Sessions Judge, SBS Nagar. It is further stated that the incident of 07.11.2017 was investigated by the police and the same was found to be false. Thus, respondent No. 2 has not violated the conditions of bail and the present petition is motivated and malafide.

7. Learned State counsel on instructions from ASI Hem Raj confirms the fact that the incident of 07.11.2017 was found to be false.

8. The Division Bench judgment in *State of Punjab (supra)* draws a distinction between rejection of bail and cancellation of bail. Circumstances for cancellation of bail have been laid down therein which are :-

- (a) Interference or attempt to interfere with due course of administration of justice or evasion or attempt to evade the due course of justice; or
- (b) misuse of the concession granted to an accused in any manner;
- (c) when bail is granted ignoring material evidence on record;
- (d) if bail is granted relying upon irrelevant materials.

9. The judgment in *Sadhu Ram (supra)* lays down that in case of heinous crime like bride burning if bail is granted without giving any reason then the order is perverse and the bail granted to the accused deserves to be cancelled.

10. Thus, the law laid down is that bail granted to an accused would be liable to cancelled in case -

- (a) order granting bail is perverse i.e. passed without considering the relevant material on record and
- (b) if the concession of bail has been misused.

11. In the present case neither of these circumstances exist. Merely because reasons have not been mentioned in the orders dated 12.09.2017 and 23.10.2017, it can not be said that the relevant material on record has been ignored

because earlier the same Judge had dealt with the anticipatory bail application of respondent No. 2 (before Section 326 IPC was added) and a well reasoned order was passed. Thereafter, the file was put up again after addition of Section 326 IPC and obviously the previous orders were taken into consideration before passing the orders impugned in the present petition. The incident of 07.11.2017 has been shown to be false by the Investigating Agency and, thus, it can also not be said that respondent No. 2 has violated the conditions of bail. Moreover, the dispute is between real brothers regarding division of ancestral property. Thus, no good ground is made out for cancelling the anticipatory bail granted to respondent No. 2.

12. The petition is, accordingly, dismissed.

April 30, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No