

Crl. Misc. No. M-47148 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-47148 of 2017

DATE OF DECISION:26.11.2018

Shyam Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Parveen Mann, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Tejinder Pal Singh, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Petitioner-Shyam Singh has filed the present petition under Section 439 (2) Cr.P.C. read with Section 482 Cr.P.C. for cancellation of bail granted to accused-respondent No.2-Ramesh vide order dated 19.9.2017 in case FIR No. 309 dated 27.8.2016 registered under Sections 148,149,323,324,325,506 IPC and Section 3 (1) of Scheduled Castes and Scheduled Tribes Act, 1989 at Police Station City Indri, District Karnal.

Learned counsel for the petitioner contends that respondent No.2 was initially granted bail by learned lower Court during pendency of the case on 19.9.2017. Thereafter, he filed an application for exemption from personal appearance on the ground that he had to go to see his ailing

relation. On the next date of hearing i.e. 22.8.2017, again an application was filed by respondent No.2 through co-accused-Jasmer Singh seeking exemption from personal appearance on the ground that his son was suffering from severe pain in his body and he had to go to Delhi for treatment. Learned counsel further contends that a specific objection was raised by the petitioner that accused-respondent No.2 has violated the terms and conditions of the bail granted to him as respondent No.2 had gone to New Zealand for four days prior to 4.8.2017 without prior information and permission of the Court. Learned counsel also contends that wrong facts were mentioned by respondent No.2 in the application filed for exemption from personal appearance, whereas, he had gone to New Zealand. It is a case of misrepresentation and said application for exemption from personal appearance was moved just to mislead the Court and respondent No.2 has misused the concession of bail by filing false and frivolous applications. At the end, learned counsel for the petitioner contends that respondent No.2 threatened informant-Harpal due to which he died and an application in this regard was also given.

Learned counsel for respondent-State contends that while granting bail all these objections were raised by the petitioner and after considering all these objections, bail was granted. A detailed and reasoned order was passed and bail cannot be cancelled on these grounds.

Learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioner and reiterated the arguments advanced by learned counsel for respondent-State. Learned counsel contends that respondent No.2 was earlier granted bail but never misused that concession. Thereafter, he was granted bail vide order dated

19.9.2017 with the direction to surrender his passport before the trial Court and to submit an undertaking to obtain permission of the Court in case he was to go abroad but still he violated the said condition.

Heard the arguments advanced by learned counsel for the parties and have also gone through the order passed by the Court below and other documents available on file including order dated 19.9.2017, vide which, respondent No.2 was granted bail.

The relevant portion of order dated 19.9.2017 passed by Additional Sessions Judge, Karnal is reproduced as under:-

“Since the applicant-accused has surrendered in the Court on 7.9.2017 and moved his application for bail after surrendering before the Court, in which his prayer was declined on 8.9.2017 and he is in custody since then and that he was earliler on bail in this case and now has moved an application again undertaking that he will surrender his passport before the Court and undertakes to obtain permission of the Court in future if he has to go to abroad, therefore, in view of this, he is ordered to furnish his fresh personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Court. Bond furnished, accepted and attested. He be released if not wanted in any other case. The bail application stands disposed of. File be attached with the main case file.”

The bail was sought on the ground that supplementary challan was not filed and due to this charges against accused were not framed. Respondent No.2 was in custody since 8.9.2017. Earlier he was on bail and did not appear before the Court. Warrants were issued against respondent

No.2 and thereafter he surrendered before the Court on 7.9.2017. Thereafter an application was moved for fresh bail, which was declined by the Court vide order dated 8.9.2017 . Bail was opposed before the lower Court also on the ground that respondent No.2 went abroad without taking prior permission from the Court. An application for exemption from personal appearance was moved by respondent No.2 through co-accused-Jasmer Singh on 4.8.2017 on the ground that he had gone to see his ailing relation, which was allowed.

While granting bail to respondent No.2, it was mentioned by Additional Sessions Judge, Karnal that respondent No.2 had surrendered himself in the Court on 7.9.2017 and moved an application for bail after surrendering, which was declined on 8.9.2017. Thereafter, another application was moved by respondent No.2 with an undertaking to surrender his passport before the Court and to obtain permission of the Court in future in case he had to go to abroad. The undertaking given by respondent No.2 was taken into consideration and he was ordered to be released on bail subject to his furnishing fresh personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of court, in case he was not wanted in any other case.

There are different parameters for grant of bail and cancellation of bail. Once, the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether there are certain circumstances to show that the accused has misused the concession of bail or jumped the bail. While granting bail, the Court is to keep in mind not only the nature of accusations but the severity of the punishment and also other factors, which are necessary for grant of bail i.e. reasonable

apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant party. Apart from this it is to be seen that prima facie case is made out for grant of bail by considering the custody and nature of offence.

There is no absolute rule that once the bail is granted to the accused, it cannot be cancelled. It can be cancelled if there is likelihood of misuse of bail. The nature of offence is also a factor to be considered that in case the petitioner is released on bail, he may not influence the witnesses or tamper with the evidence.

In the present case, the submissions made by learned counsel for the petitioner have already been considered by learned trial Court while granting bail to respondent No.2. The trial Court after taking into consideration the submissions and undertaking given by respondent No.2 granted bail to respondent No.2 with certain terms and conditions. Moreover, learned counsel for the petitioner has failed to show that respondent No.2 has ever misused the concession of bail or tampered with the evidence after grant of bail.

In view of the above, no ground is made out to cancel the bail granted to respondent No.2.

Accordingly, the present petition being devoid of any merit is hereby dismissed.

November 26, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No