

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

**Criminal Misc. No. M-48737 of 2018
Date of decision: 20.12.2018**

Vijay Kumar

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sumit Gupta, Advocate
for the petitioner.

Mr. R.S. Doon, AAG, Haryana
for respondent No.1-State.

Mr. S.K. Kaushik, Advocate
for respondent No.2.

Daya Chaudhary, J.

The present petition has been filed by petitioner, namely, Vijay Kumar under Section 439(2) Cr.P.C. for cancellation of bail granted to accused-respondent No.2 by the Additional Sessions Judge, Karnal vide order dated 20.02.2018 in case FIR No.246 dated 07.05.2017 registered under Sections 148, 149, 302, 506 of Indian Penal Code at Police Station Gharaunda, District Karnal.

Respondent No.2 filed an application for grant of regular bail under Section 439 Cr.P.C., which was allowed vide order dated 20.02.2018 on the ground that the investigation has already been completed and the case is at the stage of prosecution evidence. Nothing is to be recovered from the accused and his custodial interrogation is not required. It was also

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mentioned in the order that co-accused, namely, Sonu and Mintu, were released on regular bail.

Cancellation of bail has been sought by raising various grounds by learned counsel for the petitioner.

Learned counsel for the petitioner submits that as per allegations levelled in the FIR, respondent No.2-Vishal gave two knife blows on the person of Satnam and as per post mortem report, deceased-Satnam was having two injuries and were sharp wound. As per opinion of the Doctor, the cause of death was hemorrhage and shock due to injuries, which were stated to be anti-mortem in nature. Learned counsel further submits that the case of respondent No.2 is not identical to the case of his co-accused, namely, Sonu and Mintu, who were released on bail by this Court. Learned counsel also submits that the reasons should have been mentioned while granting bail but without discussion on the merits and demerits of the case, the bail has been granted and the same is liable to be cancelled.

Learned State counsel as well as counsel for respondent No.2 have opposed the submissions made by learned counsel for the petitioner. It has been argued by learned State counsel as well as counsel for respondent No.2 that a detailed speaking order was passed while granting bail and not only the parity with accused, namely, Sonu and Mintu was considered but other factors were also taken into consideration.

Heard arguments of learned counsel for the petitioner, learned State counsel as well as counsel for respondent No.2 and have also perused impugned order dated 20.02.2018 as well as other documents available on

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the file.

As per allegations levelled in the FIR, complainant along with one Goldy had gone to village Munak to attend Jagrata on his motorcycle whereas Satnam, Surender and Gurden went on other motorcycle. Ramesh Kumar, Vishal and Vijay were already present there in Jagrata. On the intervening night of 06/07.05.2017 at about 2:25 am, complainant, Satnam and Goldy went for walking on the Pacca Assandh Road and they came across Ramesh Kumar, Vishal and Vijay and 2/3 more boys were already standing over there. Ramesh asked Satnam to go for walk along with him and other companions of Ramesh Kumar also followed them. It is also stated by the complainant that after some time, Ramesh and Vijay caught hold Satnam and Vishal inflicted a knife blow on the right side of his armpit and gave another blow on the hip of Satnam. Thereafter, Ramesh, Vishal, Vijay and their companions chased the complainant. His companions and they saved their lives by concealing themselves in a jungle nearby. One Jasbir and Sonu lifted Satnam from the place of occurrence and took him to a doctor but the shop of the doctor was found locked. Thereafter, they arranged a car and took Satnam to Amritdhara Hospital and from there, he was taken to PGI, Karnal, where he was declared dead.

In the initial stage, respondent No.2 was stated to be the main accused, who inflicted injuries to the deceased but in the investigation, it came out that Roshan inflicted injuries to deceased and respondent No.2 was attributed injuries by fist and kick blows but as per PMR, no injuries of fist and kick blows were shown. Accused, namely, Sonu and Mintu were released on regular bail by this Court in Criminal Misc. Nos. M-48259 of

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2017 and M-5271 of 2018 by stating that it was a debatable point whether respondent No.2 had played any role or hatched any conspiracy to commit murder of the deceased and also that all the material witnesses were still to be examined, respondent No.2 was granted bail by the trial Court. It was also mentioned that the investigation had already been completed and nothing was to be recovered from respondent No.2.

On perusal of order passed in favour of respondent No.2, it cannot be said that only on the ground of parity with accused, namely, Sonu and Mintu, respondent No.2 was released on bail but other factors were also taken into consideration. Bail granted to respondent No.2 cannot be cancelled only on this ground that there was no parity with accused Sonu and Mintu.

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, which has to be exercised in a judicious manner and not as a matter of course. At the time of granting bail, the Court has to keep in mind not only the nature of accusation but the severity of punishment and reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant party.

In case, a person to whom the bail has been granted either tries

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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 the present case, nothing has been brought to the notice of this Court that respondent No.2 has misused the concession of bail or he has threatened the witnesses or is not appearing before the trial Court after releasing on bail.

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.

20.12.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes