

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

CRM-M-7586-2018

Date of decision:-14.9.2018

Bansi Lal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Raj Kapoor Malik, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Raman Chawla, Advocate
for the respondent No.2.

H.S. MADAAN, J.

This petition under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C. for setting aside of order dated 15.12.2017 passed by learned Additional Sessions Judge, Gurugram granting regular bail to Ajay Kundu - accused in FIR No.91 dated 7.7.2017 under Sections 304-B/34 IPC, registered at Police Station Sector-9A, Gurugram has been filed by the complainant Bansi Lal.

Briefly stated, the facts of the case are that Anuradha daughter of complainant Bansi Lal was married with accused Ajay Kundu; she had committed suicide within seven years of her marriage; the complainant Bansi Lal reported the matter to the police alleging that his deceased daughter Anuradha was being harassed and maltreated by her husband Ajay Kundu and members of his family in connection with demand of dowry.

On the basis of that complaint, formal FIR was registered and Ajay Kundu accused was arrested in this case. He had moved an application for regular bail, which was accepted by learned Additional Sessions Judge, Gurugram vide a detailed order dated 15.12.2017. The law laid down by the Apex Court on the subject reported in authority **Chandrakeshwar Parsad Vs. State of Bihar, 2016(9) SCC 443** was taken into consideration, which is to the following effect:

“Duty is cast upon the court in addressing such a prayer in a case on its own merit and while applying its discretion, it must be applied in a judicial manner and not as a matter of course. Balance has to be struck to right to individual liberty and interest of society. No right can be absolute and reasonable restrictions can be placed on them. While one of the considerations in deciding whether to grant bail to accused or not is whether he has been in jail for a long time. The court has also to take into consideration other facts and circumstances such as the interest of society.”

Learned Additional Sessions Judge, Gurugram has taken

into consideration various factors while granting bail to the petitioner like marriage of the couple surviving from 1.2.2013 till 6.7.2017; there being no previous complaint submitted by the deceased or her relatives regarding alleged maltreatment of deceased by her husband or his family members; no Panchayat etc. having been convened in order to resolve any alleged disturbance of family dispute; the facts and circumstances of the case showing that relations between the deceased and her husband and his family members were normal; the custody of petitioner/ accused being of long time; the photographs of the bride showing deceased in happy mood and the couple visiting outside places; the deceased had been active on the face-book and shared her happy mood photographs on social sites.

According to the complainant, the gravity and seriousness of allegations against accused did not warrant grant of regular bail to him, however, it was wrongly granted to such accused by the trial Court, therefore, the order granting bail be set aside and accused Ajay Kundu be taken into custody.

Whereas learned counsel representing such accused has submitted that there is no ground to set aside the order granting bail to Ajay Kundu and that he has not misused the concession of bail in any manner, therefore, the petition seeking cancellation of bail be dismissed. He has referred to authority **Dinesh M.N.(S.P.) Versus State of Gujarat, 2008(3) RCR(Criminal) 868** by Hon'ble Supreme Court, wherein it was observed that parameters for grant of bail and cancellation of bail are different and reappreciation of evidence as done by Court granting bail is to be avoided, though the Court can consider

whether irrelevant materials were taken into consideration; when cancellation of bail was sought on the ground that irrelevant material was taken into consideration at the time of grant of bail, such irrelevant material should be of substantial nature and not of trivial nature.

In the present case no irrelevant material is shown to have been considered by the trial Court while granting bail to the petitioner.

After hearing the rival contentions, I find that there are no allegations that after being released on bail by the trial Court accused Ajay Kundu has misused the concession by trying to influence the prosecution witnesses or by making any attempt to abscond or prolong the trial by absenting therefrom or in any other manner.

Learned counsel for the petitioner in all fairness conceded that he is seeking cancellation of bail solely for the reason that Ajay Kundu, husband of the deceased is accused of a serious offence of dowry death of his wife, as such, should not have been granted bail.

However, I find that this contention is without merit. The trial Court by a well reasoned order in light of the settled judicial position properly exercising the jurisdiction vested in it has passed the order granting bail to accused Ajay Kundu and since there is nothing on record to show that he has misused the concession of bail, no ground for cancellation the bail order is made out.

Section 437 Cr.P.C. deals with the eventualities when bail may be taken in case of non-bailable offences. Section 439 Cr.P.C. deals with special powers of High Court or Court of Session regarding bail. The trial Court has rightly exercised the jurisdiction vested in it and has certainly not exceeded the same. There is no reason to recall that order.

Learned counsel for the petitioner has referred to citation *Kalayn Chandra Sarkar Versus Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR(Criminal)254* by the Apex Court wherein discussing the scope of Section 439 Cr.P.C. while dealing with grant of bail in a triple murder case when the accused was in jail for 3 ½ years only and the trial was not likely to conclude in near future, the Apex Court had observed that bail is not to be granted when gravity of offence is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail, as such, bail was cancelled by the Hon'ble Supreme Court.

There cannot be any dispute with the proposition of law so laid down, but here the situation is somewhat different. The bail had been cancelled in a case where three persons had been murdered and a very heinous crime had been committed. In the instant case, the wife of accused had committed suicide and there are no allegations of his tampering with the prosecution witnesses after his release on bail. Therefore, this authority is not of much help to the petitioner.

Finding no merit in the petition, the same stands dismissed.

14.9.018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No