

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

**Criminal Misc. No. M-8093 of 2018
Date of decision: 26.11.2018**

Renu

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for respondent No.1-State.

Mr. S.S. Sarwara, Advocate
for respondent No.2.

Daya Chaudhary, J.

Petitioner-Renu has filed the present petition under Section 439(2) Cr.P.C. for cancellation of bail granted to accused-respondent No.2 vide order dated 01.02.2018 by the trial Court in case FIR No.117 dated 25.05.2017 registered under Sections 306, 506, 511 IPC at Police Station City Rajpura, District Patiala.

The petitioner is widow of deceased. The FIR in dispute was registered on the basis of statement made by husband of petitioner (deceased). Initially, the FIR was registered under Section 306 read with Section 511 IPC but during course of treatment, the husband of petitioner expired and challan was presented for offences punishable under Sections 306, 506 IPC. Deceased left a suicide note, which was also part of final

report/charge-sheet. Accused-respondent No.2 approached this Court by way of filing Criminal Misc. No. M-23595 of 2017 for grant of anticipatory bail, which was dismissed vide order dated 07.07.2017. Thereafter, respondent No.2 approached Hon'ble the Apex Court by way of filing SLP No.7050 of 2017, which was dismissed as withdrawn on 05.10.2017 with liberty to surrender and avail remedy of regular bail before the trial Court. Accused-respondent No.2 was arrested on 17.11.2017 and thereafter, he moved application for grant of regular bail, which was allowed by the trial Court vide order dated 01.02.2018.

The petitioner, who is wife of deceased, has filed the present petition under Section 439(2) Cr.P.C. for cancellation of bail granted to accused-respondent No.2 vide order dated 01.02.2018 by raising various grounds.

Learned counsel for the petitioner submits that a note was left by the deceased which was like a suicide note and same is part of charge-sheet. Learned counsel further submits that by considering the allegations levelled against respondent No.2, the anticipatory bail was not granted by this Court and by Hon'ble the Apex Court. Learned counsel also submits that respondent No.2 is a habitual offender as he is involved in seven other FIRs, which are pending at Police Station City, Rajpura. While granting regular bail, the conduct of respondent No.2 has not been taken into consideration. In some cases, where respondent No.2 has been acquitted, he has prevailed over the witnesses either by way of compromise or not to depose against him. Learned counsel also submits that in one case i.e. FIR No.255 dated 06.07.2002, the complainant and other witnesses did not

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support the case of the prosecution and due to that reason, respondent No.2 was acquitted. Similarly, in other case i.e. FIR No.289 dated 30.11.2002, the witnesses turned hostile and accused-respondent No.2 was acquitted. In other two cases i.e. FIR No.115 dated 18.05.2007 and FIR No.276 dated 19.10.2011, a compromise was effected between the parties, which has resulted into acquittal/discharge vide separate orders dated 13.08.2018 and 24.12.2014. It is also the argument of learned counsel for the petitioner that even respondent No.2 has not spared his own mother and has assaulted her. By managing and prevailing upon her mother, the cancellation report was presented, which was accepted vide order dated 06.12.2014. Learned counsel also submits that several witnesses are there in the present case and respondent No.2 may misuse the concession of bail. It is also mentioned in the final report that respondent No.2 harassed the witnesses. At the end, learned counsel for the petitioner submits that in the present case also, accused-respondent No.2 may influence the witnesses like the previous cases by misusing his concession of bail. Learned counsel for the petitioner has also relied upon judgments rendered by Hon'ble the Apex Court in ***Brij Nandan Jaiswal vs. Munna @ Munna Jaiswal and another, 2009(1) SCC 678, Ash Mohammad vs. Shiv Raj Singh @ Lalla Babu and another, 2012 (9) SCC 446, Gobarbhai Naranbhai Singala vs. State of Gujarat and others, 2008(3) SCC 775, Anil Kumar Yadav vs. State (NCT) of Delhi and another, 2018(12) SCC 129, Panchanan Mishra vs. Digambar Mishra, 2005(3) SCC 143, State of Maharashtra vs. Dhanendra Shriram Bhurle, 2009(3) Bom.C.R. (Cri.) 271, Kanwar Singh Meena vs. State of Rajasthan and another, 2012(12) SCC 180 and Lachhman Dass vs. Resham Chand***

Kaler and another, 2018(1) RCR (Criminal) 967 in support of his arguments. Learned counsel for the petitioner also prays that bail granted to accused-respondent No.2 be cancelled keeping in view his past conduct; allegations levelled against him and also the fact that he may influence the witnesses during pendency of the trial in the present case also.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that no case was pending against respondent No.2 at the time of grant of bail. Learned State counsel also submits that the trial is likely to be concluded as out of total 29 prosecution witnesses, twelve material witnesses have already been examined and there is no chance that respondent No.2 may influence the witnesses. No such complaint was moved to show that any threat was given to any witness after release on bail

Similarly, learned counsel for respondent No.2 has also opposed the submissions made by learned counsel for the petitioner on the ground that accused-respondent No.2 has neither misused the concession of bail nor any efforts have been made by him to influence the witnesses and statements of material witnesses have already been recorded. Learned counsel for respondent No.2 also submits that no case was pending against respondent No.2 at the time of grant of bail. Even one material witness has not supported the case of the prosecution.

Heard arguments of learned counsel for the petitioner; learned State counsel as well as counsel for respondent No.2.

It is well settled law that the Courts while granting bail should exercise its discretion in a judicious manner and not as a matter of course.

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At the stage of granting bail, a detailed examination of evidence available; nature of allegations and stage of trial, are necessary to be taken into consideration. A number of factors are necessary to be taken into consideration while granting bail like the nature of accusation and the severity of punishment and also nature of supporting evidence. It is also to be seen as to whether there is reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

Cancellation of bail is a serious matter and bail once granted can be cancelled only in the circumstances and for the reasons recorded as observed in a number of judgments rendered by this Court as well as by Hon'ble the Apex Court. Once the bail has been granted by any Court, the same can be cancelled on account of its misuse. In case the reasons have been mentioned while granting bail, it cannot be cancelled only on the ground that a number of FIRs were registered against the accused and he managed the statement of complainant. It is necessary to be seen as to whether any complaint has been made by the complainant or any other party, who was witness in the FIRs registered against the accused that compromise was effected with ulterior motive by putting undue pressure upon the witnesses. It has also been observed in various judgments that the Court does not interfere with an order passed while granting or rejecting bail to the accused but it is equally necessary to be seen by the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a number of decisions rendered by this Court or by Hon'ble the Apex Court. It is also well settled that not only the circumstances but other factors are necessary to be borne in mind while

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considering an application for bail.

Section 439 (2) of the Cr.P.C. provides for the powers of the High Court and the Court of Sessions regarding cancellation of bail granted to accused person. It reads as under:-

"Section 439 - Special powers of High Court or Court of Session regarding bail

*(1) * * **

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

Since the submission made by the parties center round the interpretation to be placed upon Section 362 of the Code, it may be necessary to have a glance at the same. The heading of Section 362 of the Code provides for the "Court not to alter judgment" and the provision operates as a bar for the court to alter or review its decisions once pronounced. It reads as under :

"Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

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 to be arrested. The power to cancel the bail granted to a accused person can be passed broadly on the grounds i.e. (i) the accused misuses his liberty by

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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.

The scope of this power to High Court under Section 439 (2) has also been considered by Hon'ble the Apex Court in the case of ***Gurcharan Singh and others Vs. State (Delhi Administration) 1978 (1) SCC 118***, wherein, it has been held as under:-

"16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498, Cr.P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439 (2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under Sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody

only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 489(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIIL by any Court including the Court of Session to custody, if it thinks appropriate to do so, it must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused, person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

Similarly in another judgment rendered in the case of **Puran**

Vs. Rambilas and another 2001 (2) RCR (Criminal) 801, Hon'ble the Apex

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Court has held that concept of setting aside an unjustified, illegal or perverse order is absolutely different from the cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In ***Dr. Narendra K. Amin Vs. State of Gujarat and another 2008 (2) RCR (Criminal) 858***, the three-Judge Bench of Hon'ble the Apex Court has also reiterated the aforesaid principle and a distinction has been drawn in granting of bail and cancellation of bail. In the said case, the High Court cancelled the bail granted to the accused in exercise of powers under Section 439 (2) of the Code. In appeal, it was contended that the High Court has erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle as laid down in ***Puran's case (supra)*** observed that when irrelevant materials have been taken into consideration by the Court granting bail, the same makes the said order vulnerable and subject to scrutiny by the appellate Court and no review would lie under Section 362 of the Code. It was also held by Hon'ble the Apex Court that if the order of grant of bail is perverse, the same can be set at naught only by superior court and has left no room for a review by the same Court.

Similar view has been taken by Hon'ble the Apex Court in the case of ***Ranjit Singh Vs. State of M.P. and others 2013 (4) RCR (Criminal) 6090***, wherein, it has been observed as under:-

"20....There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain

supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court."

Similarly, Hon'ble the Apex Court in the case of ***Hari Singh Mann Vs. Harbhajan Singh Bajwa 2000 (94) RCR (Criminal) 650*** has observed as under:-

"9. There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code.

10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. The reliance of the respondent on Talab Haji Hussain case is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561-A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests

specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7-1-1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

11. The impugned orders of the High Court dated 30-4-1999 and 21-7-1999 which are not referable to any statutory provisions, having been passed apparently in a review petition in a criminal case are without jurisdiction and liable to be quashed."

Hon'ble the Apex Court in the case of ***Central Bureau of Investigation Vs. V. Vijay Sai Reddy 2013 (3) RCR (Criminal) 252*** has cautioned that cancellation of bail necessarily involves the review of a decision, which has already been made and it should be exercised very sparingly by the Court of law. It is a well settled proposition of law that what cannot be done directly, cannot be done indirectly. While exercising a statutory power a Court is bound to act within the four corners of the Statute. The statutory exercise of the power stands on a different pedestal than the power of judicial review vested in a Court. The same has been upheld by Hon'ble the Apex Court in ***Bay Berry Apartments (P) Ltd. and Anr. v. Shobha and Ors., (2006) 13 SCC 737, U.P. State Brassware Corporation Ltd. and Anr. v. Uday Narain Pandey, 2006(1) S.C.T. 77 : (2006)1 SCC 479*** and ***Rashmi Rekha Thatoi and Anr. v. State of Orissa and Ors., 2012(2) R.C.R.(Criminal) 870 : 2012(2) Recent Apex***

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Judgments (R.A.J.) 591 : (2012)5 SCC 690. It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions which are permissible in law.

In the present case, undisputedly, respondent No.2 is under trial and all the material witnesses have been examined. Nothing has been brought to the notice of this Court that respondent No.2 has ever misused the concession of bail during pendency of the trial while recording statements of material witnesses. No doubt, the prime consideration of the Court is to protect the fair trial and ensure that the justice has been done. It may happen if the witnesses are able to depose without fear, freely and truthfully. Nothing has come in the arguments or on record to show that respondent No.2 is likely to misuse the bail or tamper with the evidence. Once the discretion has been exercised by the Court while granting bail by considering the relevant material and various factors, there is hardly any chance to interfere with such discretion unless the same suffers from serious infirmities or perversity. While considering the correctness of the order granting bail, the approach should be whether the order granting bail to the accused is vitiated by any serious infirmity where this Court can interfere. The material available on record does not prima facie indicate that there is possibility of tampering with the evidence or influencing the witnesses.

Learned counsel for the petitioner has not been able to show as to whether the order granting bail is perverse or how the concession of bail has been misused by respondent No.2. Even no complaint has been made to the Police authorities or the trial Court to show that accused-respondent No.2 has tampered with the evidence or any threat was given to depose in

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his favour.

The order of granting bail does not suffer from any such infirmity wherein interference is required. The judgments relied upon by learned counsel for the petitioner are not applicable keeping in view the facts and circumstances of the case and particularly the stage of trial, which is in progress as all the material witnesses have been examined.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner to cancel bail granted to respondent No.2 and as such, the petition being devoid of any merit is dismissed.

26.11.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No