

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

**Criminal Misc. No. M-8527 of 2018
Date of decision: 03.10.2018**

Rakesh Kumar

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. R.S. Sidhu, Advocate
for the petitioner.

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

Mr. G.S. Sidhu, Advocate
for respondent No.2.

Daya Chaudhary, J.

The present petition has been filed by petitioner-complainant, namely, Rakesh Kumar under Section 439(2) Cr.P.C. for cancellation of bail granted to accused-respondent No.2 by the Sessions Judge, Barnala vide order dated 31.03.2016 in case FIR No.71 dated 29.02.2016 registered under Sections 323, 324, 325, 326, 452 read with Section 34 of Indian Penal Code at Police Station City Barnala, District Barnala.

Learned counsel for the petitioner submits that specific allegations were levelled against respondent No.2 in the FIR and he was armed with Kirpan and Kirpan blow was given on the person of the petitioner, which hit on his forearm. Without considering the nature of injuries and specific role attributed to accused-respondent No.2, the bail has been granted to him by the Sessions Judge, Barnala. The petitioner moved

an application for cancellation of bail but it was dismissed in default vide order dated 26.04.2017. The absence of the petitioner was not intentional as he was arrested in some other case and was in custody from 01.04.2017 to 02.06.2017. Thereafter, an application for restoration of application was filed, which was also dismissed. Bail was granted to accused-respondent No.2 on the ground that the injury under Section 326 IPC was not on vital part of the body of complainant-Rakesh Kumar and he was not required for further investigation. Learned counsel also submits that by recording this finding only, respondent No.2 was ordered to be released on bail.

Learned State counsel as well as counsel for respondent No.2 have opposed the submissions made by learned counsel for the petitioner on the ground that the order granting bail is very clear as not only the role has been specified but the bail has been granted by considering the custody period and stage of the trial. After presentation of challan, no purpose would be served by keeping respondent No.2 in custody.

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 31.03.2016 as well as other documents available on the file.

The relevant portion of order dated 31.03.2016 is reproduced as under: -

“xxx

xxx

xxx

4. The injury under Section 326 IPC, which has been attributed to accused-applicant, is not on the vital part of the body of complainant Rakesh Kumar. The accused-applicant is in judicial lock up and is no longer required

for any further investigation. Presentation of challan and conclusion of trial will definitely take time. No useful purpose would be served by keeping the applicant/accused Avtar Singh behind the bars any more. Hence, he is ordered to be released on bail on furnishing bail bonds in the sum of Rs.40,000/- with one surety in the like amount to the satisfaction of Illaqa/Duty Magistrate, Barnala. Bail application file be consigned to the record room.”

The bail granted to respondent No.2 has been sought to be cancelled only on the ground that specific role has been attributed to respondent No.2 in the FIR and there is violation of terms and conditions of the bail order.

On perusal of impugned order dated 31.03.2016 and after hearing arguments of learned counsel for the petitioner, it cannot be said that there is violation of terms and conditions of the bail order. The bail has been granted by recording the finding that respondent No.2 is not required for further investigation.

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 the bail but no such ground has been raised by learned counsel for the petitioner.

The grant of bail is a discretionary power to the Court and such discretion has to be exercised in a judicious manner and not as a matter of course. It depends on various factors not only the nature of accusation but

also the specific role. It is to be seen as to whether such circumstances exist at the time of cancellation of bail or not. The Court is to consider the nature of offence and also as to whether *prima-facie* case is made out against the accused.

While cancelling the bail already granted, it is to be seen whether the accused has misused the discretionary relief granted to him. The bail can be cancelled if there is likelihood of misuse of the bail. It is to be seen that the person to whom the bail has been granted, has either tried to interfere with the course of justice or attempted to tamper with evidence or witnesses or threatened witnesses or has also indulged in similar activities which may hamper smooth investigation or trial.

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.

03.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes