

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

CRM-M No.14682 of 2019

Date of decision : 26.09.2019

Suresh Kumar

.....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. K. S. Dhanora, Advocate for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A. G., Haryana.

Mr. A. S. Shera, Advocate for the respondents No.2 and 3.

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DAYA CHAUDHARY, J.

Petitioner Suresh Kumar has filed the present petition under Section 439 (2) of the Code of Criminal Procedure, 1978 (for short – “Cr.P.C.”) for cancellation of anticipatory bail granted to accused Jaswinder Sharma and Sukhwinder Sharma alias Chhota (respondents No.2 and 3), vide order dated 06.02.2019 (Annexure P-3) in case FIR No.258 dated 25.07.2018 under Sections 148, 149, 323, 365 of the Indian Penal Code, 1860 (for short – “IPC”), registered at Police Station Ladwa, Distt. Kurukshetra, on the ground that accused-respondent No.2 and 3 threatened the petitioner either to enter into a compromise or to face the consequences.

Learned counsel for the petitioner submits that respondents No.2 and 3 have misused the concession of anticipatory bail granted to them by this Court vide order dated 06.02.2019. One more FIR No.36 dated 25.03.2019 under Section 506 IPC P. S. Ladwa, has been registered against

them. They are not entitled to remain on bail and their bail be cancelled.

Reply on behalf of respondents No.2 and 3 has been filed by learned counsel appearing for them in the Court today, which is taken on record.

Learned counsel for respondents No.2 and 3 submits that FIR No.36 dated 25.03.2019 under Section 506 IPC was wrongly registered against respondents No.2 and 3 on the basis of false complaint and no threat was given by them. They were released on bail in said FIR. Learned counsel also submits that the petitioner-complainant is habitual in committing cheating and playing fraud as one more FIR No.298 dated 08.08.2019 under Sections 406, 420, 506, 120-B IPC has also been registered against him as well as his associates at Police Station Ladwa. Respondents No.2 and 3 never misused the concession of bail and without having any ground of cancellation of bail, the present petition has been filed.

Learned State counsel has also admitted that respondents No.2 and 3 have been released on bail in the FIR which was registered under Section 506 IPC.

Heard arguments of learned counsel for the parties and I have also perused the documents available on the file including the order of anticipatory bail passed in favour of respondents No.2 and 3.

No doubt, cancellation of bail is a serious matter as bail once granted cannot be cancelled in a routine manner. A number of factors are necessary to be taken into consideration while granting bail like nature of offence, punishment, role of the accused, supporting evidence, etc. It is also necessary to be seen whether there is reasonable apprehension of tampering

with the evidence or there is any threat to the complainant.

The only reason which has been mentioned in the present petition as well as in the arguments of learned counsel for the petitioner is that respondents No.2 and 3 are involved in one more case and FIR has been registered against them. However, they have already been released on bail in that FIR.

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 :

"Section 362 – Court not to alter judgment.

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 Session 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 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 visa-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 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 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 Cr.P.C.. 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 the 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. Vs. Shobha and Ors., (2006) 13 SCC 737, U.P. State Brassware Corporation Ltd. and Anr. Vs. Uday Narain Pandey, 2006(1) S.C.T. 77 : (2006)1 SCC 479*** and ***Rashmi Rekha Thatoi and Anr. Vs. State of Orissa and Ors., 2012(2) R.C.R.(Criminal) 870 : 2012(2) Recent Apex 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, respondents No.2 and 3 are under trial. Nothing has been brought to the notice of this Court that respondents No.2 and 3 have 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 respondents No.2 and 3 are 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.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner to cancel bail granted to respondents No.2 and 3 and as such, the petition being devoid of any merit is dismissed.

Dated : 26.09.2019

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No