

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-35523 of 2019

Date of Decision: 29.08.2019

Lakhvir Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sarju Puri, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439(2) Cr.P.C. is for cancellation of anticipatory bail granted to respondent no.2 vide order dated 02.07.2019 passed by learned Additional Sessions Judge, SBS Nagar in case FIR No.22 dated 08.06.2019 under Sections 363, 366, 380 IPC and Sections 376 IPC and 6 of POCSO Act (added later on), registered at P.S. Pojewal, District SBS Nagar.

The allegation against the respondent-accused is that he had enticed away the minor daughter of the petitioner, who was born on 02.09.2001, from the Village Sri Gurudwara Sahib, where she had gone for worship. Since it was a question of their reputation, the petitioner and his family members did not disclose this fact to any other person and kept on searching for her at their own level, but they could not find her. Later on,

they came to know that their daughter who was 17 years and 9 months of

age, has been allured and enticed away by the accused-respondent no.2, who is residing in a rented house with his mother at Village Saroya. While leaving home, the daughter of the complainant had also taken away an amount of Rs.3 lakhs approximately with her.

Counsel for the petitioner has argued that learned trial Court has granted bail to respondent no.2, despite there being serious and specific allegations of kidnapping from lawful guardianship with an intention to compel her for marriage. Since daughter of the complainant was minor, the present is a case of penetrative sexual assault due to which, offence under Section 376 IPC and Section 12 POCSO Act were added to the FIR. However, respondent no.2 has been admitted on bail by the trial Court on erroneous facts. He relies upon a judgment of the Apex Court in the case of **Puran Vs. Rambilas etc.** 2001(2) RCR (Criminal) 801 and a judgment of this Court in the case of **Sadhu Ram Vs. Satish Kumar & anr. 2005(4) RCR (Criminal) 904** in support of his submissions.

I have heard learned counsel for the petitioner.

In the case of **Puran** (*supra*), Hon'ble Apex Court has observed that one such ground for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail is passed in a heinous crime and that too without giving any reasons. Such an order would be against the principles of law. Whereas in the case of **Sadhu Ram** (*supra*), this Court has held that where in a case of heinous crime like bride burning if bail has been granted by the trial Court either without giving any reason or for reasons which are contrary to the material and evidence on record and thus, perverse in nature, bail can be cancelled. But

this Court finds that the aforesaid judgments are not applicable in the facts and circumstances of the present case. In the case in hand, the daughter of the complainant-petitioner had approached this Court along with the accused to get protection on the ground of solemnization of marriage, but these was never the facts in the cases of Puran (supra) and Sadhu (supra). Therefore, these judgments have no relevance in the facts and circumstances of the case.

In Dolat Ram Vs. State of Haryana 1995SCC(1) 349,

Hon'ble Supreme Court has held as under:-

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the

factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted.”

Respondent no.2 and daughter of the petitioner had approached this Court by way of CWP-17262-2019 *Monika & anr. Vs. State of Punjab & ors.* seeking protection on the ground that they had solemnized their marriage on 25.06.2019. Along with that petition, they had also attached their marriage certificate as well as marriage photographs and this Court vide order dated 26.06.2019, disposed of the said petition, with a direction to SSP, SBS Nagar to look into the matter and take necessary action in accordance with law.

The argument of counsel for the petitioner that the girl of the petitioner had taken away an amount of Rs.3/- lakhs along with her and she is 17 years and 9 months of age, are required to be considered during trial. Merely because respondent no.2 has been admitted on interim bail, this Court does not find any reason to cancel the bail granted to respondent no.2 by the trial Court, as the paramaters for cancellation of bail under Section 439(2) CrPC are very limited, as envisaged in the case of **Dolat Ram's** case *supra*. The judgments relied upon by counsel for the petitioner do not apply to the facts of the present case.

Accordingly, the present petition is dismissed.

August 29, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No