

CRM-M-19579-2020

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

**CRM-M-19579-2020
Date of Decision: 20.07.2020**

NARESH KUMAR

....Petitioner

Versus

UT CHANDIGARH AND OTHERS

...Respondents

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.Navkiran Singh, Advocate for the petitioner

Deepak Sibal, J. (Oral)

Case taken up through Video Conferencing.

The present petition has been filed under Section 439(2) Cr.P.C. for cancellation of pre-arrest bail granted to respondent nos.2 and 3 by the learned Additional Sessions Judge, Chandigarh (for short- the Trial Court) in case FIR No.37 dated 02.04.2020 registered under Sections 406, 498-A IPC at Women Police Station, Sector 17, Chandigarh.

As per the aforesaid FIR the petitioner's daughter namely, Chhavi and one Pankaj Sehgal were working and living together in the United States of America (for short – the USA). In May 2019 they came to India and got married on 26.05.2019. At the time of their marriage the petitioner spent Rs.5 lakhs towards jewellery/clothes and against the

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demand of Rs.15 lakhs, he gave respondent nos.2 and 3 an amount of Rs.11 lakhs in cash. Other demands by respondent nos.2 and 3 were also fulfilled by the petitioner. Soon after the marriage Pankaj Sehgal and respondent no.3 started harassing and beating Chhavi. On 23.6.2019 Pankaj Sehgal, after giving merciless beatings to Chhavi, locked her in a room without any food and water. Thereafter both Chhavi and Pankaj Sehgal left for the USA on 27.6.2019 where Pankaj Sehgal left Chhavi alone at the airport and thereafter never contacted her. Pankaj Sehgal then filed a divorce petition in the USA which is pending.

On coming to know of the registration of the afore-referred FIR and apprehending arrest respondent nos.2 and 3 filed before the Trial Court a petition under Section 438 Cr.P.C. seeking therein anticipatory bail.

Before the Trial Court it was inter-alia submitted on behalf of the State and the petitioner/ complainant that respondent nos.2 and 3 had committed fraud, demanded and accepted dowry and even misappropriated the dowry articles given at the time of marriage. It was further submitted that Rs.11 lakhs in cash which had been given by the petitioner to respondents no.2 and 3 had also not been returned. A photograph was shown to the Court through which the contention with regard to handing over of Rs.11 lakhs in cash was sought to be corroborated.

On the other hand, learned counsel appearing for respondent nos.2 and 3 while specifically denying the allegations with regard to harassment, demand for dowry and receipt of Rs.11 lakhs

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submitted that after marriage, the petitioner's daughter had stayed in India only for about 30 days out of which their son and the petitioner's daughter had also gone for their honeymoon. Thus, she had stayed in the same house, along with respondent nos.2 and 3, for not more than 12-13 days.

After considering the entire matter and in particular the status report filed by the prosecution wherein it had been stated that respondent nos.2 and 3 had joined investigation and had also produced the gold jewellery received by them at the time of marriage of their son, the Trial Court granted them anticipatory bail. With regard to the allegation as to whether Rs.11 lakhs were given by the petitioner and received by respondent no.2 and 3 the Trial Court was of the view that in the light of the denial with regard to its receipt by respondent nos.2 and 3 the same was required to be proved and would be decided at the end of the trial.

Mr.Navkiran Singh, who appeared on behalf of the petitioner submitted that the anticipatory bail granted to respondent nos.2 and 3 is required to be cancelled as the Trial Court while granting anticipatory bail to them had ignored material evidence on record resulting in the passing of a perverse order. Attention of this Court was drawn to an account statement of the petitioner as per which on 20.05.2019 the petitioner had withdrawn from his bank account an amount of Rs.18 lakhs in cash. Reliance was also placed on certain photographs.

According to Mr.Navkiran Singh the above evidence clearly proved handing over of Rs.11 lakhs in cash by the petitioner to respondent nos.2 and 3 but the Trial Court had wrongly ignored the

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same and therefore on this ground alone the bail granted to respondent nos.2 and 3 was liable to be cancelled. Reliance was also placed on a judgment of the Supreme Court in Puran vs. Rambilas, 2001(2) RCR (Criminal) 801.

Section 439 of the Criminal Procedure Code, 1973 reads as under: -

439. Special powers of High Court or Court of Session regarding bail (1) *A High Court or Court of Session may direct-*

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(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.

The Supreme Court in Doalt Ram vs. State of Haryana, 1995(1) SCC 349 while considering the issue of cancellation of anticipatory bail in a dowry death case 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.”

In Panchanan Mishra vs. Digambar Mishra, 2005(3) SCC

143 the Supreme Court interpreted Section 439(2) Cr.P.C. as follows:-

“13. We have given our careful consideration on the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the

punishment is quite stringent and deterrent the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses threatening the family members of the deceased victim and also create problems of law and order situation”

In Kanwar Singh Meena vs. State of Rajasthan and another, 2012(12) SCC 180 the Supreme Court interpreted Section 439 Cr.P.C. in the following manner:-

“10. Thus, [Section 439](#) of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under [Section 439\(2\)](#) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage

of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail.”

The judgment in Kanwar Singh Meena’s case (supra) was again considered and followed in a recent judgment of the Supreme Court in Myakala Dharmarajam & others vs. State of Telangana and another, 2020(2) SCC 743. The Supreme Court held as under:-

“6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case

*may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. **Kanwar Singh Meena v. State of Rajasthan & anr. (2012) 12 SCC 180.***

*7. In **Raghubir Singh v. State of Bihar, (1986) 4 SCC 481** this Court held that bail can be cancelled where (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. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.*

*8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. **Kanwar Singh Meena v. State of Rajasthan & anr. (supra).***”

The considerations at the time of grant of bail by either the High Court or the Court of Sessions are the gravity of the offence(s), the evidence on record, status of the accused with reference to the victim and witnesses, likelihood of the accused fleeing from justice and repeating the offence(s), possibility of the accused tampering with the evidence and/or influencing witnesses etc. These considerations are inclusive and not exhaustive.

Rejection of bail in non-bailable offence(s) at the initial stage and cancellation of bail already granted are required to be dealt distinctly. The considerations which may weigh with the Court to cancel the bail already granted are if the accused has tampered with the evidence or influenced witnesses, has interfered in the course of administration of justice or has evaded or attempted to evade the due course of justice or in any manner has abused the concession of bail granted to him. Bail may also be cancelled if the order granting the bail suffers from serious infirmities resulting in miscarriage of justice and if the Court while granting bail has ignored the relevant material on record or has taken into account irrelevant material. These considerations are again inclusive and not exhaustive. The primary object behind cancellation of bail is to ensure a fair trial which is threatened by aforesaid acts of an accused who is set at liberty through the order granting him bail.

The present petition under Section 439(2) Cr.P.C. is at the instance of the complainant. The State has not preferred to challenge the grant of bail to respondent nos.2 and 3.

In a matrimonial dispute between the parties the petitioner (complainant) does not complain that respondent nos.2 and 3 are likely to flee from justice; have repeated the offences; have tampered with the evidence on record; are influencing witnesses or have in any manner interfered with the investigation or in the course of administration of justice. The solitary issue raised is that the Trial Court while granting bail to respondent nos.2 and 3 has overlooked material evidence placed on the record resulting in the passing of a perverse order and on this sole ground their bail should be cancelled.

The FIR in question had originated from a matrimonial dispute. Respondents No.2 and 3 were the father-in-law and mother-in-law of the petitioner's daughter with whom she had stayed only for a few days. As per the status report filed by the State/ prosecution respondent nos.2 and 3 had joined the investigation and had also produced the gold jewellery stated to have been received by them at the time of solemnization of marriage of their son with the petitioner's daughter. Keeping in view the aforesaid factors the Trial Court granted respondent nos.2 and 3 anticipatory bail.

So far as the bank statement and photographs relied upon by the petitioner to prove handing over of Rs.11 lakhs to respondent nos.2 and 3 was concerned, the Trial Court was of the view that in the light of denial of receipt of such amount by respondent nos.2 and 3 these allegations would have to be proved by the prosecution during the course of the trial.

A perusal of the afore referred bank statement reveals that on 20.05.2019 the petitioner had withdrawn from his bank account an

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amount of Rs.18 lakhs in cash. In the light of the denial by respondent nos.2 and 3 whether Rs.11 lakhs out of the aforesaid amount of Rs.18 lakhs was given by the petitioner to respondent nos.2 and 3 or was spent on other functions/expenses incurred in the marriage of his daughter or used otherwise would be adjudicated upon at the end of the trial after weighing the evidence which may be produced by the prosecution and the defence. Therefore, on this count, the order of the Trial Court warrants no interference.

The petitioner has also relied on photographs to prove handing over of Rs.11 lakhs to respondent nos.2 and 3. This fact has been specifically denied by them. Therefore, subject to the provisions of Section 65-A of the Evidence Act, 1872 and other evidence which may be led during the course of the trial, such photographs will have to be proved by the prosecution and this is exactly what the Trial Court has observed. Thus, on this issue too no fault is found in the order of the Trial Court.

The judgment of the Supreme Court in Puran's case (*supra*) which was relied upon by learned counsel for the petitioner pertained a case where the offence was under Section 304-B IPC and not under Section 406 and 498A IPC as is in the present case. Even otherwise as per the above discussion the order of the Trial Court is found to be reasonable and not perverse. Therefore, Puran's case (*supra*) would not be applicable to the present case.

In view of the above as also for the reason that there is not even a complaint with regard to respondent nos.2 and 3 misusing any of

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the conditions on which they have been granted bail, no merit is found in the present petition.

Dismissed.

20.07.2020
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No