

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

(206)

CRM-M-22805-2020

Date of Decision: November 09, 2020

Ram Kumar

.. Petitioner

Versus

State of Haryana and another

.. Respondents

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Priyavrat Parashar, Advocate, for the petitioner.

Ms. Rajni Gupta, Addl. Advocate General, Haryana.

Mr. Sandeep Gahlawat, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI, J.(ORAL)

Present petition has been filed seeking the cancellation of bail granted to respondent No.2-Ashok Kumar @ Shoki vide order dated 24.06.2020 as well as for setting aside the order dated 21.07.2020 by which the application filed by the State for the cancellation of the bail to respondent No.2, has been dismissed.

Learned counsel for the petitioner argues that accused Ashok Kumar @ Shoki is son of the petitioner and is also accused of killing his own brother i.e. other son of the petitioner namely Sunil. Learned counsel for the petitioner submits that bail application filed by respondent No.2 has been allowed by the Additional Sessions Judge, Kaithal vide order dated 24.06.2020, without noticing the correct facts. Learned counsel for the petitioner further submits that the material facts i.e the disclosure statement of Ashok Kumar @ Shoki wherein, a knife has been recovered at his

instance and the corresponding injuries which were found on the head of the deceased Sunil, were not taken into consideration by the learned Additional Sessions Judge, Kaithal while granting the benefit of bail to the accused-respondent No.2 on 24.06.2020. Learned counsel for the petitioner further submits that the State preferred an application for the cancellation of the bail by bringing those very facts to the notice of the Additional Sessions Judge, Kaithal, which application has been dismissed by the Additional Sessions Judge, Kaithal vide his order dated 21.07.2020 by stating that though, these facts were not brought to the notice of the Court at the time of grant of bail to respondent No.2 on 24.06.2020 but the said facts are not that significant to effect the outcome of the plea of respondent No.2 for the grant of bail.

Learned counsel for the petitioner submits that the factum of the disclosure statement of respondent No.2 clearly states the recovery of a knife at his instance. Learned counsel for the petitioner further submits that the deceased had four incised wounds on his head, which were caused by the knife and these material facts cannot be treated as insignificant to reject the plea of cancellation of bail.

Learned counsel for the respondent-State concedes that as per the disclosure statement of respondent No.2 accused, a knife has been recovered and it is a matter of fact that the deceased had four incised wounds on his head, alleged to have been caused with the said knife, which fact was not brought to the notice of the Court at the time of the grant of bail to respondent No.2 on 24.06.2020 and later on, those facts have been treated as insignificant by the Additional Sessions Judge, Kaithal to review the

order of grant of bail dated 24.06.2020 to respondent No.2-accused, which needs reconsideration by this Court.

Learned counsel appearing on behalf of respondent No.2 submits that the disclosure statement has to be read in totality. Learned counsel for respondent No.2 further submits that as per the disclosure statement, only a *danda* blow has been attributed to the accused-respondent No.2 and therefore, once there is no *danda* blow injury on the head of the deceased, respondent No.2 has rightly been granted the benefit of bail keeping in view the facts and circumstances of this case.

Learned counsel for respondent No.2 though concedes that as per the disclosure statement, a knife is recovered at the instance of respondent No.2 and there are injuries on the head of the deceased corresponding to the said weapon but whether the knife and the injuries correlate with each other, is yet to be proved during the trial as the knife recovered was not blood stained was never sent to FSL for examination and therefore, the petition filed by the petitioner challenging the grant of bail to respondent No.2-accused, may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is the duty of the Court to consider the entire actual facts and circumstances and then decide whether a particular accused is entitled for the grant of bail or not in view of those facts and circumstances of the said case.

In the present case, it is an admitted fact that at the time of grant of bail to respondent No.2 on 24.06.2020, the recovery of the knife and the corresponding injuries upon the deceased were not brought to the

knowledge of the Court and were not taken into consideration while granting bail to respondent No.2 on 24.06.2020. When the said facts have been brought to the notice of the Court by the State, the same have been declared as insignificant so as to review the order dated 24.06.2020 granting bail to respondent No.2.

Once, a recovery of knife has been attributed to respondent No.2 as per his own disclosure statement and admittedly, there are corresponding injuries with the said weapon, which are fatal in nature received by the deceased on his head, the said facts cannot be treated as insignificant for considering the grant or cancellation of bail by the Court, especially when a person has lost his life.

Therefore, once all the facts were not brought to the notice of the trial Court while granting bail to respondent No.2 on 24.06.2020, the order granting bail cannot be sustained. Further, even the rejection of the application filed by the State for cancellation of bail has been rejected by simply stating that the facts, which were withheld from the Court, were insignificant, is not borne out of the facts recorded hereinbefore and the said order dated 21.07.2020 cannot be sustained as well.

With regard to the allegation that the petitioner was receiving threats, it is noticed that the said complaint of threat was taken seriously by the State and even an application for cancellation of bail of respondent No.2 was filed. Surprisingly, now the State has taken a somersault to state before this Court that no substance was found in the allegation of the petitioner about receiving the threats from respondent No.2. The State is blowing hot and cold in the same breath, which is not understandable.

Keeping in view these contradictory facts, once a father is making an allegation of threat against his own son, the same cannot be discarded lightly and the contradictory statement of the State about the perception of threat to the petitioner at the hands of respondent No.2 is liable to be ignored though, these facts are hard to be proved beyond doubt sometimes.

Keeping in view the totality of the circumstances noticed hereinbefore, grant of bail to respondent No.2 vide order dated 24.06.2020 was without noticing the actual correct, and relevant facts and hence the said order cannot be allowed to operate and the same is accordingly set aside. Consequently even order dated 21.07.2020 rejecting the petition filed by the State for cancellation of bail of respondent No.2 is also set aside, in view of facts and circumstances recorded hereinbefore.

Respondent No.2 is directed to surrender before the jail authority by 16.11.2020.

Anything said in this order will not be taken as an expression of this Court on the merits of this case.

It is also made clear that in case, any subsequent application is moved by the respondent No.2 for the grant of bail, the same will be decided on the facts and circumstances as they exist on the said date.

November 09, 2020
harsha/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No