

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

**CRM-M-44221-2020 (O&M)
Date of Decision: 19.04.2021**

Zahur Haider Zaidi

...Petitioner

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr.Vinod Ghai, Sr. Advocate, with
Ms.Kanika Ahuja, Advocate,
for the petitioner.

Mr. Sumeet Goel, Advocate,
for respondent-CBI.

(Presence has been marked through video conferencing)

ARUN MONGA, J.

Having once been granted bail by Apex Court vide an order dated 05.04.2019, the petitioner was yet again put in jail on 24.01.2020 as his bail was cancelled vide an order of even date passed by Special Judge, CBI court, where the accused/petitioner is an under trial. Post his bail cancellation, this is petitioner's third foray in this court seeking bail, firstly having been unsuccessful in assailing the bail cancellation order, which was upheld by a co ordinate bench of this court vide an order dated 21.05.2020, Annexure P/16, in CRM-M No.7434 of 2020 and thereafter, having

preferred a fresh bail petition bearing CRM-M No. 7434 of 2020, which was dismissed as withdrawn vide my order dated 01.09.2020.

2. Adumbrating a brief factual narrative first. Petitioner, an IPS officer of Himachal Pradesh cadre, at the relevant time, was posted as Inspector General of Police. Pursuant to an order dated 19.07.2017 passed by the High Court of Himachal Pradesh, an FIR dated 22.07.2017 was registered at Police Station CBI, New Delhi under section 302 IPC etc in connection with an alleged custodial death of one Suraj Singh, who was in police custody being an accused in another criminal case. The petitioner was arrested on 29.08.2017. After investigation, charge sheet for offences under sections 302, 330, 331, 348, 323, 326, 218, 195, 196, 201 read with 120B of IPC was filed in CBI Court. It was followed up by filing of two supplementary challans. Petitioner could not secure bail upto the level of High Court of Himachal Pradesh. Order dated 05.04.2019, Annexure P/6, was passed by the Supreme Court in Criminal Appeal No.605 of 2019 directing that petitioner be released on bail, on satisfaction of the appropriate condition(s) as may be imposed by the trial court (at Shimla). Vide another order dated 07.05.2019, passed in the same appeal, Apex Court transferred trial of case from the court in Shimla to the competent court of CBI in Chandigarh (hereafter referred to as the trial Court).

3. During the course of trial, on 08.01.2020 PW Ms. Saumya Sambasivan, herself an IPS Officer, moved an application before the trial court, alleging that the petitioner was trying to influence and pressurize her to change her statement in Court. She also made a statement in person, to the same effect, before trial Court. Copies of said application and statement

were forwarded by trial Court vide an order dated 08.01.2020, Annexure P/11, to the DGP, Himachal Pradesh for information and necessary action, inter alia, observing that the Public Prosecutor for the CBI was also at liberty to act in accordance with law. Subsequently, an independent application, Annexure P/12, was moved by the CBI before trial Court sometime in January, 2020 seeking to cancel the bail of the petitioner and to pass an order of his re-arrest. Petitioner filed a reply controverting the allegations attributed to him in the application and statement of PW Ms. Saumya Sambasivan and the application of CBI for cancellation of petitioner's bail.

4. Trial Court accepted the application for cancellation of the bail vide its order dated 24.01.2020, Annexure P/14. Relevant part reads as under:

“This order of mine shall dispose of an application under section 439(2) read with section 437(5) of the Criminal Procedure Code for cancellation of regular bail granted by the Hon’ble Supreme Court of India to accused Zahur Haider Zaidi.

XXXX XXX

36. xxx xxx

At this stage, this Court has to see whether any supervening circumstances justified the cancellation of bail of accused Zahur Haider Zaidi, which clearly exists in the present case, as discussed above.

XXXXXX

37. In view of the facts and law position as explained above, the present application is allowed and accused Zahur Haider Zaidi is ordered to be taken into custody. Bail bonds stand discharged.”

5. Pursuant to the aforesaid order of bail cancellation, the petitioner was taken into custody on the same day i.e. 24.01.2020. He is in custody ever since.

6. Learned Senior counsel for the petitioner, *inter alia*, argued that the bail granted by the Supreme Court was wrongly cancelled by the trial Court, that the allegations of his influencing PW Ms. Saumya Sambasivan were/are false; that having been taken into custody on 24.01.2020 on cancellation of previous bail, he continues to be in detention; that the trial of the case has not made any headway; that all co-accused have been released on bail and that further preventive detention of the petitioner pending trial would be highly oppressive.

7. Learned counsel for the CBI contested the submissions of the learned Senior counsel for the petitioner, opposed grant of fresh bail to the petitioner and argued that after the earlier dismissal bail petition on 01.09.2020 read with order dated 21.05.2020 passed by a co-ordinate bench of this Court, vide which cancellation of bail by trial court was upheld, there has been no such material change of circumstances so as to justify the grant of fresh bail to the petitioner.

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

9. As noted above, petitioner's first petition seeking fresh bail, *inter alia*, also sought quashing of trial court bail cancellation order, which was dismissed on merits by a co-ordinate bench of this Court vide order dated 21.05.2020.

10. Indisputably, it was prior to 21.05.2020 that PW Ms. Saumya Sambasivan had filed application and made her statement before the trial court. Subsequently, the prosecution also moved application for cancellation

of petitioner's bail and the trial court vide its order dated 24.01.2020, Annexure P/14, cancelled the petitioner's bail. Till then, out of total 107 (83+24) witnesses cited by the prosecution, 25 PWs had been examined. The co-accused were granted bail, while the petitioner's plea for fresh bail was dismissed by the co-ordinate bench vide order dated 21.05.2020. Needless to say, the main reason in the order dated 24.01.2020 passed by the trial court cancelling the petitioner's bail was that he had tried to intimidate, pressurize and influence PW Ms. Saumya Sambasivan. And that, there was possibility of the petitioner intimidating, influencing and pressurizing the other witnesses from the police department of the lower ranks like constables, Head constables and other material witnesses, who were yet to be examined. These events, circumstances and observations in the order dated 24.01.2020 passed by the trial court were before the co-ordinate bench, at the time of dismissal of the petitioner's first petition for fresh bail on 21.05.2020.

11. For reasons of judicial discipline and propriety, I am unable to enter into any *de novo* re-appraisal of the events and circumstances upto the passage of order dated 21.05.2020, Annexure P/16, by a co-ordinate bench and on any such re-appraisal decide the instant second petition for fresh bail, either way, on merits or otherwise. Events prior 21.05.2020 and their effect, for or against, qua the grant of fresh bail to the petitioner can not thus be gone into once again, there being no change in the same.

12. Let us now see whether after the dismissal petitioner's first petition for fresh bail on 21.05.2020, there has been any material change of circumstances, so as to justify, at this stage, grant of fresh bail to him.

13. Response/report dated 12.02.2021 by the CBI shows that till its filing, evidence of 28 prosecution witnesses had been recorded and the cross examination of all of them was still pending. Obviously, large numbers of prosecution witnesses yet remain to be examined. It cannot be said that after 21.05.2020, there is any such material change on this score, so as to say that now, there is no scope left for influencing any one out of large number of the witnesses, who still remain to be examined by the prosecution.

14. Judicial notice may be though taken of covid -19 pandemic, seriously affecting everyone, including the working of Courts, preventing in person appearances and hearings, almost holding up the pending trials and compellingly resort to virtual hearings in cases of extreme emergencies. In his application, Annexure R/2, filed in the trial court after 21.05.2020, the petitioner himself has vehemently opposed the course of examining the prosecution witnesses through virtual hearing, saying that the same would cause serious prejudice to him. He cannot, therefore, lay blame at the door of the prosecution for not producing remaining prosecution witnesses or deliberately delaying trial, leading to his continued detention after 21.05.2020.

15. Grant of bail to the co-accused vide order dated 21.05.2020 would have been obviously factored into by the co-ordinate bench, while declining fresh bail to the petitioner vide another order of the same date. Even otherwise, the co-accused were granted initial bail only on 21.05.2020 by the co ordinate bench of this court. Whereas, the petitioner was granted his initial bail much earlier vide an order dated 07.05.2019 passed by the Apex Court. Later, his bail was cancelled on 24.01.2020 and he applied for

fresh bail before this Court which was declined vide order dated 21.05.2020.

There is thus no parity or similarity between the two situations.

16. No doubt, about 11 months have passed since the dismissal of the petitioner's first petition for fresh bail vide order dated 21.05.2020 by the co-ordinate bench. However, in my opinion this by itself does not constitute a sufficient new ground, at this stage, for the grant of fresh bail to the petitioner, if one takes into consideration the gravity of the offences and other aver all circumstances of the case.

17. Thus, in my opinion, there is no such material change of circumstances after the dismissal petitioner's first petition for fresh bail on 21.05.2020, as would justify allowing the instant petition for the grant of fresh bail to the petitioner.

18. Resultantly, the instant petition for fresh bail is liable to be dismissed.

19. Having though held as above, but before parting, and in all deference to the earlier co-ordinate bench order dated 21.05.2020 (rendered by my learned Brother Amol Rattan Singh, J.), I do, however, feel that something more needs to be said qua the trial court bail cancellation order dated 24.01.2020, vide which bail granted by Supreme court was cancelled.

20. As noticed earlier, the petitioner was arrested on 29.08.2017. He remained unsuccessful to secure bail upto the High Court of Himachal Pradesh. Ultimately, order dated 05.04.2019, Annexure P/6, was passed by the Supreme Court in Criminal Appeal No.605 of 2019 directing that the petitioner be released on bail, on satisfaction of the appropriate condition(s)

as may be imposed by trial court (at Shimla). In its order dated 24.01.2020, Annexure P/14, the trial Court, inter alia, observed that certain conditions were imposed by the then Special Judge, CBI Court, Shimla, qua which, the petitioner was found to be in violation of one of the conditions i.e. that he (Zahur Haider Zaidi) shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer. Further, petitioner was held to have violated the undertaking given by him, submitted in the form of personal bond, at the time of furnishing the bail bonds and surety bonds. At that stage, the trial court had to see whether any supervening circumstances justified the cancellation of bail of accused Zahur Haider Zaidi. Upon appraisal thereof, trial court held such circumstances clearly existed in the case. On that basis, the trial Court passed its order dated 24.01.2020, Annexure P/14, allowing the application of CBI under section 439(2) read with section 437(5) of the Criminal Procedure Code for cancellation of regular bail granted by the Supreme Court of India to the petitioner and ordered that he be taken into custody and that the bail bonds stood discharged.

21. The relevant order of the then Special Judge, CBI Court, Shimla imposing the conditions pursuant to the bail order passed by the Supreme Court, the personal bond and the surety bond submitted by the petitioner have not been produced on record. In absence thereof, I would take the same as correct and proceed on the basis of the aforesaid factual observations noted by me qua the order dated 24.01.2020 passed by the Special Judge, CBI Court, Chandigarh.

22. At the cost of repetition, it has to be borne in mind that the petitioner was granted bail by the Supreme Court vide an order dated 05.04.2019, Annexure P/6, directing that the petitioner be released on bail on satisfaction of the appropriate condition(s) as may be imposed by the trial court (at Shimla). Merely because the Supreme Court directed that the petitioner be released on satisfaction of the appropriate condition(s) as may be imposed by the trial court (at Shimla) would not and can not change the reality that the order granting bail to the petitioner was that of the Supreme Court and not the trial Court.

23. At this juncture, it would be useful to notice the following provisions in Sections 437(1) & (2), 437(5), 439(2), 446 and 446A of the Code of Criminal Procedure:

“437. When bail may be taken in case of non-bailable offence:-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence: Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if

such person is under the age of sixteen years or is a woman or is sick or infirm: Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that It is just and proper so to do for any other special reason: Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail] or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

xxxxxxxxx xxxxxx

(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

439. *Special powers of High Court or Court of Session regarding bail.*

xxxxxxxxx xxxxxx

(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.

446. *Procedure when bond has been forfeited.*

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has

subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and,; if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

446A. *Cancellation of bond and bail- bond. Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition-*

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition: Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.”

24. I am of the opinion, once the trial Court held that the petitioner had violated the undertaking given by him in the form of personal bond submitted by him at the time of furnishing the bail bonds and surety bonds, it ought to have followed the course of action prescribed in the provisions *ibid*, for the forfeiture of the bonds executed by the petitioner and the surety/sureties, imposition and recovery of penalty thereof. Instead, the trial court straightaway cancelled the bail granted to the petitioner by the Supreme Court. To my mind, the trial court of Special Judge, being lower in the hierarchy, naturally and logically, could not, or even otherwise, at least for reasons of judicial discipline and propriety, ought not to have straightaway cancelled the bail granted to the petitioner by the Supreme Court.

25. However, as already stated earlier, I am unable to re-appraise the facts and circumstances, pre-existing at the time of passing of co-ordinate bench order dated 21.05.2020 declining bail to the petitioner. There has been no such material change of circumstances after 21.05.2020, as would justify the grant of fresh bail to the petitioner.

26. With aforesaid observations, the present petition is dismissed.

27. Pending CRMs, if any, shall also be disposed of.

(ARUN MONGA)
JUDGE

19.04.2021

Vivek/Pkapoor

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No