

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

202

CRM-M-17318 of 2021
Date of Decision : 25.10.2021

Ram Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Neeraj Goel, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Ms. Molly A. Lakhanpal, Advocate for respondent No.2.

Mr. Rajinder Goyal, Advocate for respondent No.3.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for cancellation of regular bail granted by this Court to respondents No.2 and 3 vide orders dated 24.08.2020 passed in CRM-M-23266 of 2020 and dated 09.09.2020 in CRM-M-25749 of 2020 respectively.

Before going to the facts of the present case, it is necessary to state here that an FIR was got registered on the basis of complaint of one Ram Kumar being FIR No.244 dated 31.05.2019 under Sections 302, 148, 149, 341 and 120-B of the IPC and Sections 25, 24 and 59 of the Arms Act. According to the said complaint, son of the complainant was murdered and the allegations of committing the said crime were on another son of the complainant namely, Ashok Kumar @ Shoki as well as two more co-accused, who are respondents No.2 and 3 in the present petition namely Raj Kumar @ Raju and Sandeep @ Sunny respectively. Co-accused of the

respondents No.2 and 3 namely, Ashok Kumar @ Shoki filed an application seeking regular bail, which benefit was extended to him on 24.06.2020 by the trial Court and as the main allegations were against said co-accused, Ashok Kumar @ Shoki, who is the real brother of the deceased, respondent No.2 and 3 approached this Court for grant of regular bail after being unsuccessful before the trial Court. As the co-accused Ashok Kumar @ Shoki had already been granted the benefit of regular bail on 24.6.2020, the prayer of respondents No.2 and 3 for the grant of regular bail on the ground of parity, was accepted by this Court vide order dated 24.08.2020 passed by this Court in CRM-M-23266 of 2020 and dated 09.09.2020 in CRM-M-25749 of 2020 respectively.

Grant of concession of bail by the trial Court in favour of Ashok Kumar @ Shoki vide order dated 24.06.2020 as well as order dated 21.07.2020 passed by the trial Court vide which the request of the complainant for the cancellation of the said concession of bail to the said co-accused Ashok Kumar @ Shoki was declined, were challenged before this Court by the petitioner/complainant in CRM-M-22805 of 2020 and vide order dated 09.11.2020 passed by this Court, the bail granted to co-accused Ashok Kumar @ Shoki vide order dated 24.06.2020 by the trial Court, was cancelled. As both respondents No.2 and 3 were granted benefit of regular bail on the ground of parity with said co-accused Ashok Kumar @ Shoki prior to 09.11.2020, the present petition has been filed for cancellation of their bail as well, keeping in view the events, which have come into existence after granting regular bail to respondents No.2 and 3.

Learned counsel for respondent No.3 submits that grant of bail and cancellation of bail on the ground of parity stands on different footing

and, therefore, merely that the bail granted to co-accused Ashok Kumar @ Shoki by the trial Court vide order dated 24.06.2020 is cancelled by this Court on 9.11.2020, the said fact cannot be put into operation so as to cancel the bail of respondents No.2 and 3 as well. Learned counsel further submits that factum of parity invoked at the time of grant of concession of bail cannot be made operative for cancelling the bail.

Learned State counsel submits that once the petitioner approached this Court seeking regular bail on the basis of parity with co-accused Ashok Kumar @ Shoki, they cannot be allowed to argue other way around once the bail granted to co-accused Ashok Kumar @ Shoki has been cancelled by this Court.

Learned State counsel submits that parity has to prevail in all circumstances.

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

A bare perusal of the order by which respondents No.2 and 3 were granted the benefit of regular bail shows that the said benefit was extended to them on the ground of parity with co-accused Ashok Kumar @ Shoki. Relevant paragraphs of the orders dated 24.08.2020 passed by this Court in CRM-M-23266 of 2020 and dated 09.09.2020 in CRM-M-25749 of 2020 are as under:-

CRM-M-23266-2020

“It is conceded position that the allegations against the petitioner, who was not named in the FIR, are of only hitting the deceased with the fist blow and slapping him. No injury inflicted upon the victim has been attributed to the petitioner and the petitioner is already behind bars for

the last 14 months. Once, it is not disputed that the main accused

has been granted the benefit of bail by the learned Additional Sessions Judge on 24.06.2020, the parity cannot be declined to the petitioner unless and until there are differentiating facts between the petitioner and the co-accused Ashok Kumar, which disentitle the petitioner the benefit of regular bail, as extended to co-accused Ashok Kumar.

In the present case, learned counsel for the respondent-State has failed to point out any differentiating facts between the petitioner and the co-accused rather, from the facts stated in the petition, the allegation against the petitioner are of much less gravity as compared to co-accused Ashok Kumar, who has already been extended the benefit of regular bail.”

CRM-M-25749-2020

“ _ _ _ It is a conceded position that the petitioner was not named in the FIR and has only been roped in on the basis of the disclosure statement of the co-accused. Further, it is not disputed that Sh. Ashok Kumar the co-accused against whom the grave allegations have been alleged of murdering his brother, has already been granted the benefit of bail. It is further not disputed that co-accused Raj Kumar @ Raju against whom, the similar allegations, as against the present petitioner, have been alleged, has also been granted bail by this Court.

Once, the main accused Ashok Kumar has been granted the benefit of bail, against whom the serious allegations were alleged in the FIR and a similarly situated co-accused namely Raj Kumar @ Raju has also been granted the bail thereafter, the petitioner has also made out the claim for the grant of bail on parity.

Keeping in view the above, the petitioner has made out a case for the grant of regular bail.”

Once a particular concession has been extended to a co-accused on the basis of parity and after the grant of the said concession, the ground for extending the concession becomes non-existent, this Court is well within its jurisdiction to apply its mind afresh as to whether concession granted to

accused on the basis of parity, needs to be withdrawn in view of the changed facts and circumstance. In the present case, after the grant of regular bail to respondents No.2 and 3 on the ground of parity with co-accused Ashok Kumar @ Shoki on 24.08.2020 and 09.09.2020 respectively, the bail granted to said co-accused has been cancelled by this Court on 09.11.2020. This fact alone is good enough to reconsider the benefit extended to respondents No.2 and 3 vide orders dated 24.08.2020 and 09.09.2020 respectively, granting regular bail to them on the ground of parity with the co-accused Ashok Kumar @ Shoki.

That being so, orders dated 24.08.2020 passed by this Court in CRM-M-23266 of 2020 and dated 09.09.2020 in CRM-M-25749 of 2020 are recalled and bail granted to respondents No.2 and 3 namely Raj Kumar @ Raju and Sandeep @ Sunny respectively on the ground of parity with co-accused Ashok Kumar @ Shoki is cancelled as the bail of co-accused Ashok Kumar @ Shoki has already been cancelled on 09.11.2020. Both respondents No.2 and 3 are directed to surrender back before the jail authorities and CRM-M-23266 of 2020 and CRM-M-25749 of 2020, which were filed by respondents No.2 and 3 seeking regular bail and are already disposed of by this Court, are ordered to be revived and be taken up for hearing on merits after respondents No.2 and 3 surrenders back before the jail authorities.

Learned counsel for respondents No.2 and 3 submits that ten days time may kindly be granted to respondents No.2 and 3 to surrender back before the jail authorities. Keeping in view the said request, respondents No.2 and 3 are directed to surrender back before the jail authorities on 05.11.2021 by 5.p.m.

Registry is directed that as order dated 24.08.2020 passed by this Court in CRM-M-23266 of 2020 and dated 09.09.2020 in CRM-M-25749 of 2020 have been recalled by cancelling the bail granted to respondents No.2 and 3, both these petitions be listed for hearing on 08.11.2021 to be decided on merits of the case.

Respondents No.2 and 3 will apprise this Court on the next date of hearing whether they have surrendered back or not so that their plea for grant of regular bail on merits is taken up for consideration on the adjourned date i.e. 08.11.2021.

October 25, 2021
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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