

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24545-2021

Date of Decision: September 30th , 2021

Balbir Singh Bains

....Petitioner

Versus

Navdeep Singh Bains and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S. Bains, Senior Advocate, with
Ms. Aarushi Garg, Advocate, for the petitioner.

Mr. P.S. Ahluwalia, Advocate,
for respondent Nos. 1 and 2.

Mr. H.S. Sitta, AAG, Punjab.

HARNARESH SINGH GILL, J.

Laying challenge to the order dated 29.10.2020 passed by the learned Sessions Judge, Hoshiarpur, whereby respondent Nos.1 and 2 had been granted concession of anticipatory bail in FIR No. 129 dated 24.06.2020 under Sections 457, 380, 448 read with Section 34 IPC, the petitioner, by way of the present petition, seeks cancellation of such bail.

It may be noticed that initially, the learned Sessions Judge, Hoshiarpur, had granted anticipatory bail to respondent Nos. 1 & 2 vide order dated 03.07.2020. Aggrieved thereagainst, the petitioner had filed CRM-M-26148-2020, which was dismissed as withdrawn vide order dated 04.09.2020 passed

by this Court, reserving liberty to the petitioner to file an appropriate application before the Sessions Court, Hoshiarpur. It was in such application filed by the petitioner, the learned Sessions Judge, passed the order dated 29.10.2020 dismissing the said application.

The petitioner, aggrieved of the said order, has filed the present petition.

Learned Senior Counsel for the petitioner would vehemently submit that the impugned order passed by the learned Sessions Judge, suffers from patent illegality, inasmuch, the specific and pointed plea raised by the petitioner that respondent Nos. 1 and 2 had obtained the order dated 03.07.2020, by concealing the factum of dismissal of bail application of respondent No. 1 in FIR No.7 dated 19.01.2017 under Sections 420, 465, 467, 468, 471 and 120-B IPC at Police Station Mahilpur, District Hoshiarpur, vide order dated 27.04.2017 passed by a Coordinate Bench of this Court. He further submits that not only this, respondent Nos. 1 and 2 had been declared proclaimed offenders in the proceedings arising out of the said FIR and the said fact had also been concealed by respondent Nos. 1 and 2 and not taken into consideration by the Sessions Judge, while granting them bail in FIR No.129 aforesaid.

Learned Senior counsel further submits that the police was having hand-in-glove with respondent Nos. 1 and 2 and they had not only not opposed the bail application in FIR

129, but also facilitated grant of such concession without causing their arrest in FIR No.7 aforesaid. It is further contended that it is beyond common prudence as to how the police of the same police station, where FIR No.129 was registered, would not know anything about the previous case i.e. FIR No.7, registered in the same police station. It is yet further submitted that the investigation conducted by the police in FIR No.129 is shoddy in nature, inasmuch as, all the witnesses (the persons from the locality/neighbourhood) had suffered their statement in favour of respondent Nos.1 and 2 out of a sheer fear.

On the other hand, learned counsel appearing for respondent Nos.1 and 2 has vehemently submitted that the house as regards which the allegations of trespassing and burglary had been leveled, resulting into registration of FIR No.129 aforesaid, is a joint property and it is an undeniable fact that the civil litigation inter-partes is pending adjudication before the civil Court. He further submits that during investigation, all the witnesses from the locality, had suffered statements that respondent No. 1-Navdeep Singh resided in the house in question for 4/5 years and thereafter, he got constructed his own house at Milan Palace and had shifted there. Learned counsel for respondent Nos. 1 and 2 would further submit that even the telephone installed in the said house was in the name of respondent No.1.

While vehemently arguing that no offences of trespassing and theft are made out against a co-sharer as regards the joint property, he relies upon the judgments of the Single Benches of this Court in Sadhu Singh and others Vs. State of Punjab and another, 2011(3) RCR (Criminal) 263; Rai Singh and others Vs. State of Haryana and another, 2013(5) RCR (Criminal) 822 and Karamjit Kaur Singh Vs. State of Punjab and others, 2014(7) RCR (Criminal) 1201.

Still further, it is submitted that post grant of anticipatory bail by the Sessions Court, respondent Nos. 1 and 2 had already joined investigation and they did not violate any of the conditions thereof and are not required for any further investigation. Hence, it is argued that no occasion has arisen for the prosecution to maintain the application seeking cancellation of bail of respondent Nos.1 and 2.

Learned State counsel submits that on an application filed by respondent No.2-Mandeep Kaur Bains (wife of respondent No.1), before the Director Bureau of Investigation, Punjab, the investigation in FIR No. 7 dated 19.01.2017 was forwarded to the Assistant Inspector General of Police, Crime Zone, Jalandhar on 31.01.2019; who sent a letter dated 3.12.2019 to SSP, Hoshiarpur that the investigation report was sent to the Director, Bureau of Investigation, Punjab and till the approval of such report, no further investigation be carried out in the matter. It is further submitted that ultimately after approval of the said report by the Director, Bureau of

Investigation, respondent No.1 was arrested on 28.02.2021 in FIR No.7 aforesaid.

As far as FIR No.129 aforesaid is concerned, the learned State Counsel would submit that respondent Nos. 1 and 2 after having joined the investigation, did not violate any of the conditions laid down while granting bail to them and nothing is to be recovered from them. Therefore, there is no ground to cancel the bail granted to them.

I have heard learned counsel for the parties.

There is no denying the fact that the petitioner and respondent Nos.1 and 2 are close relatives. There is no dispute regarding the civil litigation pending inter-partes regarding their joint properties. As observed by the learned Sessions Judge, there was no concealment on the part of respondent Nos. 1 and 2 as regards registration of FIR No. 7 dated 19.01.2017 as the said fact stands mentioned in the earlier bail application filed by them, which was allowed by the Sessions Judge, on 03.07.2020. During the course of hearing of the application filed by the petitioner before the Sessions Judge, for cancellation of the bail granted to respondent Nos. 1 and 2, the Police had stated that after grant of concession of anticipatory bail, respondent Nos. 1 and 2 had fully cooperated with the Police and that there was no complaint from the locality or neighbourhood in the village regarding their having extended any threat or otherwise.

Still further, a perusal of the status report, would show that upon a complaint filed by respondent No.2 i.e. wife of

respondent No.1, an inquiry/investigation was conducted by the police and for some period i.e. till the approval of such report by the Director Bureau of Investigation, further investigation was stayed at the directions of the AIG, Jalandhar. Ultimately, respondent No.2 was arrested in FIR No.7 dated 19.01.2017 on 28.02.2021.

The issue regarding the powers of the Court to cancel the bail, need not be dilated. However, such powers are to be exercised when there is violation of any of the conditions of the bail order or involvement of the accused in any other similar crime, post grant of such bail. In the instant case, FIR No.7 dated 19.01.2017 was at prior point of time than FIR No.129 dated 24.06.2020. As observed by the learned Sessions Judge, in the impugned order, there was no concealment of the registration of the said case and the same stands mentioned in the order dated 03.07.2020 as well. Thus, at this stage, when respondent Nos. 1 and 2 have already joined investigation and they are not required for any further investigation, no occasion arises to cancel the bail granted to the said respondents.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

September 30th, 2021

ds

(Harnaresh Singh Gill)
Judge

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No