

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.-M No.39646 of 2021
Date of Decision: September 22, 2021

Jaskaran Singh @ Sethu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Nandan Jindal, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

MANOJ BAJAJ, J. (Oral)

Petitioner-Jaskaran Singh @ Sethu (accused) has filed this petition to challenge the order dated 20.12.2019, whereby the Special Judge, Kaithal proceeded to cancel his regular bail granted to him through order dated 02.12.2019 (Annexure P-2) in case FIR No.109 dated 20.07.2019, under Sections 279, 337, 483, 34 IPC, Section 15 N.D.P.S.Act, 1985 and Sections 3/181 Motor Vehicles Act, 1988, registered at Police Station, Siwan, District Kaithal.

The above FIR was registered on a written complaint by Constable Ajit Singh No.358, who stated that when the investigation in the case FIR No.108 dated 19.07.2017, under Section 379-A IPC, Police Station, Siwan was in progress and when the complainant was present on road which leads from Kanthli to Sair, a car was seen coming from the side of Village Sair at about 10.15 p.m. at a very high speed and hit a motorcycle coming from Village Kanthli. The motorcyclist (Ranjit Singh @ Rana)

suffered injuries, who was sent to the hospital and two persons were found sitting in the car, who on seeing the police party attempted to escape, but with the help of fellow police officials, they were apprehended. Upon search, three plastic bags were found lying in the rear seat of the car, whereas two were found in the dicky. Upon checking, poppy straw was found in those bags. The occupants of the vehicle disclosed their names as Jaskaran Singh @ Sethu (driver) and Jatinder @ Raju. Upon weighing the bags, total 95 kgs. of poppy husk was recovered from those bags. On these broad allegations, the above FIR was registered.

After registration of the case and arrest of the accused, petitioner applied for regular bail before trial court, and his prayer was accepted vide order dated 02.12.2019 (Annexure P-2). Thereafter, Station House Officer, Police Station, Siwan moved an application under Section 439(2) Cr.P.C. (Annexure P-4) for cancellation of bail on the ground that the court has extended the concession without examining the merits and provisions of Section 37 N.D.P.S.Act, and prayed for cancellation of the bail. The said application was contested by the accused-petitioner by filing a reply dated 18.12.2019 (Annexure P-5), however, after considering the application as well as the reply and arguments of the parties, the trial court proceeded to cancel the bail of the petitioner vide impugned order dated 20.12.2019. Hence, this petition.

Learned counsel for the petitioner has argued that once the trial court had examined the entire background of the case and upon hearing the Public Prosecutor proceeded to extend the concession of regular bail to the accused, there was no occasion for it to review the said order on the ground that the merits were not correctly appreciated. He has further argued that

admittedly, neither the petitioner has misused the concession of regular bail nor any such ground was raised in the application under Section 439(2) Cr.P.C., therefore, the said application was not maintainable in view of the bar contained in Section 362 Cr.P.C. According to the learned counsel, even if it is assumed that the order granting bail to the accused was bad in law, in that eventuality, the remedy to challenge the order on merits would lie before the higher court. He submits that apparently the impugned order is not sustainable, and the same be set-aside.

The prayer is opposed by the learned State counsel, assisted by ESI Ramphal, who has argued that the provisions of Section 37 N.D.P.S.Act were not taken into consideration while the concession of bail was given to the accused and on this ground, the intervention of the trial court was again sought for, for cancellation of the bail. He submits that the Hon'ble Supreme Court in **Union of India Versus Niyazuddin Sk. & Anr. (Criminal Appeal No.1277 of 2017 @ Special Leave Petition (Crl.) No.7495 of 2015)**, decided on 28.07.2017, had set-aside an order, whereby the bail was extended to the accused without considering the provisions of Section 37 N.D.P.S.Act and the matter was remanded back before the High Court to consider the prayer of the accused afresh. Learned State counsel has further pointed out that the trial court has further observed that the accused has misused the terms and conditions of the bail order as he never appeared before the trial court during the course of hearing of this application for cancellation of bail. According to him, the order passed by the trial court cancelling the bail of the accused is justified.

At this stage, learned counsel for the petitioner has pointed out that accused was represented by his counsel and for adjudication of the

application moved by the prosecution for cancellation of bail, the presence of accused was not necessary and even on one of the dates, i.e., 13.12.2019 the petitioner was not present, but the court did not press for his presence. He has argued that the petitioner is regularly appearing before the trial court even after the stay of the impugned order by this court. It is further explained by him that the petitioner could not appear because he had suffered a fracture and in this regard, has invited the attention of the court to his medical record (Annexure P-6).

During the course of hearing, it is not disputed by the learned State counsel that the concession of bail has neither been misused by the accused nor he is involved in any other case of similar nature. He has further pointed out that after completion of investigation, the final report was filed on 19.10.2019, whereupon the charges were framed on 16.11.2019, but only two prosecution witnesses have been examined so far out of total sixteen witnesses.

After hearing the learned counsel for the parties and considering the above background of this case, this court finds that the impugned order passed by the Special Judge, Kaithal cancelling the bail of the accused amounts to review of its previous order dated 02.12.2019, whereby the petitioner was released on regular bail. No doubt, the correctness and validity of an order granting bail to an accused can be tested on merits as well, but for that, the remedy would always lie before the higher court. Since it is not at all a case of misuse of concession or obtaining the order by exercising any fraud on the part of the accused, the trial court was not justified in reviewing its previous order, thus the impugned order is not sustainable. In this regard, reference can be made to

Brij Nandan Jaiswal Vs. Munna @ Munna Jaiswal, 2009 (1) SCC 678, it

has been held that the order of bail can be questioned on merit as well and the relevant observations contained in Para 7 read as under:-

“7. It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter.”

The above view was further reiterated by the Hon'ble Supreme Court in **Padmakar Tukaram Bhavnagare Vs. State of Maharashtra (2012) 13 SCC 720** and the relevant observations are extracted below:-

“..... It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. (See: Dolat Ram v. State of Haryana, 1995 (1) SCC 349 & Dinesh M.N. (S.P.) v. State of Gujarat, 2008 (3) R.C.R. (Criminal) 868: 2008 (4) R.A.J. 596: 2008 (5) SCC66.”

In view of the above, this court has no hesitation in holding that the trial court has wrongly exercised jurisdiction under Section 439(2) Cr.P.C. by observing that the trial court faulted in granting bail to the

accused by inadvertently not considering the provisions of Section 37
N.D.P.S.Act.

Resultantly, the petition is allowed and the impugned order is
set-aside.

September 22, 2021
ramesh

(MANOJ BAJAJ)
JUDGE

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