

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

CRM-M-20200-2022

Date of Decision: May 13, 2022

Shashi Rani

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Mohit Rathee, Advocate,
for the petitioner.

Vivek Puri, J.

Present petition under Section 439(2) of the Code of Criminal Procedure (for short 'Code') has been instituted for cancellation of regular bail granted to the respondent no.2 in case FIR No. 758, dated 27.11.2018, under Sections 376/366-A of the Indian Penal Code, Section 6 of the POCSO Act and Section 3 of the SC/ST Act, , registered at Police Station City Bahadurgarh, District Jhajjar.

It has been contended by the learned counsel for the petitioner that the FIR bearing number 758, dated 27.11.2018 was registered on the basis of the statement of the petitioner with regard to the commission of sexual intercourse upon her by Neeraj Sharma. The allegations

have also been imputed against the respondent no.2 who facilitated the commission of such act. Although, the respondent no.2 was found innocent during the course of investigation, but, she has been summoned under Section 319 of the Code in terms of order dated 06.03.2020. Subsequently, the respondent no.2 had surrendered in the trial Court and has been granted bail in terms of order dated 22.02.2022.

The cancellation of bail has been mainly sought on the ground that the respondent no.2 was declared proclaimed person in terms of order dated 26.10.2021 and consequently, she is not entitled to bail.

In terms of the order dated 22.02.2022 passed by the learned trial Court, the respondent no.2 has been granted bail and the said order has been impugned in the instant petition.

The power of cancellation of bail has to be exercised with care and circumspection. The cancellation of bail has to be resorted only in case of patent perversity. The bail can be cancelled in the event, there is an interference in the due course of justice, hampering investigation, abusing the freedom granted by the Court, intimidation of the witnesses etc. Such reasons for cancellation of bail can only be termed to be illustrative and not exhaustive. It is left to the sound judicial discretion of the Court and the bail is

required to be cancelled in the event compelling circumstances are made out for such an indulgence. The rejection of bail in a non-bailable case and the cancellation of bail so granted have to be dealt with and considered on the basis of separate yard sticks. The bail already granted can be cancelled in the event there are cogent and overwhelming circumstances to do so.

In the instant case, the primary grievance of the petitioner is to the effect that the bail should not have been granted to the respondent no.2 as she was declared proclaimed person. In this regard, it shall be appropriate to mention that the reasons given by the learned trial Court for extending the concession of bail are reproduced herein below:-

“In the instant case, main accused Neeraj, who allegedly committed rape upon the prosecutrix, was granted bail by the Hon’ble Punjab & Haryana High Court in terms of orders dated 07.08.2020 passed in CRM-M-14968 of 2020. The applicant was not challaned by the police and she has been summoned to face her trial under Section 319 of Cr.P.C. A perusal of record would reveal that all the processes issued for the presence of accused Indu were received back unserved for want of complete address. Therefore, accused Indu was not personally served and therefore, she was not at fault when she was declared a proclaimed offender. Her

evasion from the court was not intentional. She is not required for her custodial interrogation and no useful purpose shall be served by sending her behind bars.”

The perusal of the aforesaid order indicates that the learned trial Court has observed that the processes were issued for securing the presence of respondent no.2 and the same were received back for want of complete address. As the respondent no.2 was not personally served and as such, it was observed that she was not at fault when she was declared as proclaimed offender and her evasion from the court was not intentional. In such circumstances, the learned trial Court has considered and appreciated the fact that the respondent no.2 was declared proclaimed person but despite that the bail has been granted as there was lack of material to indicate that she was personally served or was at fault when she was declared proclaimed person.

Consequently, it cannot be said that it was appropriate to decline the bail more particularly regular bail to the petitioner only on the score that she was declared proclaimed person. Moreover the main accused has been granted bail by the Co-ordinate Bench of this Court in terms of order dated 17.08.2020 passed in CRM-M-14968-2020.

The impugned order even when tested on merits does not suffer from any illegality, arbitrariness or perversity which may provide any justified ground for indulgence by

this Court for cancellation thereof particularly because the respondent no.2 was found innocent during the course of trial and has been summoned to face trial by invoking the provisions of Section 319 of the Code.

Consequently, the petition is dismissed.

May 13, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasonable	:	Yes/No
Whether reportable	:	Yes/No