

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-31469-2022
Date of decision : 25.07.2022

Paramjeet Devi

... Petitioner

Versus

The State of Haryana and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Krishan Singh, Advocate
for the petitioner.

Mr.Anmol Malik, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439(2) Cr.P.C. with a prayer for cancellation of order dated 01.06.2022 passed by the Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhari in bail application no.1054 of 2022 titled as “[Ritu Rani vs. State of Haryana” whereby respondent no.2 has been granted concession of regular bail in FIR no.101 dated 31.03.2022 registered under Section 4 of the Protection of Children from Sexual Offence Act, 2012 at Police Station Chhappar, District Yamuna Nagar (in order dated 01.06.2022 FIR number has wrongly been mentioned as FIR no.82 instead of FIR no.101).

Learned counsel for the petitioner has submitted that respondent no.2, after having been released on regular bail, has allured the son of the petitioner to live with her and further, in paragraph 14 of the petition, it has been averred that said respondent no.2 is threatening the

respondent no.2 deserves to be cancelled.

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court of India in the case of “***Dolat Ram and others vs. State of Haryana***” reported as ***(1995) 1 Supreme Court Cases 349*** have laid down the parameters / factors which are to be taken into consideration for cancellation of bail granted. It has been observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with, on different basis and very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted and the ground for such cancellation would normally include interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It has been held that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. The relevant portion of the said judgment is reproduced hereinbelow:-

“The State of Haryana filed a petition in the High Court of Punjab and Haryana seeking cancellation of the anticipatory bail, granted to the appellants by the Additional Sessions Judge, Rohtak on 12-11-1993. The learned Single Judge of the High Court by his order dated 8-9-1994, cancelled the bail observing:

"Dowry death is a serious matter and cannot be taken so lightly. No positive finding has been recorded by the Additional Sessions Judge in his order to the effect that the respondents and the deceased were living separately. No prima facie case is made out which could justify the grant

of anticipatory bail. To my view of thinking, concession of anticipatory bail granted by the Additional Sessions Judge, was totally uncalled for. The order dated 12-11-1993 is, therefore, set aside and the respondents are directed to be taken into custody."

The appellants are aggrieved of the cancellation of the anticipatory bail, granted to them. Hence this appeal.

3. It appears to us that whereas the learned Additional Sessions Judge was not justified in observing in the last paragraph of his order while granting anticipatory bail "it appears that possibly these accused-appellants have been roped in falsely", at that initial stage, when possibly the investigation was not even completed let alone, any evidence had been led at the trial, the High Court also fell in error in cancelling the anticipatory bail granted to the appellants for the reasons, which have been extracted by us above.....

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted.

5. We are, therefore, satisfied that the cancellation of anticipatory bail granted to the appellants, for the reasons given by the High

Court, was not justified. Nothing has been brought to our notice either from which any inference may possibly be drawn that the appellants have in any manner, whatsoever, abused the concession of bail during the intervening period.

6. We, accordingly, allow this appeal, set aside the impugned order of the High Court and restore that of the learned Additional Sessions Judge, Rohtak dated 12-11-1993.”

In the present case, the petitioner, who is the step mother of the alleged victim, is seeking the cancellation of bail granted to respondent no.2, who is the natural mother of the alleged victim. The Additional Sessions Judge, (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhari had granted bail to respondent no.2 after considering the fact that there is no MLR nor any proof that offence under Section 3 of the POCSO Act had taken place. It was also observed that genuineness of the alleged audio recording would have to be seen during the course of trial and as mentioned in paragraph 4 of the order, the said audio recording was played in open Court and the Additional Sessions Judge found that there was nothing to suggest that there was an admission of any sexual intercourse having taken place between the two. In addition to the said fact, it is also relevant to note that respondent no.2 was in custody since 21.05.2022 and was released on 01.06.2022. There is nothing on record to show that respondent no.2 is involved in any other case. Even a perusal of the FIR would show that it is on the basis of suspicion / doubt that the FIR in question has been registered. There is no medical evidence to substantiate the said suspicion / doubt.

Paragraphs 14 and 15 of the petition which have been highlighted by learned counsel for the petitioner, are reproduced hereinbelow:-

“14. That the respondent No.2 was released on bail vide order dated 01.06.2022 and after releasing on bail the respondent No.2 took the victim i.e. son of the petitioner with her and now the victim is residing with the respondent No.2 w.e.f. 04.06.2022. After releasing on bail the respondent No.2 became inimical towards the petitioner and her family members and she started threatening to the petitioner and her family members. After the order dated 01.06.2022 the petitioner and her family members are receiving regular threats from the respondent no.2 and the petitioner and her family members have apprehension in their mind that the respondent no.2 can cause harm to the petitioner and her family members.

15. That the respondent no.2 has violated the terms and condition of the bail granted to her. After getting bail order dated 01.06.2022 the respondent No.2 started residing with the minor son of the petitioner. The husband of the petitioner is posted in Army and the petitioner is alone at home and the respondent no.2 by taking the advantage of this fact is threatening the petitioner with dire consequences. The petitioner visited so many times in the Police Station and filed so many complaints against the respondent no.2 in the police station but no action was taken by the police.”

A perusal of the above said two paragraphs would show that no specific date has been mentioned as to when and how respondent no.2 has threatened the petitioner. No mode of levelling any threat has been mentioned. No complaint with respect to any such threat allegedly given by the respondent no.2 after having been released on bail, has been annexed with the present petition. It is the argument of the petitioner that her son has been allured by respondent no.2 but however, on a pointed query raised by this Court, whether the petitioner has filed any application for the custody of minor son, the answer to the same is in the negative. The petitioner has chosen to file the present petition for cancellation of bail instead of seeking custody of the minor child, which apparently shows that the petitioner is more keen on sending respondent no.2 behind bars rather than channelising

her energy and resources for the benefit of the minor child.

Keeping in view the facts and circumstances of the present case, order granting concession of bail to respondent no.2 cannot be held to be illegal or against law, requiring any interference of this Court and accordingly, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

July 25, 2022
Davinder Kumar

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