

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

CRM-M-32013-2022

Date of decision : 26.07.2022

Furjana

.....Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jasdev Singh Mehdiratta, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition filed under Section 439(2) read with Section 482 Cr.P.C. is for cancelling the bail granted to respondent No.2 vide order dated 13.07.2022 in FIR No.162 dated 25.06.2022, under Sections 323, 354-D, 376, 506 of IPC and Sections 3 and 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019, registered at Women Police Station Yamuna Nagar, District Yamuna Nagar.

Learned counsel for the petitioner has submitted that the petitioner was married with respondent No.2 on 10.03.2020. After the marriage, petitioner was being harassed by her husband-respondent No.2 and in-laws. Her Jeth Tahir had an evil intention upon her. In the intervening night of 20/21.06.2022, when the petitioner was alone in the home, Tahir entered into her room and forcibly committed rape upon her. The petitioner informed about the incident to her father who along with 2-3 respectables persons came from her parental home to her matrimonial home. He questioned the in-laws regarding the untoward incident on

which respondent No.2 i.e. husband/petitioner infuriated and he pronounced Triple Talaq to the petitioner. On this, petitioner lodged the FIR against respondent No.2 and her in-laws in which respondent No.2 was granted anticipatory bail by virtue of the impugned order.

Learned counsel for the petitioner has contended that learned Additional Sessions Judge has committed an illegality by granting anticipatory bail to respondent No.2. He submits that respondent No.2 is the husband of the petitioner and he has shielded his brother from the legal action being taken against him but learned Court below failed to appreciate the same. He submits that as per the law settled the Court is to keep into consideration nature and gravity of the offence, character, behaviour, means, position and standing of the accused for consideration of bail. However, learned Additional Sessions Judge failed to appreciate the same and thus, granted bail by ignoring the settled proposition of law. Hence, the impugned order granting bail to respondent No.2 deserves to be *set aside*.

I have heard counsel for the petitioner and perused the record.

Admittedly, petitioner is the wife of respondent No.2. Both were married on 10.03.2020. The allegations made by the petitioner-prosecutrix are against respondent No.2 and her in-laws. So far as the allegations pertaining to the offence under Section 376 IPC are concerned, the same are against the brother-in-law Tahir. In any case offence under Section 376 IPC is not attracted against respondent No.2-husband. There is no dispute regarding the law settled by the Hon'ble

Supreme Court in laying down the precedent regarding the parameters to be considered for the cancellation of bail. As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, the relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail.

The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds

to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

Hon'ble the Supreme Court in P. Vs. State of Madhya Pradesh and another, 2022 SCC OnLine SC 552 has held as under:-

“21. It is true that bail once granted, ought not to be cancelled. In Dolat Ram And Others v. State of Haryana (1995) 1 SCC 349, this Court has held that very cogent and overwhelming circumstances are necessary for cancellation of bail and bail once granted, should not be cancelled in a mechanical manner. It is equally true that an unjustified or perverse order of bail is vulnerable to interference by the superior Court. So is an order where irrelevant material has been taken into consideration [Refer : Narendra K. Amin (Dr.) (Supra)]. The factors that are paramount for cancellation of bail have been succinctly stated in Prakash Kadam and Others v. Ramprasad Vishwanath Gupta (2011) 6 SCC 189 in the following words:

“18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

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25. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permitted to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under [Section 439](#) (1) of the [Cr.P.C.](#) can be cancelled are enumerated below: -

- a) If he misuses his liberty by indulging in similar/other criminal activity;*
- b) If he interferes with the course of investigation;*
- c) If he attempts to tamper with the evidence;*
- d) If he attempts to influence/threaten the witnesses;*
- e) If he evades or attempts to evade court proceedings;*
- f) If he indulges in activities which would hamper smooth investigation;*
- g) If he is likely to flee from the country;*
- h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;*
- i) If he attempts to place himself beyond the reach of his surety.*
- j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.”*

However, learned Court below has appreciated the facts and circumstances of the case. The allegations against respondent No.2 are regarding pronouncing Triple Talaq. The offence falling under the heinous offence as alleged to have been committed by the co-accused and not by respondent No.2. Besides this, the petitioner has failed to point out any misuse of concession of bail granted to respondent No.2.

From the facts and circumstances of the case, the Court is of the opinion that no case is made out for cancellation of bail of respondent No.2 granted by learned Additional Sessions Judge, Yamuna Nagar, Jagadhri vide impugned order dated 13.07.2022.

The petition, being devoid of any merits, is hereby dismissed.

26.07.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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