

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

CRM-M-40686-2020
Date of Decision: 3.8.2022

Suman Petitioner

Versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Abhi Kalsy, Advocate for
Mr. Virender Soni, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Rajesh Bhardwaj, J. (ORAL)

The petitioner has approached this Court by way of the present petition under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C. for cancellation of regular bail granted to respondent No.2 by the learned trial Court at Rohtak vide order dated 17.2.2020 in a case FIR No.124 dated 12.12.2019, registered under Sections 328, 376(2)(n), 363 IPC, at Women Police Station Rohtak, District Rohtak.

As per factual matrix of the case, the FIR in question was lodged by complainant-petitioner. It was alleged in the FIR that she had relationship with respondent No.2-accused Chinnu for the last two years. He allured her on the promise of marriage and thereafter, he established physical relation with her. It was alleged that physical relationship continued for two years, but thereafter he refused to marry her and his marriage was fixed with some other girl for 31.12.2019. She filed an complaint before the Police to take legal action against respondent No.2. On the basis of the complaint, the FIR was lodged and the investigation

commenced and the petitioner was arrested by the police. The petitioner approached the Court of Additional Sessions Judge, Rohtak, who after hearing learned counsel for the parties, granted regular bail to respondent No.2 vide order dated 17.2.2020. Aggrieved by the same, the complainant-petitioner has approached this Court praying for cancellation of bail of respondent No.2.

Learned counsel for the petitioner submits that respondent No.2 had established physical relationship with the complainant-petitioner on the promise of marriage with her. However, thereafter he refused to marry her and thus, ruined the life of the complainant by making false promise of marriage with her. He submits that the act of respondent No.2 in refusing to marry the petitioner after alluring her on the promise of marriage, amounts to rape and thus, the Court could not have granted him bail for a heinous offence. He submits that the consent of the petitioner was taken by respondent No.2 by misconception of fact and thus, offence under Section 376 IPC was made out and therefore, the bail granted to respondent No.2 deserves to be cancelled.

Heard.

Learned State counsel submits that the case is pending trial before the trial Court, however, as per the instructions received, no other criminal case is pending against respondent No.2.

Petitioner i.e. the prosecutrix and respondent No.2 admittedly were in relationship from the last two years. Both are of the age of the majority. As per case of the prosecution, respondent No.2-accused established physical relationship with the prosecutrix on the promise of

marriage made to her, however, after relationship of two years, he refused to marry her and decided to marry with some other girl. Learned Additional Sessions Judge appreciated the facts and circumstances of the case and after hearing granted bail to respondent No.2. The petitioner and respondent No.2 had been visiting hotels and there physical relationship was established by them. Admittedly both the petitioner and respondent No.2 are of the age of the majority. Hon'ble Supreme Court in Pramod Suryabhan Pawar vs. The State of Maharashtra and others, (2019) 9 SCC 608, held that when the relationship is consensual on account of promise to marry, the consent is not vitiated by the misconception of fact and hence, the same does not amount to offence of rape. Whether in the facts and circumstances of the case, physical relationship between the petitioner and respondent No.2 is by virtue of the misconception of fact or not, is debatable issue, which is to be evaluated by the trial Court on the basis of the evidence led by the parties. However, consensual relationship between both of them is an admitted fact. 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.

.....XXXXXXX.....

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 permit him 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.”

There is nothing on record to show that respondent No.2 is facing trail in any other case or he has misused the concession of bail granted to him. Thus, there are no supervening circumstances after grant of bail, which would justify the prayer made by learned counsel for the petitioner.

From the facts and circumstances of the case, the Court is of the opinion that no case is made out for cancellation of bail granted to

respondent No.2 by learned Additional Sessions Judge, Rohtak vide impugned order dated 17.2.2020.

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

3.8.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No