

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

Date of Decision: *November 24, 2022*

1. CRM-M-52693-2022

Jugminder @ Jagmender

... Petitioner

Versus

State of Haryana and another

... Respondents

2. CRM-M-52711-2022

Jugminder @ Jagmender

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Vikas Kumar Dhariwal, Advocate,
for the petitioner.

Vivek Puri, J.

By this common order, both the aforesaid CRM-M-52693-2022 and CRM-M-52711-2022 are being decided together as similar facts are involved in both the petitions and have arisen out of same FIR.

In both the afore-mentioned petitions, the petitioner is seeking cancellation of regular bail granted to Umesh, respondent no.2 in CRM-M-52693-2022 in terms of order dated 14.09.2022 and Harsh, respondent no.2 in CRM-M-52711-2022 in terms of order dated 08.09.2022 passed by the Court of learned Additional Sessions Judge, Sonipat.

Briefly, the FIR has been registered by the petitioner alleging that victim is his daughter and aged about 16 years. She left the house on 13.05.2022 at about 5.00 p.m. without informing. The efforts were made to locate her, but to no effect. At about 10/11 p.m., he came to know that the victim is present near Bali Toll Plaza, District Jhajjar. Immediately, he reached there and found the victim to be in intoxicated condition. She was brought back to the house. After gaining consciousness, it was disclosed that she was called by one Monu of Amazon company. She went to him on a motorcycle. Monu made her to consume beer and thereafter, Monu along with the co-accused Gulzar forcibly committed rape upon her in a truck. After committing rape, they also threatened to kill her family in the event she disclosed the occurrence to anyone. It was also disclosed that Harsh and Umesh, respondents, had committed rape upon her on different dates at the earlier instance and the victim was threatened that her family will be killed. At the earlier instance, Ajay, co-accused had also committed rape upon her and threatened to kill her two younger brothers.

Learned counsel for the petitioner has argued that there are categorical allegation of commission of rape attributed against Umesh and Harsh, respondents. Furthermore, in her statement under Section 164 Cr.P.C.,

the victim has also attributed allegation with regard to the commission of rape upon the private respondents during the month of August, 2021. Ajay co-accused had prepared a video film and the private respondents had obtained the same and had committed forceful act with her. Furthermore, the private respondents are generating pressure upon the family of the petitioner, abusive comments and threatening the family members. Keeping in view the gravity of the allegations, no justified ground is made out to extend the concession of bail to them.

It may be mentioned here that 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. The bail can be cancelled in the event the same has been granted illegally or improperly by erroneous and arbitrary exercise of the discretion. Very cogent and overwhelming grounds/circumstances are required to cancel the bail already granted.

In **Criminal Appeal No. 1972 of 2022** titled as “**Bhuri Bai vs. The State of Madhya Pradesh**”, decided on **11.11.2022**, it has been laid down as following:-

“19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under [Section 439\(2\)](#) CrPC.

20. It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a

case where bail has already been granted, its upsetting under [Section 439\(2\)](#) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail.”

On advertent to the merits of the present case, it is significant to note that the reasons assigned by the learned trial Court for granting regular bail to the private respondents are to the effect that the investigation of the case has been concluded, the victim was recovered by the highway police at KMP and without any documentation, her custody was handed over to the parents by the police and on the following day, the case has been registered, the allegations against the private respondents are with regard to an incident which allegedly took place in the past and does not pertain to the incident dated 13.05.2022. It shall not be out of place to mention here that the arrest of Umesh-respondent was effected on 15.05.2022 and Harsh-respondent was effected on 16.05.2022.

Significantly, no allegation has been attributed against either of the private respondents with respect to the incident which took place on 13.05.2022. The allegation

against the private respondents pertain to the period of August, 2021. Even no medical examination of the victim was conducted at that point of time. Even in the statement under Section 164 Cr.P.C., there are vague allegations leveled against them without specifying any date and detail of incident. It has not been disputed that no video has been recovered from the private respondents. The bail has been granted to the private respondents on the completion of the investigation and after they had undergone custody for a period of about four months.

Although in the petition, there is an allegation to the effect that the private respondents and their family members are generating pressure upon the family of the petitioner, passing abusive comments and threatening the family members, but the bald assertion is not supported with any reliable material. There is nothing to suggest that on account of any such threat or pressure, the petitioner had submitted any application to the police authorities or reported the matter at any forum. Furthermore, two complaints (Annexure P-5 and P-6) have been submitted by the petitioner to the Superintendent of Police, Sonipat and the Chief Minister, Haryana, but the allegations leveled therein pertain to the co-accused Ajay. Even there are vague allegations with regard to the threat extended by the private respondents to the family of the petitioner without specifying

any detail or specific act or overact on the part of the private respondents. The Court of learned Additional Sessions Judge has granted regular bail after the private respondents had undergone reasonable custody period and on conclusion of the investigation by observing some infirmities in the case of the prosecution. The reasons which weighed in the mind of the Court while granting regular bail can be termed to be sufficient to exercise the powers granted under Section 439 Cr.P.C.

The impugned orders even when tested on merit indicate that the same do not suffer from any illegality, arbitrariness or perversity which may provide any justified ground for indulgence by this Court for cancellation thereof.

Both the afore-mentioned petitions are dismissed accordingly.

November 24, 2022
vkd

[Vivek Puri]
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes