

229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-174-2022

Date of Reserve:16.08.2023

Date of Pronouncement: 28.08.2023

(i)

Vijay Kumar

...Appellant

Vs.

State of Haryana and another

...Respondents

(ii)

Vijay Kumar

...Appellant

Vs.

State of Haryana and another

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ajay Kalra, Advocate
for the appellant(s) in both the appeals.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

Mr. V.K Sheoran, Advocate
for respondent No.2 in both the appeals.

N.S.Shekhawat J.

1. This order shall dispose of two criminal appeals i.e **CRA-S-174-2022** titled as **Vijay Kumar Vs. State of Haryana and Another** and **CRA-S-175-2022** titled as **Vijay Kumar Vs. State of Haryana and Another**, which have been filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Act"), read with Section 439(2) Cr.P.C for setting aside the orders passed by the Court of Additional Sessions Judge, Charkhi Dadri, whereby the regular bail has been allowed to respondents No.2/accused in both the appeals in a case arising out of FIR No.264 dated 18.10.2020 under Sections 285, 307,341,427,506 read with Section 34 of IPC, under Section 25 of the Arms Act and under Section 3 (2) (va) of SC and ST Act, Police Station Badhra.

2. A prayer has been made in both the appeals to cancel the bail granted to respondents No.2 in both the cases and to direct them to surrender.

3. The FIR in the present case was got registered by the petitioner/complainant namely Vijay Kumar by alleging that on 12.10.2020, his daughter Pooja had eloped from Bawana (Delhi) and during the enquiry made by him later on, he came to know that Ankit @Dholiya (respondent No.2 in CRA-S-175-2022) had taken her away with him. The matter was reported to the police at Police Station Bawana(Delhi). On the date of incident, i.e on 18.10.2020, at about 01:15 P.M, the complainant along with his cousin Sandeep were going in their car from their village to Loharu and when they reached near Government School, Village Dharni two boys namely Ankit @ Dholiya and Robin, both respondents No.2/accused in the abovesaid appeals came from the front side in a white colour camper vehicle and stopped their vehicle in front of the car of the complainant. They started abusing and threatened to kill the complainant. When the complainant tried to run away from the spot, Ankit @ Dholiya blocked the passage with the vehicle and also fired from his pistol in the air. After this, pistol was taken by Robin and he also fired on their vehicle with an intention to kill them and the bullet hit the front glass of the car, right side neck of Sandeep and then hit in the seat of the car. The complainant ran away from the spot and Sandeep, injured was shifted to the hospital for treatment. Both the accused were arrested in the present case on 18.10.2020 and were ordered to be released on regular bail vide the impugned orders, which have been challenged in abovementioned appeals.

4. Learned counsel for the appellant, while referring to Section 15-A of the “Act” stated that a victim under the Act has a right to reasonable,

accurate and timely notice of any Court proceedings including any bail proceedings and the victim is entitled to be heard at any proceeding under this “Act” in respect of the bail. Further, all proceedings relating to the offences have to be videographed in the present case and the victims have to be protected in all respects. Apart from that, the copy of the charge-sheet should be provided free of cost to the victim and it shall be right of the victim to seek assistance from NGO, social workers or advocates. He further contends that in the present case, in absence of copy of charge-sheet and supplementary charge-sheet, it was not possible for the appellant/complainant to lead/file his written submissions as provided under Sub-Section 5 of Section 15-A of the “Act”. Still further, the Lower Court had not even issued notice to the appellant/complainant and the counsel was not allowed to file a written submission in the present case. Apart from that, the gravity and the role attributed to the petitioners was not considered by the Trial Court and the bail had been wrongly granted to the respondents No.2/accused in the present cases.

5. On the other hand, learned counsel representing both the respondents in both the appeals submitted that the appellant/complainant was duly represented by a learned counsel, while both the bail applications were decided by the Trial Court. Learned counsel further submitted that in the present case, all the necessary documents, at that stage, were supplied to the counsel for the appellant/complainant and there was no illegality or perversity in the impugned orders. Apart from that, the impugned orders have been passed on 15.11.2021 and 28.10.2021 respectively and the respondents No.2 in both the appeals are on bail for the last more than one year and eight months and they have not misused the concession of bail in any manner. Apart from that,

the prosecution witnesses are being recorded by the trial Court and when the trial is at an advance stage, no useful purpose will be served by sending the respondents/accused behind the bars. Still further, there is no merit in the present appeals and are liable to be dismissed by this Court.

6. I have heard learned counsel for the parties and with their able assistance; I have perused the record carefully.

7. The Hon'ble Supreme Court has held in the matter of M. Dharmarajam and others Vs.State of Telangana and Anr., 2020(1) RCR Criminal, 540 as follows:-

6.The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7.In Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the

investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8.It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

8. In the present case, the learned counsel for the appellant has vehemently argued that the provisions of Section 15-A of the “Act” have been completely ignored by the Trial Court, while granting bail to the respondents No.2/accused in the present cases.

9. I have considered the said submission and find no force in the said argument. From the impugned orders in both the appeals, it is evident that the complainant was duly represented by Mr. Daya Ram Badalia, Advocate and the submissions of learned counsel for the appellant/complainant were duly considered by the learned Trial Court. Apart from that, it is also evident from the impugned order that the reply was filed by the State and the arguments were heard in detail. Still further, even though learned counsel for the appellant/complainant had shouted loudly in anger over the Trial Court, still the Court has taken into consideration the details submissions made by learned counsel for the appellant/complainant.

10. Even the submissions have been rejected by the Trial Court by passing detailed order. Consequently, the appellant/complainant cannot be permitted to submit that no notice under Section 15-A of the “Act” was issued to him and the complainant was not even heard by the Trial Court while granting bail. Rather this Court has examined the record and find that the said mandatory provisions have been sufficiently complied with by the Trial Court. Apart from that, it is apparent that the submissions of both the sides have been considered in detail and the impugned orders do not suffer from any material irregularity or illegality. Even the law is well settled that the order of cancellation of bail is a very harsh order as it interfere with the liberty of the individuals and such orders cannot be passed in routine. In the present case also the respondents No.2 in both the appeals have been granted the concession of regular bail on 15.11.2021 and 28.10.2021 respectively and for the last more than one year and eight months, both the respondents have not misused the concession of bail. Still further, in the present case the prosecution evidence is being recorded by the learned Trial Court and the trial is at an advanced stage.

11. Thus, no purpose would be achieved by sending both the respondents behind the bars. Consequently, finding no merits, both the appeals are ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

28.08.2023
hitesh

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