

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

231

CRR-136-2020 (O&M)

Date of Decision: 16.05.2023

Paras

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sarvjit Singh Khurana, Advocate for the petitioner

Mr. Ashish Bishnoi, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 401 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking setting aside of order dated 09.01.2020 whereby learned Additional Sessions Judge, Rewari has allowed the application for cancellation of bail of the petitioner which was granted on 22.11.2019 in FIR No.344 dated 23.10.2019 under Sections 363, 366 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Khol, District Rewari.

2. Learned counsel for the petitioner *inter alia* contends that petitioner has solemnized inter-caste marriage with the prosecutrix. Mother of prosecutrix lodged an FIR against the petitioner and he was arrested. The petitioner was granted regular bail on 22.11.2019. The mother of the prosecutrix, just to get bail of the petitioner cancelled, lodged another FIR and petitioner was again arrested. The petitioner in the second FIR was arrested on 26.11.2019 and thereafter released on

bail on 28.11.2019. The Trial Court vide order dated 09.01.2020 has cancelled bail of the petitioner. The petitioner is regularly facing trial and he has never misused concession of bail. Though petitioner has not committed offence as alleged by mother of prosecutrix yet he has already been arrested on the second occasion and released on bail.

3. Learned State counsel submits that there are 8 witnesses and 4 have already been examined. The petitioner is involved in other cases, thus, he does not deserve leniency.

4. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

5. From the perusal of record and arguments of learned counsel for the petitioner, it comes out that grievance of the complainant was that petitioner after getting regular bail threatened prosecutrix and her family members and in this regard, FIR No.389 dated 25.11.2019 was registered. The State has not led any evidence of misuse of concession of regular bail granted to the petitioner at least after registration of FIR dated 25.11.2019. The bail was granted on 22.11.2019 and till date 4 witnesses out of 8 have been examined. The prosecution has not examined the witnesses though almost 4 years have passed away from the date of registration of FIR. The State is unable to controvert the fact that petitioner is on regular bail and he is regularly appearing before the Trial Court and facing trial. Thus, there is no reason to cancel the bail granted by the Sessions Court which was subsequently cancelled.

6. The parameters of granting and cancellation of bail are totally different. Bail cannot be cancelled unless and until there is evidence of misuse of bail in the form of commission of similar or identical offence, tampering or destruction of evidences, threatening or winning over of witnesses or there is total non-application of mind. Bail already granted cannot be cancelled in a mechanical manner.

7. In the case in hand, the order granting bail was passed on 22.11.2019 and there seems no reason to cancel bail after such a long period i.e. almost 4 years. There is no evidence of misuse of bail after registration of FIR No.389 dated 25.11.2019 for which separate trial is still pending.

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. Order dated 09.01.2020 passed learned Additional Sessions Judge, Rewari is hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

16.05.2023

Mohit Kumar

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No