

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

Neutral Citation No. 2023:PHHC:107523
CRM-M-9036-2023
Reserved on: August 01, 2023
Date of Decision: August 16, 2023

Suresh Yadav

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Rishabh Chaudhary, Advocate for
Mr. Aman Pal, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Harminder Singh, Advocate for respondent No.2.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure, petitioner, who is the complainant of FIR No.153 dated 14.04.2016 registered under Sections 406 and 420 of IPC, at Police Station Khedki Dhaula, Gurugram, seeks cancellation of anticipatory bail granted to accused-respondent No.2, Vikram Sharma, by the court of learned Additional Sessions Judge, Gurugram.

2. FIR was lodged with the allegations that complainant was handling day to day affairs of the two firms namely, M/s Govind Shuttering Store, of which he is the proprietor; and S.K. Steel, which is the proprietorship firm of his wife. The said firms deal in the supply of shuttering material on rent. It was alleged that during the period 2012 to

2015, the firms of the petitioner had supplied shuttering material on rent to accused M/s Supreme Infrastructure India Ltd., a private limited company, for its various projects located at different places. Respondent No.2-Vikaram Sharma along with B.S. Sharma and Vikas Sharma are stated to be the Directors of the accused company. The complainant gave details of the rent of the shuttering material for the different projects of the accused, disclosing that out of total receivable rent, some was paid and remaining rent remained unpaid. It was also alleged that shuttering material was not returned by the accused-company and the same was misappropriated. As per the complainant, an amount of ₹5,04,38,210/- was outstanding towards the rent for the shuttering material supplied at different projects; whereas cost of the shuttering material misappropriated by the company was ₹1,43,85,910/-. It was alleged that accused since beginning had boasted of their good reputation and induced the complainant to deliver their valuable security.

3. Ld. Counsel for the petitioner contends that respondent No.2-accused Vikram Sharma was declared proclaimed offender, vide order dated 15.11.2017 of learned Judicial Magistrate 1st Class, Gurugram (Annexure P1) and despite the said fact, he has been allowed anticipatory bail by the Court of learned Additional Sessions Judge, Gurugram, vide order dated 31.01.2022 (Annexure P2).

4. It is contended that custodial interrogation of the accused is necessary to recover the remaining amount; that he had escaped from the arrest to prevent himself from clearing the due amount and that scheme of compromise and arrangement between M/s Supreme Infrastructure India Ltd. and its creditors referred by learned Additional Sessions Judge, has

no legality since the due amount pertains to the year 2016; whereas the matter before the National Company Law Tribunal was decided on 12.06.2020. Petitioner further submits that there is high possibility that respondent No.2 may violate the bail by misusing his liberty and that so, in these circumstances, the anticipatory bail granted to him, be cancelled.

5. In the short reply filed by the respondent-State through an affidavit of Assistant Commissioner of Police, Manesar, it is stated that during course of investigation, warrants of arrest were got issued against respondent No.2-Vikram Sharma and co-accused Vikas Sharma from time to time and ultimately on the basis of proclamation under Section 82 Cr.P.C., as they did not appear, they were declared proclaimed offenders by the Court on 15.11.2017. Later on, respondent No.2 was granted interim anticipatory bail by learned Additional Sessions Judge, Gurugram, on 29.12.2021. Respondent No.2 joined the investigation through video conferencing. Relevant record was supplied by him through his counsel. Accused B.S. Sharma was not found to be involved in the case. Section 420 IPC was deleted and that bail of respondent N: 2 was made absolute by learned Additional Sessions Judge, Gurugram on 31.01.2022. It is submitted further that in case, this Court comes to the conclusion that this case is a fit case for cancellation of bail, then answering respondent has no objection.

6. (i) In the reply filed by respondent No.2, it is submitted that there were business transactions between the petitioner and M/s Supreme Infrastructure India Ltd. as it is clear even on the bare perusal of the FIR. Due to certain unavoidable circumstances, business transactions could not be fructified as expected and in order to harass and humiliate the

respondent and his family members, present FIR was got registered despite various judgments by the Hon'ble Supreme Court and this Court that civil dispute cannot be given a criminal colour to pressurize the parties.

(ii) Respondent No.2 submits further that as he came to know about the criminal proceedings against him, he approached the Court of learned Additional Sessions Judge, Gurugram by filing anticipatory bail application, which has been allowed after observing that matter was of civil nature. Respondent No.2 further submits that he joined the investigation and co-operated in the same to the satisfaction of the Investigating Officer; that his custody was not being sought by the Investigating Officer and the interim bail was made absolute. Respondent No.2 submits that he has also been granted bail in separate FIR registered under Section 174-A IPC, regarding declaring him a proclaimed person, despite the fact that on the date of registration of the FIR under Section 174-A IPC on 29.10.2022, he had already been allowed anticipatory bail in the main case.

(iii) Respondent No.2 further submits that present petition has been filed by concealing the fact that petitioner had earlier challenged the order granting anticipatory bail to him by filing a cancellation petition before the Court of Sessions, but the same was dismissed. Still further, it is submitted that respondent No.2 never misused the concession of bail granted to him nor violated any condition. Besides, petitioner is also the beneficiary in the scheme of compromise and arrangement between M/s Supreme Infrastructure India Ltd. and its operational creditors under Section 230 of the Companies Act, which was approved vide order dated

16.06.2022 by the National Company Law Tribunal, Mumbai and that the Court of learned Additional Sessions Judge, Gurugram while passing order dated 14.11.2022 has already granted liberty to the petitioner to pursue the appropriate remedy by referring to National Company Law Tribunal proceedings.

(iv) With all these submissions, prayer is made for dismissing the petition.

7. I have considered submissions of both the sides and have also perused the record carefully.

8. As far as locus of the petitioner-complainant to seek the cancellation of bail to accused is concerned, Ld. Counsel has referred to ***Brij Nandan Jaiswal Vs. Munna, 2009(1) RCR (Criminal) 529***, wherein it has been held by Hon'ble Supreme Court that "complainant can always question the order granting bail to an accused, if the said order is not validly passed; and that it is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its misuse. It was further held that the order can also be tested on merits also".

9. In present case, before considering the contentions raised in this petition, certain principles, which govern the grant of anticipatory bail, are required to be noticed. In ***Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1***, Hon'ble Supreme Court has enunciated the considerations that must govern the grant of anticipatory by holding as under: -

92.3... While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

10. Similarly, in ***Neeru Yadav Vs. State of UP & Anr., (2016) 15 SCC 422***, it was held by Hon’ble Supreme Court as under: -

“11. It is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge.”

11. Proceeding ahead, there can be no doubt that all the aforesaid factors are required to be taken into consideration while granting anticipatory bail to an accused, but it is a well-established principle that once bail has been granted, it would require cogent and overwhelming circumstances for its cancellation. At the same time, equally important is to note that bail can be revoked by the superior court, if the court granting bail has ignored relevant material available on record, as observed by the Hon’ble Supreme Court in ***Vipan Kumar Dhir Vs. State of Punjab 2021 SCC OnLine SC 854***.

12. In ***State Through Delhi Administration vs Sanjay Gandhi, 1978 AIR 961***, it has been observed by Hon’ble Apex Court that:

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair

trial to allow the accused to retain his freedom during the trial.”

13. In ***Ms. X vs The State of Telangana (2018) 16 SCC 511***,

Hon’ble Supreme Court held that:

*“In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in **Dolatram v State of Haryana [(1995) 1 SCC 349]** observed that:*

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. (Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

*These principles have been reiterated by another two Judge Bench decision in **Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan (2011) 5 SCC 296** and more recently in **Dataram Singh v State of Uttar Pradesh (2018) 3 SCC 22***

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another

reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

14. In ***Myakala Dharmarajam Vs. The State of Telangana, (2020) 2 SCC 743***, it has been held by the Hon'ble Supreme Court: -

"9. 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."

15. The Hon'ble Supreme Court in *Criminal Appeal No.658 of 2022 (arising out of SLP (Crl) NO.27 of 2022) titled as **Imran Vs. Mr. Mohammed Bhava and another** decided on 22.04.2022*, has held as under:

"26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles".

16. It is, thus, clear that an appellate or a Superior Court can set aside the order granting bail, if the Court granting bail did not consider the relevant factors. Said position of law has been made further clear by Hon'ble Supreme Court in *Criminal Appeal No.680 of 2021 arising out*

Manor Infrastructure Pvt. Ltd. Vs. The State of Maharashtra and another decided on 26.07.2021.

17. Keeping in mind, the legal position as above, let us see the factual matrix of this case. In the present case, the only ground pressed by learned counsel for the petitioner for cancelling the anticipatory bail granted to respondent No.2 is that said respondent had been earlier declared as proclaimed person, vide order dated 15.11.2017 (Annexure P-1) and that a person who is absconding and has been declared proclaimed offender, is not entitled for grant of anticipatory bail. Learned counsel has referred to *“Prem Shankar Prasad v. The State of Bihar & Anr.”* (Criminal Appeal No.1209 of 2021, decided by the Hon'ble Supreme Court on 21.10.2021) (LL 2021 SC 579). In this case, the Hon'ble Supreme Court referred to the case of *“Lavesh v. State” (NCT of Delhi) [(2012)8 SCC 730]*, wherein the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 Cr.P.C., was considered and it was held as under: -

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender' there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

18. The Hon'ble Supreme Court then held in *Prem Shankar Prasad's* case (*supra*) that is, thus, clear that if anyone is declared proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to the relief of anticipatory bail. Hon'ble Supreme Court also considered

about the observations made by the High Court while granting anticipatory bail to the effect that nature of accusations had arisen out of a business transaction. It was held as under: -

“8. Even the observations made by the High Court while granting the anticipatory bail to respondent No.2-accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly Sections 406, 420, 467, 468 etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction. At this stage, it is required to be noted that respondent No.2-accused has been charge-sheeted for the offences punishable under Sections 406 and 420, etc. and a charge-sheet has been filed in the court of learned Magistrate Court.”

19. From the legal position as explained in **Lovesh's** case (*supra*) and as reiterated in **Prem Shankar Prasad's** case (*supra*), it is clear that when the accused is not available for interrogation and investigation and is absconding and concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to the relief of anticipatory bail.

20. However, it is important to note that in the present case, as per the contention of the petitioner that it is in December, 2021 that he came to know about the proceedings of the case and then approached the Court of Sessions by applying for anticipatory bail. This contention was also raised in application moved by respondent N: 2 before Sessions court, when he applied for anticipatory bail vide Annexure P5. The report/reply filed by the respondent police reveals that though non-bailable warrants were issued against respondent No.2 from time to time, but it is nowhere stated that respondent No.2 evaded the arrest despite the

knowledge of non-bailable warrants. There is no averment that any summons were earlier issued or served upon the respondent No.2. Rather, as per police report, after being granted the interim bail, respondent No.2, not only joined the investigation, but provided all the relevant record through his counsel.

21. It is relevant to notice that before a person is declared proclaimed offender, court concerned is required to ensure that summons, bailable warrants or non-bailable warrants have been duly served upon the person concerned and he is deliberately avoiding the same. Issuing summons, bailable warrants and non-bailable warrants would not suffice, but what is important is its service upon the accused in view of the dictum of the Hon'ble Supreme Court in “*Inder Mohan Goswami and another vs. State of Uttaranchal and others*” [Appeal (Crl.) 1392 of 2007, decided on 09.10.2007], as these coercive steps are directly related with the liberty of the person which is protected under Article 21 of the Constitution of India.

22. No doubt that a person, who has been absconding and concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 Cr.P.C., is not entitled to the relief of anticipatory bail as held in *Prem Shankar Prasad's* case (*supra*), but there must be material to show about the service of summons or bailable warrants/ warrants of arrest upon such a person prior to issuance of proclamation under Section 82 Cr.PC and further that he has been declared proclaimed person in accordance with law.

23. In present case, as rightly pointed out by Ld. Counsel that respondent N: 2 is resident of Mumbai. No material is placed on file

either by the petitioner-complainant or the respondent State that before declaring the respondent N: 2 as proclaimed person, he was duly served with summons or bailable warrants/ warrants of arrest, and further that he has been declared proclaimed person in accordance with law. Neither any proclamation notice or its service nor any report of service of summons or warrants upon the respondent N: 2 is produced on file.

24. Apart from above, present petition by complainant seeking cancellation of bail is based on concealment of facts. As the documents placed on record by respondent No.2 reveal that petitioner moved an application (Annexure R-2/3) seeking cancellation of anticipatory bail before the Court of Sessions. After serving notice upon respondent No.2, as per order dated 14.09.2022 (Annexure R-2/4), that application was rejected by the Court of learned Additional Sessions Judge, Gurugram, vide order dated 14.11.2022 (Annexure R-2/5). Besides, respondent No.2 also placed on record the order dated 11.01.2023 (Annexure R-2/6), whereby he has been allowed bail in separate FIR registered under Section 174-A IPC. Petitioner has not even whispered before this court about moving an application for cancellation of anticipatory bail granted to respondent No.2 and its rejection by learned Additional Sessions Judge, Gurugram.

25. Still further, as observed in *Prem Shankar Prasad's* case (*supra*), the fact that the nature of allegations have arisen out of a business transaction in itself is not relevant because business transaction may also involve offences, particularly, under Section 406, 420, 467, 468, 471 IPC etc. and so what is required to be considered is the nature of the allegations and the accusation. In the present case, as the police report

reveals that after investigation, Section 420 IPC has already been deleted.
The only other allegation against respondent No.2 is misappropriation of shuttering material.

26. Having regard to all the aforesaid facts and circumstances and the nature of the allegation and accusation against respondent No.2; the fact that application for cancellation of anticipatory bail moved by the petitioner has already been dismissed by the Court of learned Additional Sessions Judge, Gurugram and said fact has been concealed from this Court by the petitioner, this Court is of the considered view that there is no merit in this petition. As such, the same is hereby dismissed.

August 16, 2023
Sarita

(DEEPAK GUPTA)
JUDGE

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