

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

209

CRM-M-9771-2022

Date of Decision: 16.05.2023

Deepak Kumar

...Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Anil Sehrawat, Advocate with
Mr. Swantantra Pratap, Advocate for the petitioner
Ms. Priyanka Sadar, AAG, Haryana
Mr. Nikhil Vats, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439(2) Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking cancellation of regular bail granted to respondent No.2 vide order dated 20.01.2022 passed by learned Additional Sessions Judge, Jhajjar in FIR No.304 dated 11.09.2021 under Section 302 of Indian Penal Code, 1860 (for short 'IPC') (charge sheet under Sections 306, 201 of IPC) registered at Police Station Sector 6, Bahadurgarh.

2. Learned counsel for the petitioner *inter alia* contends that FIR was registered on 11.09.2021 and death of sister of the petitioner took place on 10.09.2021. The FIR was registered under Section 302 of IPC and police without conducting proper investigation converted commission of offence into Section 306 IPC. The challan came to be presented under Section 306 IPC and accordingly, Trial Court framed charges under Section

306 IPC. The post mortem report at that point of time was incomplete and statements of many material witnesses were not recorded still police converted commission of offence from Section 302 IPC to Section 306 IPC. The police did not conduct investigation in fair and unbiased manner. The petitioner has filed protest petition which was pending at the time of passing impugned order, thus, Sessions Court has wrongly granted concession of bail to the respondent.

3. Learned counsel for private respondent submits that respondent No.2 was arrested on 11.09.2021 and thereafter granted concession of regular bail vide order dated 20.01.2022 passed by Additional Sessions Judge, Jhajjar. The respondent No.2 is facing trial and there is no allegation of misuse of concession of regular bail. The charges stand framed and trial is going on.

4. Learned State counsel, on instructions from ASI Ashok Kumar, submits that police has conducted investigation in fair and unbiased manner and thereafter filed its report under Section 173 Cr.P.C. Charges stand framed and private respondent at present is on regular bail. She further confirms that State has never found misuse of concession of bail on the part of private respondent, thus, State has not filed any application seeking cancellation of his bail.

5. I have heard learned counsel for the parties and scrutinized the record with their able assistance.

6. The conceded position emerging from record is that private respondent was granted concession of regular bail vide order dated 20.01.2022 passed by Additional Sessions Judge, Jhajjar. The petitioner has not moved any application seeking cancellation of bail before the Sessions Court which had granted regular bail to the private respondent. The challan stands presented and charges stand framed. The private respondent at present is on regular bail and there is no evidence of misuse of concession of bail. The prime grievance of the petitioner is that police has not conducted investigation in fair and unbiased manner. The police acting in haste converted commission of offence from Section 302 to Section 306 IPC.

7. The petitioner has been granted bail qua commission of offence punishable under Section 306 IPC. It is duty of the Investigating Officer to invoke correct provisions of law and thereafter of the Trial Court while framing charge. This fact or legal position cannot be ground for cancellation of bail. The State has not filed any petition seeking cancellation of bail of the private respondent.

8. From the perusal of record and arguments of learned counsel for the petitioner, it comes out that grievance of the petitioner is only that police has not conducted investigation in fair and unbiased manner. The petitioner has not led any evidence of misuse of concession of regular bail granted to the private respondent. Moreover, petitioner is unable to controvert the fact that private respondent is on regular bail and he is regularly appearing before the Trial Court and facing trial. The State is not

seeking cancellation of bail. Therefore, there is no reason to cancel the bail already granted by the Sessions Court.

9. 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.

10. The Court while granting bail is not supposed to deal with each and every contention of the complainant. A bail once granted cannot be cancelled on the basis of bald allegations of the complainant especially when there is no complaint by prosecuting agency supported by evidence of misuse of bail. From the perusal of impugned order, it comes out that the Court below while granting regular bail has passed a reasoned order which needs no interference. The present petition being bereft of merit deserves to be dismissed.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

16.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>