

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-10805-2021

Date of Decision: *February 22, 2023*

Nirvail Singh

... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Umesh Aggarwal, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

Mr. PBS Goraya, Advocate,
for respondent No.2.

Vivek Puri, J.

The petitioner is seeking cancellation of anticipatory bail granted to respondent no.2 in terms of order dated 23.02.2021 passed by the Court of learned Additional Sessions Judge, Amritsar, in the case bearing FIR no. 25, dated 01.02.2019, under Sections 323/324/148/149 of the Indian Penal Code (for short 'IPC'), registered at Police Station Gharinda Amritsar Rural.

Briefly, the FIR has been registered on the allegations that on 18.01.2019, Balwinder Singh armed with datar, Kashmir Singh armed with sword, Nirbhai Singh armed with datar, Gursahib Singh armed with datar, Veer Singh armed with 12 bore gun, Balraj Singh armed with pistol, Navdeep Singh armed with rifle and Gurbhej Singh

came at the vegetable stall of the father of the petitioner. Gurbhej Singh exhorted the co-accused. Nirbhai Singh inflicted datar blow upon Manjinder Singh, the nephew of the petitioner, who raised his right hand and blow hit his little finger which got severed. The blow also hit the finger next to little finger. Kashmir Singh inflicted sword blow upon the index finger of left hand of Manjinder Singh. Balwinder Singh inflicted datar blow on the forehead of Manjinder Singh. Gursahib Singh inflicted datar blow on the left cheek of Gurpreet Singh. Veer Singh fired gun shot from 12 bore gun and the pellets hit the chest and bicep of left arm of the petitioner. Balraj Singh fired from his pistol and respondent no.2 fired a gun shot from the rifle which hit the vegetable stall.

I have heard learned counsel for the parties and perused the record.

The learned counsel for the petitioner contends that the offence under Section 307 IPC has been incorporated in the instant case. The respondent no.2 was armed with rifle. He was member of unlawful assembly and injuries were inflicted upon the person of the petitioner and two others. Even the rifle has not been got recovered by the respondent no.2 and keeping in view the nature and gravity of the offence, a sufficient case is made out for cancellation of anticipatory bail.

Learned State counsel has pointed out that there are 09 accused in the instant case. 5 of them are on bail and 4 are absconding. In the cross version case, there are 08 accused and all are on bail and the matter is still under investigation.

Learned counsel for respondent no.2 has contended that no injury has been attributed to the respondent no.2. Even there is nothing to indicate that the respondent no.2 is in possession of any fire arm. The Court below has passed the impugned order extending the concession of pre-arrest bail to the respondent no.2 after proper appreciation and evaluation of the entire facts and circumstances in proper perspective and no ground is made out to interfere with the same. Moreover, the grounds which existed at the time of grant of bail cannot be re-considered at the time of deciding the petition for cancellation of bail. The respondent no.2 has not misused the concession of bail and there is no allegation to the effect that the respondent no.2 in any manner has threatened the petitioner or any of the witnesses. Moreover, it is a case of version and cross-version.

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 “**Bhuri Bai vs. The State of Madhya Pradesh**”, 2023(1) R.C.R. (Criminal) 303 (SC), the Hon’ble Supreme Court has 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.”*

It is significant to note that the respondent no.2 had approached the Court of Sessions for grant of bail under Section 438 of the Code. In terms of order dated 17.02.2021, the respondent no.2 was granted interim bail by making the following observations:-

“4. So far as the prayer for grant of bail under section 438 Cr.PC to applicant Navdeep Singh is

concerned, he is staed to have fired towards the vegetable kiosk/khokha of the complainant which offence falls within the purview of section 336 IPC. Admittedly, it is a case of version and cross version. There is no specific attribution to this applicant as such, before deciding this bail application on merits, it is appropriate to direct the applicant Navdeep Singh to join investigation which would be beneficial for the further progress of investigation.”

Significantly, the prayer of bail under Section 438 of the Code of Nirbhay Singh, co-accused to whom the injuries under Section 326 IPC was attributed, was declined. Thereafter, in terms of the order dated 23.02.2021, the interim bail granted to the respondent no.2 vide order dated 17.02.2021 was made absolute. Although, the impugned order indicates that the rifle has not been got recovered, but it is significant to note that there is lack of concrete material to indicate that the respondent no.2 was in fact in possession of any such rifle. It was submitted by the investigating officer that the respondent no.2 has joined the investigation in compliance with the interim directions, but the recovery of rifle is to be effected. The gun shot has been attributed to the respondent no.2 having been fired from the rifle, but significantly, the same had allegedly hit the vegetable stall of the father of the petitioner. No injury has been attributed to the respondent no.2. As such, merely on

the score that rifle has not been recovered, particularly when there is lack of material to indicate that respondent no.2 was in possession, thereof at any point of time cannot be termed to be a circumstance to decline anticipatory bail. There is nothing on record to indicate that the respondent no.2 has been granted anticipatory bail on the basis of insufficient grounds and without considering the nature and gravity of the offence. The injuries under Sections 326 and 307 IPC have not been attributed to the respondent no.2. Moreover, it is a case of version and cross-version. As such, the reasons which weighed in the mind of the Court while granting pre-arrest bail can be termed to be sufficient to exercise the powers granted under Section 438 Cr.P.C.

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

Present petition is dismissed accordingly.

February 22, 2023

vk

(Vivek Puri)
Judge

Whether reasoned/speaking:	Yes
Whether reportable :	Yes