

2023:PHHC:112804

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

**CRM-M No.10083 of 2020
Date of Decision: 28 .08.2023**

Suman

...Petitioner

Versus

Sudhir Pannu & Anr.

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Rajesh Sethi, Advocate,
for the petitioner.

Mr. U.K.Agnihotri, Advocate,
for respondent No.1.

Mr. Apoorv Garg, Sr. DAG, Haryana,
for respondent No.2-State.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has assailed the order Annexure P-13 passed by learned Additional Sessions Judge, Hisar, on 24.10.2019 in the bail application bearing No.330-BA-2019, whereby respondent No.1-accused (here-in-after to be referred as 'the accused') has been granted the relief of regular bail in the criminal case arisen out of the FIR bearing No.203 dated 12.04.2018, as registered at Police Station Civil Lines District Hisar under Sections 498-A, 406, 313, 506 read with Section 34 IPC and she has also prayed for rejecting the said bail application.

2. As per the brief factual-matrix, culled out from the pleadings canvassed in the present petition and culminating in the filing of the same,

the criminal case under reference had been got registered by the petitioner against the accused and his family members. After being arrested in the said case, the accused was produced before the Area Magistrate who, vide the order Annexure P-2, remanded him to the police custody only for 04 hours and accordingly, he (accused) was again produced before the said Magistrate in the evening, along-with application Annexure P-3, which had allegedly been forged by making the cuttings on the words 'police remand for one day' and writing the words 'judicial remand' therein whereas in fact, the recovery of certain articles, including the gold jewellery items, was yet to be affected at his (accused's) instance and then, vide the order Annexure P-4 passed on the same day, he was admitted to bail by the said Magistrate. Feeling aggrieved by the afore-said order, the petitioner moved an application under Section 439(2) Cr.P.C for seeking the cancellation of bail, as granted to the accused and vide the order Annexure P-5, learned Additional Sessions Judge, Hisar allowed the above-referred application. Thereafter, the trial Court issued non-bailable warrants against the accused several times but in vain and finally, he was arrested on 11.10.2019 and he again moved an application for seeking the relief of regular bail which has been allowed by learned Additional Sessions Judge vide the impugned order (Annexure P-13), while observing that the said criminal case was triable by the Court of Magistrate.

3. Written-Reply has been filed by respondent No.1-accused and respondent No.2-State has also preferred to submit the detailed Status-Report (by way of the affidavit of Deputy Superintendent of Police, Head

Quarters, Hisar) in the instant petition and these documents have already been taken on the record.

4. I have heard learned counsel for the petitioner as well as learned counsel for respondent No.1-accused and learned State counsel for respondent No.2 in this petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner has contended that while extending the relief of regular bail to the accused vide the impugned order, learned Additional Sessions Judge has gravely erred by observing that the afore-referred criminal case is triable by the Court of Magistrate whereas besides other offences, the offence under Section 313 IPC has also been invoked in the above-said case and the same is exclusively triable by the Court of Sessions and moreover, after the cancellation of his regular bail vide order Annexure P-5, the accused evaded his arrest despite the issuance of non-bailable warrants by the competent Court against him on numerous occasions and ultimately, he had been arrested by the police and the afore-mentioned conduct on his part, in itself, does suffice to disentitle him to seek the relief of regular bail and in these circumstances, the impugned order deserves to be set aside.

6. Per contra, learned counsel for respondent No.1-accused has argued that the accused has been got falsely implicated in the above-said criminal case and he has never misused the relief of regular bail granted to him vide the impugned order and even otherwise, the parameters/factors, as required to be taken into consideration for rejecting the prayer for grant of bail and for cancellation of bail, are entirely different and distinguishable

and therefore, the relief of regular bail, as already granted to the accused, cannot be taken away merely on the basis of the whims and fancies of the petitioner. To buttress his contentions, he has placed reliance upon the observations, made by the Division Bench of this Court in **State of Punjab vs. Jagjit Singh Chahal 2015(4) R.C.R. (Criminal) 724** and also by the Co-ordinate Benches in **Ekta vs. State of Punjab and others 2016(4) R.C.R. (Criminal) 426** and **Kharati Lal and others vs. State of Haryana 2019(1) R.C.R (Criminal) 840.**

7. Learned State counsel has argued that the accused is involved in one more criminal case registered under Sections 25/30 of the Arms Act and it being so, the impugned order is liable to be set-aside.

8. A perusal of the order Annexure P-2 reveals that at the time of producing the accused before the concerned Magistrate after arresting him in the afore-said case, the Investigating Agency had moved an application for seeking his (accused's) police remand for one day but the concerned Magistrate had remanded him to the police custody only for 04 (four) hours and as mentioned in order Annexure P-4, the accused was again produced before the said Magistrate at his residence, on the same evening, along-with an application (Annexure P-3) for seeking his judicial remand for 14 days and then, he was ordered to be released on bail.

9. It is pertinent to mention here that in the order Annexure P-5 as passed while allowing the application, moved by the petitioner under Section 439(2) Cr.P.C for seeking the cancellation of the relief of regular bail extended by the Magistrate to the accused vide order Annexure P-4,

learned Additional Sessions Judge, Hisar, has specifically observed that the forgery had been committed in the application, as moved for seeking the police remand of the accused, by making cuttings on the words 'police remand' and adding the words 'judicial remand for 14 days' therein and it has also been mentioned in the above-referred order that the Magistrate did not take the factum regarding the offence under Section 313 IPC being exclusively triable by the Court of Sessions, into consideration.

10. This Court is astonished to notice that in Para No.07 of the impugned order (Annexure P-13), learned Additional Sessions Judge has also committed the blunder by observing that the afore-mentioned criminal case is triable by the Court of Magistrate, despite the facts that she must be having a considerably long experience of working as a Judicial Officer, to her credit and it being so, she cannot be presumed to be oblivious of the nature of the offence under Section 313 IPC and of the Court of competent jurisdiction to try the same. However, this Court deems it appropriate to refrain from making any further comments on this aspect of the matter and would, rather, prefer to advise her to be careful and cautious in discharging her duty as a judicial officer.

11. Seen from yet another angle, it has categorically been deposed in Para No.06 in the Status-Report, as submitted on behalf of respondent No.2-State, that after cancellation of the bail of the accused vide the order Annexure P-5, the concerned Court issued the warrants of arrest against him on 08.04.2019, 13.05.2019, 15.07.2019 and 21.10.2019 and finally, he (accused) was arrested on 11.10.2019. These depositions speak volumes of

the fact that the accused had kept on evading his arrest for almost one year after the cancellation of his bail and ultimately, he had been arrested by the police in the case. To add to it, he (accused) is involved in another criminal case registered under Sections 25/30 of the Arms Act.

12. The observations made by the Division Bench of this Court in *State of Punjab (supra)* and by the Co-ordinate Benches in *Ekta (supra)* and *Kharati Lal and others (supra)* are no help to the petitioner as the facts and circumstances of the instant case are distinguishable from those of the cited above. Rather, in *State of Punjab (supra)* and *Ekta (supra)*, it has been observed that “*the State could seek the cancellation of bail where the Court had granted bail by taking into consideration the irrelevant material or overlooking relevant material*” and in the present case also, the impugned order has been passed while overlooking the fact that the case, involving the offence under Section 313 IPC, is exclusively triable by the Court of Sessions and by wrongly observing that the same was triable by the Court of Magistrate.

13. Further, in *Kharati Lal and others (supra)*, the only ground, as taken for cancelling the bail of the petitioners, was that when their co-accused was arrested, he had suffered a disclosure statement to the effect that he had been planning to surrender long back but the petitioners, who were on bail, had been pressurising him and the other accused persons not to surrender, whereas it is not so in this case.

12. As a sequel to the fore-going discussion, it follows that the impugned order is not legally sustainable and therefore, the same is hereby

set-aside and respondent No.1-accused, through his counsel, is directed to surrender before learned trial Court/Area Magistrate/Duty Magistrate on 06.09.2023 and after his surrender, his above-referred bail application shall be decided afresh by the concerned Court, strictly in accordance with law, preferably within a period of one week. Resultantly, the petition in hand stands allowed accordingly.

28th August, 2023
seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*