

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

CRM-M-12468-2023 (O&M)

Reserved on: 28.11.2023

Pronounced on: 01.12.2023

SITALAN SINGH TANWAR

. . . . Petitioner

Vs.

State of Haryana and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ashish Jhamb, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

None for respondent No.2.

DEEPAK GUPTA, J.

Petitioner-Sitalan Singh Tanwar, father of the deceased Sumit, is the complainant of the FIR No.874 dated 25.12.2022 registered at Police Station Sector 8, Faridabad under Sections 306/34 IPC.

2. By way of this petition filed under Section 439(2) read with Section 482 CrPC, petitioner has prayed for setting aside the order dated 02.02.2023 (Annexure P2), whereby interim pre-arrest bail was granted to respondent No.2-accused by the Court of Id. Additional Sessions Judge, Faridabad; and the order dated 09.02.2023 (Annexure P3), whereby interim order was made absolute.

3. FIR in question was lodged on the complaint of the petitioner, as per which his son Sumit was married to Pooja (co-accused) in 2015.

Two children were born out of the wedlock. It was alleged that about three

months ago (*prior to lodging of the FIR*), Pooja had left for her parental home. She left parental home saying that she was going to matrimonial home but did not reach there. On making search, complainant and his son came to know that Pooja had extra marital affair with Brij Vir @ Sonu - respondent No.2. It was further alleged that said Brij Vir @ Sonu and Pooja visited the house of the complainant and told that they were living happily. They also made Sumit upset by saying unpleasant words to the effect that he was useless and that he was not worth living with Pooja; and that even if he died, Pooja could live her own life. Same thing was also stated by respondent No.2-Brij Vir @ Sonu and thus, they insulted Sumit. It was further alleged by the complainant that due to said abetment on the part of Brij Vir @ Sonu - respondent No.2 and Pooja, his son Sumit had committed suicide.

4. Respondent No.2-Brij Vir @ Sonu applied for anticipatory bail before the Court of Sessions. He was allowed interim bail vide order dated 02.02.2023 (Annexure P2) on the condition that he shall join the investigation. The said interim order was made absolute vide order dated 09.02.2023 (Annexure P3).

5. (i) It is contended by ld. counsel for the petitioner – complainant that while passing the impugned orders, granting anticipatory bail to Respondent No.2, ld. Additional Sessions Judge, Faridabad, failed to appreciate that soon before the death of deceased Sumit, respondent No.2 and Pooja had met the deceased and told him about their illicit relationship and insulted him by stating that he was of no use and thus, instigated the deceased to commit suicide. Suicide note was also recovered by the Police,

in which Pooja and respondent No.2 have been blamed for committing suicide. Ld. counsel contends further that there is direct proximate link between the suicide by Sumit and the act of respondent No.2-Brij Vir @ Sonu. Though death of Sumit took place because of hanging, but the circumstances reveal that he was quite depressed and having felt humiliated amongst the family members, friends and society, he committed suicide.

(ii) Ld. counsel for the petitioner contends further that apart from the parameters laid down by Hon'ble Supreme Court in ***Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481*** for cancellation of bail, it has also been held by Hon'ble Supreme Court in the case of ***Myakala Dharmarajam and others Vs. State of Telangana and another, AIR 2020 SC 317*** that it is necessary to examine as to whether the order passed by the Sessions Judge granting bail is perverse and suffers from the infirmities, resulting in the miscarriage of justice or there was likelihood of the accused tampering with the evidence.

(iii) Ld. counsel further refers to ***Sayara Uruuf @ Afsana Vs. State of UP*** [Cr. Misc. Bal Application No.14096 of 2021 decided on 10.08.2021], wherein Allahabad High Court found the proximate link between the act of deceased committing suicide and his hyper sensitive nature and depression due to humiliation amongst the family members, friends etc. on account of bad habits of the accused.

(iii) With these submissions, prayer is made for cancellation of anticipatory bail granted to respondent No.2.

6. As per the reply filed by respondent No.1, after completion of investigation, case is now fixed for consideration of charge before the concerned Court. It is also stated in the reply that it was found during investigation that dispute was between deceased Sumit and his wife-Pooja, who were in relationship with each other and therefore, other persons named in the suicide note, were kept in column No.12 of the challan. It is also submitted that after formal arrest of respondent No.2, his disclosure statement was recorded. The reply of respondent No.1 would reveal that State has neither supported the case of the petitioner so as to cancel the anticipatory bail granted to respondent No.2 nor opposed the prayer.

7. In the separate reply filed by respondent No.2, it is submitted that deceased had strained relations with his wife-Pooja and even the Court of Id. ASJ has observed about the circumstances brought out through the chat on WhatsApp, which have not been denied by the petitioner. Id. counsel for respondent No.2 further submits that no case for cancellation of the anticipatory bail is made out and so, the present petition deserved to be dismissed.

8. I have considered submissions of both the sides and appraised the record carefully.

9. 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.*”

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.*”

10. 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***.

11. 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.”

12. 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."

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

"In Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

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."

14. 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”.

15. 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 of SLP (Crl) No.3155 of 2018 titled as ***M/s Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. The State of Maharashtra and another*** decided on 26.07.2021.

16. Keeping in mind, the legal position as above, let us see the factual matrix of this case. In the present case, it has been observed by Ld ASJ in the impugned order that divorce petition had already been filed by Pooja wife of the deceased in December 2022 and that even if the allegations are taken as it is, it appeared that deceased and his wife were not having good relations and that his wife i.e., Pooja had started living separately. Ld. ASJ also observed that WhatsApp chat attached with the petition spoke much about the relations between the parties and that *prima facie*, it appeared that it was case of a unhappy married life of deceased and pooja.

17. Apart from the aforesaid circumstances as noted by Id. ASJ, it is important to notice that as per the contents of the FIR, Pooja had left her parental home about three months prior to lodging of the FIR and then left the parental home for coming back to the matrimonial home, but did not reach there. FIR does not mention as to when Pooja left for matrimonial home and when the complainant or his deceased son came to know about the illicit relations of Pooja with respondent No.2.

18. It is further important to notice that copies of five pages of the suicide note have been placed on record by respondent No.1 along with the reply to the petition, bare perusal of which would reveal that separate pages have been written by the deceased at different points of time. Not only this, deceased appeared to be in unstable state of mind, as the contents of the suicide note would reveal that he was quite incoherent, inasmuch as at most of the places he has blamed family members of his in-laws to be responsible for his death (*who have been found innocent during investigation*), whereas at some places he has blamed respondent No.2-Brij Vir @ Sonu to be responsible for his death. The suicide note would further reveal that deceased had come to know about the illicit relations of his wife with respondent No.2 much prior to commission of suicide and therefore, it cannot be stated at this stage that there is a proximate link between the suicide committed by the deceased-Sumit and the illicit relations of respondent No.2 with Pooja.

19. Further, there is neither any allegation nor any circumstance in order to show that after grant of anticipatory bail by way of impugned orders, respondent No.2 misused the same in any manner whatsoever.

There is nothing on record to suggest that respondent No.2 interfered in the course of investigation or attempted to tamper with the evidence or witnesses or threatened the witnesses or indulged in any such activity or that there was likelihood of his fleeing away from the country or not attending the trial.

20. In all the aforesaid facts and circumstances, this Court finds no ground to interfere in the impugned orders (Annexure P2 & P3) passed by Court of Ld. ASJ, Faridabad so as to cancel the anticipatory bail granted to respondent No.2.

Dismissed.

Pending application (s), if any, stands disposed of.

(DEEPAK GUPTA)
JUDGE

01.12.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |