

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17677-2023

Reserved on 13.04.2023

Pronounced on 17.07.2023

Harmanjot Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Pushpinder Kaushal, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1). By way of instant petition jurisdiction of this Court has been sought to be invoked under Section 439(2) Cr.P.C., for cancellation of regular bail granted to Kajal-respondent No.2 by Additional Sessions Judge, Moga (Annexure P-8) in FIR No.194, dated 10.11.2021, under Sections 166,189,190,204,328,506 and 509 IPC, 1860 registered at Police Station City Moga, District Moga.

(2). Learned counsel for the petitioner contends that the impugned order dated 09.03.2023.(Annexure P-8) passed by Additional Sessions Judge, Moga suffers from patent illegality, perversity and infirmity as same being unsustainable and is liable to be set aside. He submits that the Revisional court has overlooked the well-reasoned order passed by trial court while dismissing the bail application of the respondent No.2 vide order dated 25.01.2023 (Annexure P-7) whereby it has been categorically stated that no sufficient opportunities have been availed by the prosecution to conclude the entire evidence within sixty days from the date the case was first fixed for evidence.

- (3). Heard learned counsel for the petitioner.
- (4). Before advertng to the merits of the case, this Court deems it appropriate to reproduce the relevant Section 437(6) CrPC, which reads as under:-

“Section 437. When bail may be taken in case of non-bailable offence:

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

- (5). This provision stipulates that if in a non-bailable offence triable by a Magistrate, the trial is not concluded within a period of sixty days from the first date fixed for taking evidence and the accused remains in custody during the whole period, then he becomes entitled for release on bail though such benefit can be denied to the accused if the trial Magistrate records reasons thereof.
- (6). Though, there is no straight jacket formula to assess the application for grant or rejection of bail but determination of whether a case is fit for grant of bail or not involves balancing of numerous factors among which nature of offence, severity of punishment and *prima facie* view of the involvement of accused are of utmost importance. Very cogent and overwhelming circumstances or ground 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 be lightly interfered with under Section

439(2), Cr.P.C. While considering the petition for cancellation of bail, a Court shall bear in mind that:-

- a) the accused misuses his liberty by indulging in similar criminal activity,*
- b) interferes with the course of investigation,*
- c) attempts to tamper with evidence or witnesses,*
- d) threatens witnesses or indulges in similar activities which would hamper smooth investigation,*
- e) there is likelihood of his fleeing to another country,*
- f) attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency and*
- g) attempts to place himself beyond the reach of his surety, etc.*

(7). It is thus clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled.

(8). The Supreme Court in **Bhuribai vs. State of Madhya Pradesh in criminal appeal No.1972 of 2022** elaborating the powers of the Court for cancellation of bail held that it cannot be approached as if of disciplinary proceedings against accused and such 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 part of accused before granting bail.

(9). This Court is of the considered view that the petitioner has failed to highlight any cogent or overwhelming circumstances or grounds which is a *sine qua non* for seeking cancellation of bail. It is not the case of the petitioner

that the respondent has misused the liberty or had comported themselves in any manner in violation of the conditions imposed on him. The power of cancellation of bail ought to 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 economic offence is involved in the case.

(10). It is not the case of the petitioner that the respondent No.2 accused had misused the liberty or had violated any of the conditions as envisaged under Section 439 Cr.PC. Merely because respondent No.2 is *prima facie* shown to be involved in the case in terms of the charges framed against her, is not a circumstance to be construed adversely against her to denude her the benefit of beneficial statutory provisions of Section [436\(7\)](#) CrPC. Moreover, neither there is failure of the prosecution to examine material witnesses during the period of 60 days nor is there any ground taken that the release of respondent No.2-accused may affect testimony of the witnesses to be examined by the prosecution. From perusal of the zimni orders reproduced in the paper book, it transpires that the challan was presented on 10.01.2022; charge in the case was framed on 20.10.2022 and out of 19 witnesses, only 2 witnesses have been examined till date. Respondent No.2 had been in custody

since 11.11.2021, which clearly violates the mandate provided under Section 437(6) that the trial has to be concluded within sixty days from the first date fixed for prosecution evidence. During this entire period, for no fault of the petitioner, the case was adjourned time and again. Clearly enough, time was sought by the prosecuting agency to produce the evidence.

(11). Considering the aforesaid submissions and the language of Section 437(6) CrPC and also in view of the decision of the Apex Court in **Bhuribai**, this Court is of the view that Section 437(6) does not give an absolute right to the accused to be released on bail, rather a harmonious construction of the Code with other acts needs to be taken into consideration to maintain a balance between individual liberty and the interest of justice, because the very object of introducing such provisions is to speed up the trial and to ensure that the accused is not unnecessarily harassed and also keeping the accused behind bars for an indefinite period amount to violation of Article 21 of the Indian Constitution. Further the Supreme Court in **Hussainarakhatoon & others versus Home Secretary, State Of Bihar (AIR 1979 SC 1369)** provided a broad definition of Article 21 of the Constitution and stated that a speedy trial is a fundamental right of every citizen.

(12). In the light of the above discussion, this Court does not find any illegality in the order passed by the trial court in granting anticipatory bail to the accused person.

(13). Dismissed.

17.07.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No