

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19140-2022 (O&M)

Reserved on: 02.08.2023

Pronounced on: 16.08.2023

Reeta Kumari

. . . . Petitioner

Vs.

State of Punjab and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Jasraj Singh, Advocate, for the petitioner.

Mr.M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

Accused Rajwinder Kaur (Respondent No.2 herein) was allowed anticipatory bail vide order dated 16.12.2021 (Annexure P6) by the Court of Id. Additional Sessions Judge, Hoshiarpur in a case arising out of FIR No.66 dated 06.05.2021 registered at Police Station Bullowal, District Hoshiarpur, under Section 420 of the Indian Penal Code, 1860 and Section 13 of the Punjab Travel Professionals (Regulations) Act, 2014.

2. Present petitioner Reeta Kumari is the complainant of the FIR and by virtue of this petition filed under Section 439(2) read with Section 482 of the Cr.P.C., she has prayed for cancellation of the bail as granted to respondent No.2.

3. FIR was lodged against six named persons including the petitioner and some unknown persons, as per which, complainant was cheated the amount of ₹7,80,000/- plus 1400 US dollar, for sending her son Jatin Kumar to Portugal. As per the allegations, one Gurdeep Singh had assured to send the son of the complainant to Portugal with a work permit

visa, projecting that Rajwinder Kaur (respondent No.2) and her daughter Sarabjit Kaur were also being sent to Portugal. Later on, these persons, namely Gurdeep Singh, Rajwinder Kaur and Sarbjit Kaur, came to the house of the complainant and deal for ₹8 lakh was struck. As per allegations, an amount of ₹7,80,000/- was paid from time to time. Son of the petitioner along with Gurdeep Singh, Rajwinder Kaur, Sarabjit Kaur, and Mohammad Sadiq Khan flew from Jaipur to Armenia on 25.10.2019 and stayed there till 14.12.2019 and then taken to Georgia. At that place, the dollars worth ₹1 lakh were forcibly taken from son of the complainant by the accused including respondent No.2. After much struggle, son of the petitioner managed to return to India on 06.12.2019. Petitioner-complainant contacted the concerned persons, but they refused to return the money and rather, threatened to kill her and her son.

4. After registration of the FIR, similarly placed accused Gurdeep Singh applied for pre-arrest bail, which was dismissed by Id. Additional Sessions Judge, Hoshiarpur vide order dated 12.10.2021 (Annexure P2). Said Gurdeep Singh then approached this High Court by filing CRM-M-46353-2021. Vide order dated 03.11.2021, this Court granted concession of interim bail to him subject to the condition that he will bring a demand draft of ₹1 lakh in the name of the complainant on the next date of hearing i.e., 18.01.2022. However, in the meantime, respondent No.2 (Rajwinder Kaur) taking benefit of the interim bail to the co-accused, applied for bail before Id. Additional Sessions Judge, Hoshiarpur and the same was allowed vide order dated 16.12.2021 (Annexure P6). Subsequently, since co-accused Gurdeep Singh failed to bring the demand draft of ₹1 lakh in

terms of order dated 03.11.2021 passed in CRM-M-46353-2021, his petition for anticipatory bail was dismissed by this Court on 18.02.2022 (Annexure P8).

5. It is contended by Id. Counsel for the petitioner-complainant that while granting anticipatory bail to respondent No.2, the Court of Id. Additional Sessions Judge gave the reasoning that co-accused Gurdeep Singh had already been granted anticipatory bail by this High Court. It is contended that case of respondent No.2 is at par with Gurdeep Singh and since the bail petition of Gurdeep Singh has been dismissed by this Court on 18.02.2022, therefore, the bail to respondent No.2 is not justified. It is also contended that Id. Additional Sessions Judge was not made aware about the fact that interim bail granted to Gurdeep Singh was a conditional one. It is urged that Id. Court acted in a mechanical manner while granting the concession of anticipatory bail to respondent N: 2 and so, the same deserves to be withdrawn.

6. Upon notice of motion being issued, nobody turned on behalf of respondent No.2. Rather, she refused to receive the notice. Respondent No.1/State has not filed any reply. However, Id. State counsel has supported the case of the petitioner.

7. I have heard counsel for the petitioner as well as the State and perused the file.

8. As far as locus of the petitioner-complainant to seek the cancellation of bail to accused is concerned, Id. Counsel for petitioner has referred to *Brij Nandan Jaiswal Vs. Munna*, 2009(1) RCR (Criminal) 529, wherein it has been held by Hon'ble Supreme Court that "*complainant can*

always question the order granting bail to an accused, if the said order is not validly passed; and that it is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its misuse. It was further held that the order can also be tested on merits also”.

9. In ***Rajinder Singh Vs. State of Haryana***, 1998 (4) RCR (Criminal) 663, it has been held by this Court that “*if bail is obtained by misrepresentation, the same can be cancelled.*” In that case, the victim was in the hospital, but the Investigating Officer wrongly stated that the victim has been discharged, which had prompted the judge to grant bail. Ordering the SSP to hold enquiry against the IO and observing that the bail has been obtained by misrepresentation, the same was cancelled.

10. In present case, 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.”

11. 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.”

12. 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***.

13. 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.”

14. 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.**"*

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

9. 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."

16. The 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”.

17. 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.

18. Keeping in mind, the legal position as above, let us see the factual matrix of this case. The Court of Id. Additional Sessions Judge, while allowing the anticipatory bail to the accused Rajwinder Kaur (respondent No.2 herein) by way of impugned order dated 16.12.2021 (Annexure P6) reasoned as under: -

“Now from the facts, it comes out that applicant/accused Rajwinder Kaur, her daughter Sarbjit Kaur along with Gurdeep Singh and Mohammad Sadiq Khan are alleged to have cheated the complainant Reeta Kumari under the pretext of sending her son Jatin to Portugal. Though, non-applicant Gurdeep Singh also visited Georgia via Armenia along with son of complainant and other persons as is clear from the photostat copies of air tickets and other documents annexed on the file. As per version of complainant, on many occasions, she met Gurdeep Singh for sending her son abroad and she handed over different amounts on different dates to non-applicant Gurdeep Singh. The case was registered against the applicant-accused after enquiry. Now the co-accused Gurdeep Singh has been granted interim bail by

Hon'ble High Court. As Investigating Officer has stated that the applicant-accused Rajwinder Kaur has joined the investigation. The prosecution is not seeking the requirement of custodial interrogation of applicant-accused. Looking into the fact that the applicant is a lady and as per her version, she too had given ₹13 lakh for going abroad by herself and by her daughter. Even some annexures are attached regarding payment by the applicant-accused. In these circumstances, the applicant-accused Rajwinder Kaur is entitled to benefit of anticipatory bail and accordingly, bail application filed by her under Section 438 Cr.P.C. is hereby allowed, subject to compliance under Section 438(2) Cr.P.C. and accordingly interim order dated 10.12.2021 is hereby confirmed. Subject to conditions that the applicant-accused will continue to join and co-operate with the investigation as and when required; will appear in the court on each and every date of hearing; that she will not leave India without prior permission of the Court and that she shall not tamper with evidence of prosecution."

19. It is, thus, clear that the fact that co-accused Gurdeep Singh had been granted the interim anticipatory bail by this High Court, was only one of the considerations, which was taken into account by the Ld. ASJ, while allowing anticipatory bail to respondent No.2. Apart from this factor, Ld. ASJ took into account the following factors: -

- (i) Gurdeep Singh co-accused and Rajwinder Kaur (respondent No.2) also visited Georgia via Armenia along with son of the complainant and other persons as was clear from the photocopies of the air tickets and other documents.
- (ii) Rajwinder Kaur (respondent No.2) had already joined the investigation as was stated by the Investigating Officer.
- (iii) Prosecution was not seeking requirement of custodial interrogation of respondent No.2.
- (iv) Respondent No.2 was a lady and as per her version, she had also given ₹13 lakh for going abroad along with her daughter,

regarding which some annexures were attached in respect of payment.

20. Apart from above, it was also the contention that respondent No.2 besides Gurdeep Singh & others had also been cheated by agent Mohammad Sadiq Khan and that they (respondent No.2-Rajwinder Kaur, Gurdeep Singh, Sarabjit Kaur and Gulshan) had managed with great difficulty to return to India on 06.05.2019 and thus, it is not only the son of the petitioner-complainant, who came back from Georgia, but it is also respondent No.2-Rajwinder Kaur and her daughter, who came back.

21. In *Abdul Basit @ Raju and others etc. Vs. Md. Abdul Kadir Chaudhary and another*, 2014 (4) RCR (Criminal) 716, it has been held as under: -

“Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (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. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail

cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last-mentioned case, one would expect very strong grounds indeed. (Raghubir Singh and Ors. etc. v. State of Bihar, 1987 CriLJ 157)”

22. None of the above grounds exist in this case for cancelling the bail granted to respondent N: 2.

23. In all the above said circumstances, simply because Id. Additional Sessions Judge did not put the condition of depositing demand draft of ₹1 lakh, which had been put for co-accused Gurdeep Singh by this Court while granting interim bail in CRM-M-46353-2021, cannot be ground to cancel the anticipatory bail granted to respondent No.2 by Id. ASJ, Hoshiarpur, particularly when there is no allegation on the part of respondent/ State that respondent No.2 has not cooperated in the investigation in any manner whatsoever; or that she is trying to influence the witnesses. This court does not find any compelling circumstance to cancel the anticipatory bail already granted to the respondent N: 2 in the absence of any cogent material justifying the cancellation.

24. In view of the aforesaid discussion, I find no merit in the petition.

Dismissed.

(DEEPAK GUPTA)
JUDGE

16.08.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No