

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211+213

CRM-21604-2023 in/and
CRM-M-22146-2023
Date of decision: 16.05.2023

Ashish Khatri

.....Petitioner

Versus

Jagdish @ Bhandu and Anr.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Jangjit Singh Dahiya, Advocate
for the petitioner.

Mr. Rakesh Kumar Lathwal, Advocate
for respondent No.1.

Mr. Rahul Mohan, Sr. DAG, Haryana
for respondent No.2-State.

MANJARI NEHRU KAUL, J. (ORAL)

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1. For the reasons mentioned in the application, the same is allowed and copies of documents mentioned therein are taken on record as Annexures P-5 and P-6 respectively.

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2. The petitioner has approached this Court under Section 439(2) read with Section 482 of the Cr.P.C. seeking cancellation of interim bail which had been granted to respondent No.1 by the learned Additional District and Sessions Judge, Sonapat vide order dated 25.04.2023 (Annexure P-1) in case FIR No.411 dated 21.11.2021 under Sections 302, 307, 323 and 506 of the IPC (charge framed under Section 302 and 506 of the IPC) registered at Police Station Civil Line,

Sonipat.

3. Learned counsel for the petitioner, while inviting the attention of this Court to the impugned order, *inter alia* contends that the Trial Court had granted interim bail to accused-respondent No.1 without there being any such prayer made in the application, and still further, the said concession of interim bail had been granted to respondent No.1 at a very crucial stage of the trial when the prosecution evidence was still underway. Learned counsel has further argued that the Trial Court gravely erred in overlooking the gravity of the offence committed by respondent No.1 i.e. of having inflicted fatal injury on the head of the deceased. Learned counsel has contended that it was a case of eye witness account where the father of the complainant petitioner had been murdered by respondent No.1 by inflicting fatal injury on his head, and for which respondent No.1 had been charged to face trial for offences under Section 302 and 506 of the IPC by the Trial Court vide its order dated 25.07.2022. He further submitted that all the 09 material witnesses while stepping into the witness box had fully supported the case of the prosecution. Thereafter, on the date when the impugned order was passed, evidence of 07 other prosecution witnesses had been recorded while 01 prosecution witness had been given up by the prosecution. Thus, only 05 prosecution witnesses remained to be examined out of the 22 cited and they all were formal witnesses. Learned counsel vehemently asserted that a perusal of the impugned order clearly revealed that on the face of it, it was a perverse order which had been passed without assigning any reason much less cogent as to why and under what circumstances, respondent No.1

deserved the concession of **interim bail** for 03 months moreso when the prosecution evidence was nearing conclusion and without there being any compelling circumstances such as any medical emergency, bereavement in the family of the accused, etc.

4. Learned counsel for the petitioner has thus vehemently prayed for cancellation of the interim bail granted to respondent No.1 as not only had it been granted by the Trial Court without there being any justifiable ground and still further and most importantly the conditions which had been imposed upon respondent No.1, had been blatantly breached, as the accused-respondent No.1 had been frequently visiting the village of the victim-deceased and had also been extending threats of dire consequences to them.

5. On being put to notice, status report by way of affidavit of Jeet Singh, HPS Assistant Commissioner of Police, Kharkhoda/Crime, Sonipat on behalf of respondent No.2-State has been filed in the Court today which is taken on record subject to all just exceptions. A copy of the same has been supplied to the counsel opposite.

6. A perusal of the affidavit filed today reveals that pursuant to a complaint made by the petitioner, an enquiry was carried out by the police to verify the authenticity qua the accused being frequently seen moving around in the village of the victim-deceased, in breach of the conditions imposed upon him. As per the enquiry carried out and on the basis of CCTV footage obtained from a medical store situated in village Jathura i.e. the village of the victim-deceased, respondent No.1 was clearly visible and seen moving around. Though the reply states that no material had come forth qua any quarrel having taken place between

respondent No.1 and the brother of the deceased, namely Narinder Khatri, yet it has been conceded in the affidavit that respondent No.1 had indeed violated the conditions imposed upon him by the learned Trial court while being extended the relief of interim bail.

7. On the other hand, learned counsel appearing for respondent No.1 has opposed the prayer and submissions made by the counsel for the petitioner. He states that he does not wish to file any reply and would address arguments straightaway. He submits that a false and fabricated case has been planted upon respondent No.1 and on account of previous enmity between the parties, false allegations had been levelled against him of being present in the village of the victim-deceased, after being extended the concession of interim bail vide the impugned order. He submits that even otherwise as per the conditions imposed there was a choice given to the accused that he would not enter the village of the victim-deceased **or** would not meet the members of the victim-deceased. He submits that even assuming for the sake of arguments that he had entered the village of the victim-deceased, the reply filed by the State clearly revealed that no substance had been found in the complaint qua respondent No.1 having threatened the brother of the deceased or having quarrelled with him. He submits that he had been abiding by all the conditions imposed by the Trial Court and had been continuously getting his presence marked in the Police Station Civil Lines Sonipat after every 15 days.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Once the concession of bail has been extended to an accused facing trial, the Court must act with a great deal of circumspection while exercising its judicial discretion to cancel it. It is a matter of record that in the case at hand the prosecution evidence was nearing conclusion and the prayer made by respondent No.1 was for grant of regular bail and not for interim bail much less on grounds of any medical emergency or bereavement in the family or any other exigency in his family. In the circumstances, this Court finds it extremely strange as to what was the compelling circumstance or reason for the Trial Court to bend backwards and to be so generous and magnanimous to extend the concession of interim bail to the petitioner. Still further, the FIR in question came to be registered on 21.11.2021 and respondent No.1 was arrested on 24.11.2021. It is certainly not the case that the petitioner had been languishing in custody for an abnormally long period of time and the trial had not been progressing or had been unnecessarily delayed on account of reasons attributable to the prosecution. Rather, a perusal of the zimni orders (Annexure P-3) reveals that on the date when the impugned order was passed, 07 witnesses were examined and prior thereto 09 witnesses already stood examined while one prosecution witness was given up. Hence, only 05 prosecution witnesses remained to be examined, who had been summoned for 25.07.2023.

10. Without mincing any words, this Court is compelled to observe that there was no material worth the name on record for the trial Court to pass such an order of interim bail.

11. Coming next to the breach of the conditions imposed upon

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respondent No.1 in view of the affidavit filed today, this Court has no hesitation to concur with the submissions made by learned counsel for the petitioner, that respondent No.1 has indeed violated the following conditions imposed upon him at the time when he was extended the concession of interim bail vide order dated 25.04.2023:-

“that the accused would not enter the village of the victim-deceased or would not meet the members of the family of the victim-deceased. During the period of bail he will continue to mark his presence in the Police Station Civil Lines, Sonipat after every 15 days.”

12. As a sequel to the above, the instant petition is allowed. The impugned order granting interim bail to respondent No.1 is set aside and his bail is cancelled. Respondent No.1 is directed to surrender before the Trial Court on 26.05.2023 failing which the Trial Court shall take appropriate steps to take him in custody.

13. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.05.2023
Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No