

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

201+2

CRM-M-46310-2017

Date of Decision: 24.04.2023

Aman Garg

...Petitioner

Versus

The State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Yagsimant Attri, Advocate for
Mr. Rajinder Goyal, Advocate for the petitioner
Ms. Dimple Jain, AAG, Haryana
Mr. A.P.S. Chaudhary, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439(2) Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking cancellation of regular bail granted to respondent No.2 vide order dated 29.09.2016 (Annexure P-2) passed by learned Additional Sessions Judge, Kurukshetra in FIR No.130 dated 31.03.2016 under Sections 304-B & 34 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Peohwa, District Kurukshetra. .

2. Learned counsel for the petitioner *inter alia* contends that private respondent, misusing concession of regular bail, has threatened mother of the petitioner and for the said cause, FIR No.421 dated 08.08.2017 under Sections 451 & 506 IPC (Annexure P-6) has been registered against the private respondent.

3. Learned counsel for private respondent submits that there was no misuse of concession of bail. The petitioner is a practising lawyer and he is misusing his position by filing multiple petitions against the private respondent.

4. Learned State counsel, on instructions from SI Raj Kumar, submits that Investigating Officer after completing investigation has filed his report under Section 173 Cr.P.C. Charges stand framed and private respondent at present is on regular bail. He further confirms that State has never found misuse of concession of bail on the part of private respondent, thus, State has not filed any application seeking cancellation of their bail.

5. I have heard learned counsel for the parties and scrutinized the record.

6. The conceded position emerging from record is that private respondent was granted concession of regular bail vide order dated 29.09.2016 passed by Additional Sessions Judge, Kurukshetra. The petitioner has not moved application before Sessions Court which had granted regular bail to the private respondent. The challan stands presented and charges stand framed. The private respondent at present is on regular bail and there is no evidence of misuse of concession of bail atleast after registration of FIR No.421 dated 08.08.2017. The State has not filed any petition seeking cancellation of bail of the private respondent.

7. From the perusal of record and arguments of learned counsel for the petitioner, it comes out that grievance of the petitioner is that private respondent after getting regular bail threatened mother of the petitioner and in this regard, FIR No.421 dated 08.08.2017 was registered. The petitioner has not led any evidence of misuse of concession of regular bail granted to private respondent at least after registration of FIR dated 08.08.2017. On account of filing of multiple petitions by both sides, trial is pending at nascent stage. The FIR was registered in 2016 whereas till date prosecution evidence has not commenced. Petitioner is unable to controvert the fact that private respondent is on regular bail and they are regularly appearing before the Trial Court and facing trial. The State is not seeking cancellation of bail. Therefore, there is no reason to cancel the bail already granted by the Sessions Court.

8. The parameters of granting and cancellation of bail are totally different. Bail cannot be cancelled unless and until there is evidence of misuse of bail in the form of commission of similar or identical offence, tampering or destruction of evidences, threatening or winning over of witnesses or there is total non-application of mind. Bail already granted cannot be cancelled in a mechanical manner.

9. In the case in hand, the impugned order granting bail was passed on 29.09.2016 and there seems no reason to cancel bail after such a long period i.e. 7 years. The trial is lying stayed. There is no evidence

of misuse of bail after registration of FIR No.421 dated 08.08.2017 for which separate trial is still pending. The Court while granting bail is not supposed to deal with each and every contention of the complainant. A bail once granted cannot be cancelled on the basis of bald allegations of the complainant especially when there is no complaint by prosecuting agency supported by evidence of misuse of bail. From the perusal of impugned orders, it comes out that the Court below while granting regular bail has passed a reasoned order which needs no interference. The present petition being bereft of merit deserves to be dismissed.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

24.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>