

CRM-M-28779-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214/1

CRM-M-28779-2021
Date of Decision:-17.03.2023

Parveen KumarPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: HON’BLE MR. JUSTICEALOK JAIN

Present: Mr. Arjun Sheoran, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. M.S. Chahal, Advocate for respondent No.2.

ALOK JAIN, J.

The present petition is preferred by invoking the provisions of Section 439(2) Cr.P.C. seeking cancellation of bail granted to respondent No.2 vide order dated 04.02.2021 (Annexure P-2) in case FIR No.363 dated 22.10.2020 (Annexure P-1) under Sections 304-B, 34 and 494 of the Indian Penal Code, 1860, registered at Police Station Kheripul, Faridabad.

2. Learned counsel for the petitioner has vehemently argued that the learned trial Court has erred in granting the bail to respondent No.2, despite the fact that, in the challan, it was categorically stated that there is substantial evidence available on record against respondent No.2. He further submits that respondent No.2 has committed a grave offence and therefore, alternative charge under Section 302 IPC has also been imposed.

3. Learned counsel for the petitioner submits that respondent

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No.2 is a Police man and is posted with one of the Judicial Officer in Faridabad and therefore, there is a reasonable apprehension of misuse of concession of bail. Learned counsel also relies upon the judgment passed by the Hon'ble Supreme Court of India in case "***Brij Nandan Jaiswal Vs. Munnaa, (2009) 1 SCC 678***" to contend that the complainant is always well within the parameter of questioning the order of granting bail. Learned counsel for the petitioner also relies upon the judgment in case "***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ PappuYadav and another, 2004(2) RCR (Criminal) 254***" to contend that the Court below has to exercise its discretion while granting bail in a judicious manner and not as a matter of course.

4. *Per contra*, learned State counsel has submitted that there is no infirmity in the order passed by the Court below and the discretion has been exercised by the Court based upon the facts and circumstances of the case. He further submits that the petitioner has failed to demonstrate any illegality in the order and contends that for exercising the powers under Section 439(2) Cr.P.C., the incidence after the grant of bail have to be looked into and in case, the accused has violated any of the terms and conditions of the bail, only then such a petition could be entertained. Moreso, petition for cancellation of bail has to be filed before the Court which granted bail. It is further submitted that respondent No.2 is not posted in the Court Complex and is rather posted at Police Station SGM Nagar, NH-4, NIT Faridabad. Therefore, the apprehension of the petitioner that respondent No.2 shall exert influence is unfounded.

5. Learned counsel for respondent No.2 has vehemently opposed

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the petition and the counsel has raised a preliminary objection to contend that the present application is an abuse of process of law, as the petitioner never approached the Court, which granted the bail to seek the relief prayed herein. He further submits that the allegations of the answering respondent No.2 to be in proximity with the Senior Judicial Officer at the Courts at Faridabad is also unfounded, as the said Judicial Officer has already been transferred from Faridabad. To summarise, he submits that he has not violated any terms of the bail and has always attended the proceedings in accordance with law and therefore, prays for dismissal of the petition.

6. Moreso, the Hon'ble Supreme Court of India in case ***“Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2022 Live Law (SC) 577”***, and in multiple pronouncements has expressed that bail is a rule jail is not. In the present case, the learned trial Court has examined the entire matter in its totality and granted the concession of regular bail to the petitioner after considering the stage of the trial and the duration of incarceration of respondent No.2.

7. After hearing learned counsel for the parties and with their able assistance, it is imperative to reproduce Section 439(2) Cr.P.C. which reads as under:-

“A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody”.

8. The rigorous of cancellation of bail are not same as the parameters adhered to, while grant of bail. At the time of considering the exercise of the discretionary power of granting the bail to a person, the

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learned Court looks into various aspects such as the gravity of offence, the antecedents of the accused, the stage of trial etc. and after considering the said details, the accused is granted the concession of bail or refused as the case may be.

9. In the present case, there was no opposition at the time of grant of bail and the apprehensions raised are also unfounded. Section 439(2) Cr.P.C if invoked, then the incidents which have occurred after the grant of bail have to be looked into.

10. Analyzing the matter in its factual matrix, coupled with the establish principles of law, I do not find any merit or force in the contentions raised by the counsel for the petitioner-complainant.

11. Accordingly, the present petition stands dismissed.

12. However, it is made clear that in case if there is any report or incident with regard to any threat to the complainant or any of the witnesses during trial, the complainant may file an application for cancellation of bail granted to the accused which shall be decided on its own merits.

13. However, to meet the ends of justice and take care of the apprehension of the petitioner, the State is directed to take appropriate steps to provide security, if sought for, to the complainant for his travel to Faridabad on the date of hearings before the trial Court.

(ALOK JAIN)
JUDGE

17.03.2023
Parul

Whether speaking/reasoned:- Yes
Whether Reportable:- Yes