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

**CRM-M-24580-2019 (O&M)
Date of Decision: 08.08.2023**

Sunil Kumar @ Happy and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Navkiran Singh, Advocate,
for the petitioners.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Mr. Ishan Gupta, Advocate
for respondents No.2, 4 & 5.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of pre-arrest bail granted to respondents No.2, 4 & 5 by the learned Additional Sessions Judge, Sangrur on 24.04.2019 (Annexure P-17) in case bearing FIR No.138 dated 19.08.2015, under Sections 337, 427 and 307 of the IPC, registered at Police Station Sadar Dhuri, District Sangrur.

2. On the last date of hearing i.e. on 02.08.2023, this Court had directed that the present petition be also treated as a petition under Section 482 of the Code of Criminal Procedure and in this way the present petition was treated as also under Section 482 of the Code of Criminal Procedure since the order (Annexure P-17) by which the anticipatory bail was granted to the private respondents No.2, 4 & 5 has been challenged by the petitioners

on merits.

3. The aforesaid FIR was lodged on the basis of statement of one Prem Chand by stating that he was informed that his son-in-law, namely, Satinder Kumar @ Honey-petitioner No.2 and his brother, namely, Sunil Kumar @ Happy-petitioner No.1 were shot by gun and he was taken to the spot where he saw the aforesaid two persons, who are the petitioners in the present case, lying on a cot at Har Wali Road in the phirni of Katron. Thereafter, petitioner No.1-Sunil Kumar @ Happy told him that the persons who were there on the spot, had fired gun shots at him and beaten him up and they must be caught. The video was also recorded in this regard. Thereafter, the accused persons who were the police officials started driving the car of petitioner No.1 and the complainant came in front of the car and was dragged to the side by four police officials. The complainant saw six persons and they were drunk. Afterwards, some other police officials reached at the spot and when the complainant reached at the spot, the firing of the gun shots had already been stopped. Petitioner No.1 had told the complainant that one car was chasing them and they were firing gun shots and they came to know that in fact in the previous village there was gun shot firing between some bad elements and police officials, which had hit some police officials.

4. On the basis of the aforesaid information, the police lodged an FIR under Section 307 IPC on 19.08.2015. Thereafter, investigation was carried on and during the investigation, Section 307 IPC was deleted by the police and the challan was presented under Sections 337 & 427 of the IPC on 27.09.2018. The private respondents No.2, 4 & 5, who were the accused

persons, were released on bail. At the time of presentation of the challan, they also furnished bail bonds in the learned trial Court. Thereafter, an application was moved by the prosecution for commitment of the case in the learned Court of Sessions at Sangrur since according to the prosecution, offence under Section 307 IPC was made out but the police had deleted the offence earlier. Thereafter, offence under Section 307 IPC was added. On the addition of Section 307 IPC, respondents No.2, 4 & 5, who were already on bail, they filed an application for grant of anticipatory bail before the Session Court. The learned Additional Session Judge, Sangrur vide impugned order dated 24.04.2019, granted anticipatory bail to respondents No.2, 4 & 5. The present petition has been filed by the injured persons for cancellation of bail granted by the learned Additional Session Judge, Sangrur as aforesaid. However, vide order dated 02.08.2023, this petition was also treated as petition under Section 482 of the Code of Criminal Procedure since learned counsel for the petitioners has stated that the aforesaid order itself has been challenged.

5. Learned counsel for the petitioners argued that the learned Additional Session Judge, Sangrur has erroneously granted anticipatory bail to respondents No.2, 4 & 5 and the same liable to be cancelled. While substantiating his arguments he submitted that it is a case where the petitioners were travelling in a car and suddenly some police officials came from behind and chased the car of the petitioners and started firing upon them by AK-47 rifle by which not only the car was damaged but it was also over turned and the petitioners were also injured. He further submitted that there was earlier firing between some bad elements and the police officials

in the previous village from where the police officials were coming and it appears that because of some mistaken identity, they started chasing the car of the petitioners and started firing upon them, which resulted in the injuries. He further submitted while referring to the impugned order passed by the learned Additional Sessions Judge, Sangrur that the findings recorded by the learned Additional Sessions Judge, Sangrur that no specific injury has been attributed to any of the applicants is factually incorrect. He also submitted that it is rather not in dispute that it was only the private respondents No.2, 4 & 5, who had caused injuries by firing from their rifles and therefore, the observation was factually incorrect. He further submitted that it has also been so observed by the learned Additional Sessions Judge, Sangrur that no injury on the petitioners was declared dangerous to life by the doctor. He also submitted that this observation was also factually incorrect since the injuries were dangerous to life and that was the reason as to why on the directions issued by the learned Additional Sessions Judge, Sangrur, Section 307 IPC was added in the offence. To further substantiate the aforesaid two arguments, he referred to Annexures P-3 & P-4, which are the MLR, in which it has been so stated that it was the case of firearm injury pertaining to both the petitioners. He further submitted that the learned Additional Sessions Judge, Sangrur, ought not have granted anticipatory bail to respondents No.2, 4 & 5, who were the police officials and should have considered the gravity of the offence involved wherein the petitioners, who were innocent persons were fired at by the police officials. He also submitted that the order passed by the learned Additional Sessions Judge, Sangrur is liable to be set aside because it was based upon the facts, which

were against the record.

6. On the other hand, Mr.Sarabjit Singh Cheema, DAG, Punjab has submitted that so far as the observations made by the learned Additional Sessions Judge, Sangrur vide impugned order that there was no specific role attributable to respondents No.2, 4 & 5 is concerned, the same was factually incorrect because there is no dispute that respondents No.2, 4 & 5 had fired upon the petitioners and during the course of investigation, respondents No.2, 4 & 5 were duly identified by the petitioners.

7. Mr. Ishan Gupta, learned counsel for respondents No.2 to 5 has submitted that so far as respondent No.3 is concerned, he has died on 21.06.2023 and has also supplied a copy of his Death Certificate in Court today and *qua* respondent No.3 nothing survives in this petition. He submitted that the present petition deserves to be dismissed in view of the fact that the incident took place in the year 2015 i.e. on 18.08.2015 and, thereafter, respondents No.2, 4 & 5 had been granted bail by the learned Additional Sessions Judge, Sangrur on 24.04.2019, which is about more than 4 years ago on its own merits. He further submitted that more than 4 years have gone by after the grant of bail to respondents No.2, 4 & 5 and the trial is commencing and there is not even a single instance to show that respondents No.2, 4 & 5 have ever violated any of the terms and conditions of the bail order or have ever tried to influence any witness. He further submitted that there is no ground available with the petitioners to claim that the anticipatory bail which was granted to respondents No.2, 4 & 5 deserves to be cancelled or set aside after a period of more than 4 years after the granting of the bail. He further submitted that considering the conduct of

respondents No.2, 4 & 5, wherein, there is no allegation against them regarding any jumping of the bail or any violation of the bail order or there is no other similar kind of allegations against respondents No.2, 4 & 5 and therefore, the liberty of respondents No.2, 4 & 5 cannot be now curtailed especially after a lapse of more than 4 years after the grant of bail by the learned Additional Sessions Judge, Sangrur. He also submitted that even otherwise also respondents No.2, 4 & 5, who are the police officials have already been transferred to some other Districts. He further submitted that the cancellation/setting aside of bail has serious consequences affecting the liberty of an individual and in the present case, there is no ground available to the petitioners for seeking cancellation of bail after a period of more than 4 years, although the present petition was filed in the year 2019. He further referred to Annexures P-11 & P-12, which is an opinion of the doctors of DMCH, Ludhiana to contend that the petitioners did not receive any gun shot injuries. He also referred to the letter of the doctor, namely, Manish Wadhwa, Resident Surgeon (Annexure P-11) to the Investigating Officer, in which it has been so stated that the injuries on the person of Sunil Kumar-petitioner No.1 as described in the MLR are subcutaneous and are simple in nature and it is also clarified that as there was no blackening. Therefore, no definite opinion can be given whether the multiple radiopaque metallic densities as seen in x-ray film are pellets or not. No definite opinion can be given regarding the metallic densities seen in the x-ray films and it cannot be said that these injuries are of firearm. It has been further so stated by the Doctor that the history of firearm injury as given by the petitioner himself could not be co-related clinically. Vide Annexure P-12, which is again an

opinion of the Doctor of Dayanand Medical College & Hospital, Ludhiana, while referring to the column of kind of weapon used, it has been so opined that the injuries No.1 & 2 were of open wound without any exit wound and no bullet was found on X-ray. Injuries No.3 to 12 are all blunt and as per the Radiology Report, no evidence of firearm injury was found from the abovesaid injuries. He further submitted that the MLR which has been relied upon by the learned counsel for the petitioners was the initial opinion but thereafter, on examination it was found that the petitioners did not receive any injuries. He also submitted that even otherwise also at the time of trial it can be ascertained on the basis of medical opinion and other evidence as to whether the petitioners have received bullet injuries or not but that itself at this stage cannot become a ground for cancellation of bail considering the life and liberty of respondents No.2, 4 & 5. He has referred to the judgment of the Hon'ble Supreme Court in "**Pradeep Ram Vs. State of Jharkhand**" **2019(3) RCR (Criminal) 538**, to contend that respondents No.2, 4 & 5 were released on bail and they furnished bail bonds. It was, thereafter, by the orders passed by the learned Additional Sessions Judge, Sangrur that the provisions of Section 307 of the IPC were added and therefore, offence was enhanced. He also submitted that there is nothing on record available to show that there was any order passed by the learned Additional Sessions Judge, Sangrur directing the arrest of respondents No.2, 4 & 5. He further submitted that in the aforesaid judgment in ***Pradeep Ram's case (supra)*** it has been so held by the Hon'ble Supreme Court that if an accused has been arrested and he is released on bail then in case there is an enhancement of the offence then for that purpose a definite procedure has to be adopted

which has been so stated in the aforesaid judgment to the effect that an application has to be filed by the prosecution either for seeking of the cancellation of bail granted or even if such a prayer is not made or cancellation is not granted by the Court, then the prosecution has to seek the orders of the Court for seeking arrest of the accused on the basis of enhanced offence. He also submitted that in the present case, no such application has been filed by the prosecution or by the petitioners in this regard and therefore, even otherwise also respondents No.2, 4 & 5 cannot be arrested without following the procedure as enunciated by the Hon'ble Supreme Court in *Pradeep Ram's case (supra)*.

8. I have heard the learned counsels for the parties.

9. It is a case where as per the allegations, the petitioners were chased by respondents No.2, 4 & 5, who were the police officials and as per learned counsel for the petitioners, the petitioners received bullet injuries and even the car was damaged and turned over. The reason for chasing of the petitioners by respondents No.2, 4 & 5 as stated by learned counsel for the parties is that there was an earlier incident at a previous village from where the car was coming and the police had encounter with some other bad elements and they by way of a mistaken identity chased the car of the petitioners and without even identifying, they started firing at the petitioners who received injuries. Thereafter, learned Additional Sessions Judge, Sangrur granted anticipatory bail to respondents No.2, 4 & 5, which has been challenged in the present petition.

10. It is an admitted position that earlier the FIR was lodged under the provisions of Section 307 IPC but thereafter, during the course of

investigation, Section 307 IPC was deleted and challan was presented only under Sections 337 & 427 of the IPC and respondents No.2, 4 & 5 were released on bail and they furnished their bail bonds. Thereafter, during the committal proceedings on the application filed by the prosecution, an order was passed by the learned Additional Sessions Judge, Sangrur directing the police to add Section 307 of the IPC and in this way the offence *qua* respondents No.2, 4 & 5 was enhanced under Section 307 of the IPC. Learned counsel for respondents No.2, 4 & 5 has relied upon the judgment of Hon'ble Supreme Court in ***Pradeep Ram's case (supra)*** to contend that the procedure as so enunciated by the Hon'ble Supreme Court has not been followed in the present case. Para No.29 of the said judgment is reproduced as under:-

29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under section 437(5) or 439(2) of Cr.P.C., 1973 for arrest of the accused and his custody.

(iii) The Court, in exercise of power under section 437(5) or 439(2) of Cr.P.C., 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already

been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

11. It was so held by the Hon’ble Supreme Court in the aforesaid judgment that where after grant of bail to an accused, further cognizable and non-bailable offences are added then the accused can surrender and apply for bail for newly added cognizable and non-bailable offences and in the event of refusal of bail, the accused can certainly be arrested. The Investigating Agency can seek order from the Court under Section 437(5) and 439(2) of Code of Criminal Procedure for the arrest of the accused and his custody. Even the Court in exercise of power under Section 437(5) & 439(2) of the Cr.P.C. can direct for taking into custody the accused who has already been granted bail after cancellation of bail and the Court in exercise of the aforesaid powers can direct a person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail. Thereafter, it was observed that in case where an accused has already been granted bail, the Investigating Authority on addition of an offence or offences may not proceed to arrest the accused, but

for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.

12. In the present case, respondents No.2, 4 & 5 were granted bail by the learned Additional Sessions Judge, Sangrur and they furnished their bail bonds. As per the learned counsels for the parties, respondent Nos.2, 4 and 5 were granted police bail since at that point of time it was a bailable offence. However, it is an admitted position that there was no application by the prosecution to any Court seeking cancellation of bail or for seeking the arrest of the accused persons nor was there any direction by any Court for taking respondents No.2, 4 & 5 into custody. During the course of arguments, learned counsel for the petitioners has submitted that the aforesaid judgment as relied upon by learned counsel for respondents No.2, 4 & 5 is distinguishable and would not apply to the present case on the ground that it is only when the bail earlier is granted by the Court then the aforesaid procedure will apply but not when bail was granted as a police bail and when the offences are bailable in nature. However, this Court is of the considered view that be that as it may, the rationale of the aforesaid judgment would still remain the same even if the accused persons have been released on police bail. Therefore, in the present case, the procedure for seeking arrest of the accused persons or even for cancellation of bail etc. has not been followed by the prosecution. This Court is of the view that the case of respondents No.2, 4 & 5 is squarely covered by the aforesaid judgment.

13. During the course of arguments, the learned counsel for the petitioners also referred to the judgment of the Hon'ble Supreme Court in

Criminal Appeal Nos.1161-1162 of 2021 titled as “***Vipan Kumar Dhir versus State of Punjab and another***”, decided on 04.10.2021 that if a bail order has been passed on irrelevant factors or has ignored the relevant material available on record then the bail is liable to be cancelled and set aside. He has referred to Para No.10 of the aforesaid judgment. However, this Court is of the view that in the facts and circumstances of the present case, the aforesaid judgment is distinguishable from the present case. In the present case, the ratio of the aforesaid judgment of ***Pradeep Ram’s case (supra)*** is applicable. Apart from the above, respondents No.2, 4 & 5 are already on bail for the last more than 4 years and the incident took place 8 years ago. The order of cancellation/setting aside of bail, if any, seriously and prejudicially affects the freedom of an individual and it is a settled law that for the purpose of cancellation or setting aside of the bail order, strong and cogent reasons are required to deprive the liberty of an accused in the light of Article 21 of the Constitution of India. Reference of the same has been made in the judgment passed by the Hon’ble Supreme Court in “***Neeru Yadav Vs. State of U.P.***”, ***2015(1) R.C.R. (Criminal) 311***. The relevant portion of the same is reproduced as under:-

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the

world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or its caprice. It has to be guided by the established parameters of law.”

14. Apart from the above, it is still disputed as to whether the petitioners received gun shot injuries or not in view of two contradictory medical opinions, the first being initial in nature and second after observing the injuries with time. The learned counsel for the petitioners has referred to Annexures P-3 & P-4, whereas learned counsel for respondents No.2, 4 & 5

has referred to Annexures P-11 & P-12 and the initial medical opinion had shown that it was due to the bullet injuries, whereas the letter of DMCH, Ludhiana shows that it cannot be said that it was a bullet injury. Therefore, the aforesaid factual position is a matter of trial which can be proved only by way of adducing the evidence at the time of trial.

15. Apart from the above, this Court is of the view that since the prayer of cancellation/setting aside of bail is to be considered in the light of Article 21 of the Constitution of India for which there has to be an extremely strong reason for cancellation/setting aside of bail. Rather it is a case of the learned counsel for the petitioners that after the passing of the impugned order dated 24.04.2019, by which the bail was granted to respondents No.2, 4 & 5, there is no allegation of any jumping of bail or violation of any of the terms and conditions of the bail order. More than 4 years have passed after the grant of bail and therefore, considering the aforesaid facts and circumstances, this Court is of the considered view that it is not a fit case where the bail granted to respondents No.2, 4 & 5 should be cancelled or set aside.

16. Consequently, finding no merit in the present petition, the same is hereby dismissed.

17. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

08.08.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |