

102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29005-2023(O&M)

Date of Decision: 11.09.2023

Ravinder Singla

....Petitioner(s)

Versus

State of Punjab and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Madhav Pokhrel, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J.

1. The present petition has been filed under Section 439 (2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted to respondent No.2 vide order dated 20.04.2023 (Annexure P-2) passed by learned Additional Sessions Judge in FIR No.156 dated 24.09.2022, under Section 406 IPC (Section 380 IPC added later on), registered at Police Station Anaj Mandi, District Patiala.

2. The aforesaid FIR came to be lodged on the basis of complaint made by the petitioner against respondent No.2 to the police by stating that the petitioner and respondent No.2 purchased 3 kanals 5 marlas of land in the area of village Sanaur, District Patiala for setting up a silicate factory and the registry of the same was recorded in the name of Bhagwait Silicate in the name of petitioner and respondent No.2 as partners. The aforesaid silicate factory was installed on the aforesaid land and named as Bhagwati Silicate Work and both the petitioner and respondent No.2 were equal partners in the same. In this regard, a separate partnership deed dated 07.06.1997 was prepared. The work

of the factory was going on well with good profits. However, in the year 2020, respondent No.2 who is the accused had told the petitioner that the children of both of them have grown up and one another big factory should be set up to make silicate to increase the work. This was agreed by the petitioner and in order to install a new factory of silicate after forming a firm in the name of Jai Ambey Glass Udyog, a land was purchased in the name of the said firm having total area of 7000 yards at villlage Rasulpur Joran at Police Station Anaj Mandi, Patiala. In the aforesaid firm i.e. Jai Ambey Glass Udyog, the son of the petitioner namely Varun Singla is equal share partner with respondent No.2 and a separate partnership deed was also prepared and in order to make the aforesaid firm, both the partners i.e. Varun Singla and respondent No.2 got sanctioned a loan of Rs. 2 crores from Punjab National Bank Sanaur Branch, Patiala. In order to construct the factory, both the above partners assigned the petitioner a duty of supervision. Uptil now after taking a loan of Rs. 1 crore has been incurred and the factory was ready and apart from the bank's money, the son of the petitioner has also spent a lot of money for the construction of the factory.

3. However, in the month of October, 2021, when the factory was ready to run, then respondent No.2 refused to run the factory and said that if he will run the factory, then he will run it alone. Two watchmen were kept day and night to guard the factory and were given salary by the petitioner who were thereafter removed and a lock was put on the factory so that the factory goods cannot be stolen. However, after some time when he visited the factory then he saw that the lock installed by him on the main gate of the factory was broken and one Nirmal Singh @ Nimma living in the factory came on the spot and told him that respondent No.2 namely Sunder Lal Singla alongwith his driver and one more person had come alongwith 5-6 other persons in a truck and

after breaking the lock of the factory, they stole away 500 bags of soda, 2 electric motors and one sand truck which was to be used in the silicate factory by loading the same in a truck with JCB machine. Some other articles were also stated to be stolen and the matter was reported to the police. Apart from the above, one white car Honda was also purchased by the petitioner in his name and bank loan was also sanctioned by OBC in his name was also taken away by respondent No.2 and has not returned the same.

4. Respondent No.2 namely Sunder Lal Singla filed application for grant of anticipatory bail before the learned Additional Sessions Judge, Patiala which was allowed on 20.04.2023 vide Annexure P-2. The learned Additional Sessions Judge while granting bail passed a detailed order and by giving reasons for grant of bail. The present petition has been filed by the complainant under Section 439(2) Cr.P.C for cancellation of bail granted to respondent No.2.

5. Learned counsel appearing on behalf of the petitioner has submitted that the aforesaid anticipatory bail granted to respondent No.2 is liable to be cancelled. He submitted that respondent No.2 did not deserve the concession of anticipatory bail because he had committed theft of the articles lying in the factory which were jointly owned by the petitioner and respondent No.2 and huge amount is involved with regard to the stolen articles and even otherwise also the petitioner also owns some amount from respondent No.2 which has not been paid and outstanding amount towards the loan account has also not been paid. He submitted that there are factual disputes in the order passed pertaining to the various transactions etc. and therefore, the anticipatory bail was not rightly granted to respondent. He further submitted that a perusal of the order would show that when the learned Additional Sessions Judge was considering the prayer for anticipatory bail to respondent No.2, he had sought

the assistance of the earlier counsel of the petitioner as Amicus Curiae which was unwarranted and the earlier counsel of the petitioner could not have rendered assistance to the Court once the petitioner had engaged one another subsequent counsel and therefore on this ground also the anticipatory bail application could not have been allowed by the learned Additional Sessions Judge.

6. I have heard the learned counsel for the petitioner.

7. The learned Additional Sessions Judge, Patiala on 20.04.2023 vide Annexure P-2 had granted anticipatory bail to respondent No.2. During the course of arguments this Court had put a specific query to the learned counsel for the petitioner as to what was the stage of investigation to which he submitted that now the investigation has been completed and challan has been presented. Another query was put to the learned counsel for the petitioner as to whether with regard to the financial dispute between the petitioner and respondent No.2 any civil litigation was pending inter se between the parties or not to which he stated that no civil litigation is pending between the parties.

8. The present petition has been filed Section 439(2) Cr.P.C for cancellation of bail granted to respondent No.2 but the essence of the present petition is for setting aside of the order passed by the learned Additional Sessions Judge on merits and it is not the case of the petitioner that respondent No.2 has violated any of the conditions of the grant of anticipatory bail to him or has jumped any bail etc. The order has been challenged purely on merits, however, without invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure.

9. Be that as it may, the learned counsel for the petitioner has raised two grounds. Firstly, that the order by which the anticipatory bail was granted to the petitioner was based on wrong facts and secondly, the learned Additional

Sessions Judge had sought assistance from the earlier counsel of the petitioner as Amicus Curiae. So far as the first submission made by the learned counsel for the petitioner is concerned, a perusal of the order passed by the learned Additional Sessions Judge would show that after referring to the details of allegations and counter allegations it has been so observed that in pursuance of the anticipatory bail having been filed by both the parties, the petitioner and respondent No.2 had arrived at a compromise and settled the terms. In pursuance thereof a sum of Rs. 96,47,140.90 has been deposited for clearing the outstanding amount towards the loan account by respondent No.2. Besides that, other partner namely Varun Singla, who is the son of the complainant during the course of the bail application has received a sum of Rs. 48 lacs i.e. Rs. 43 lacs were transferred in the account of the son of the petitioner and Rs. 5 lacs in the account of petitioner. Furthermore, as per the counsel for the State and the counsel for the petitioner in addition to a sum of Rs. 60 lacs, Rs. 20 lacs was to be further paid and car was also to be kept by the complainant. Respondent No.2 had cleared the outstanding amount which as per the bank statement of Punjab National Bank a sum of Rs. 96,47,140.90 had been deposited and balance amount has been shown as Nil. Thereafter, both the parties were laying emphasis as to the terms which as per respondent No.2 were settled and the petitioner had wriggled out with regard to the compliance thereof. For the purpose of ascertaining the facts and for getting assistance with regard to the facts, the learned Additional Sessions Judge sought the assistance of the earlier counsel who had appeared on behalf of the petitioner as to what was the terms which were settled between the parties who had brought to the notice of the Court of the Additional Sessions Judge that it was settled between the petitioner and respondent No.2 that out of total sum of Rs. 1.32 crores including the entire amount due towards the bank, respondent No.2 was

to pay a sum of Rs. 60 lacs and besides the car that was transferred in the name of respondent No.2 to which the petitioner and son of the petitioner did not agree. Amount of Rs. 96,47,140.90 has been deposited in the bank account which was a joint account of respondent No.2 and Varun Singla who is the son of the petitioner being partners of the firm.

10. The learned Additional Sessions Judge while taking note of the aforesaid factual position allowed the anticipatory bail application subject to conditions laid down in the order. It was also observed by the learned Additional Sessions Judge that the deposit of entire loan amount and the payment of Rs. 48 lacs which was admitted to have been received by the petitioner by way of bank transfers can be sought to be resolved by way of rendition of accounts, in case the partners do not want to continue with the business.

11. The argument raised by the learned counsel for the petitioner that the aforesaid facts were wrong facts and therefore the anticipatory bail granted to respondent No.2 is liable to be cancelled is not sustainable in view of the fact that it was in the presence of the counsel for the complainant/petitioner, the aforesaid order was passed by the Additional Sessions Judge. Even if assumingly there are factual mistakes in the same, still the investigation of the case has already been completed and challan stands presented and the dispute appears to be *ex facie* a financial dispute between the partners who are the petitioner/son of the petitioner and respondent No.2, an anticipatory bail already granted to respondent No.2 now cannot be cancelled purely on the ground that some factual error has occurred with regard to the recording of the facts by the learned Additional Sessions Judge pertaining to the amount of money especially when the investigation of the case has already been completed.

12. The second argument raised by the learned counsel for the petitioner that during the course of deciding the anticipatory bail by the learned Additional Sessions Judge, the earlier counsel of the petitioner was asked to render assistance as Amicus Curiae and therefore the anticipatory bail is liable to be dismissed is concerned, the same is also unsustainable in view of the fact that the lawyer from whom the assistance was sought was none else than the counsel for the petitioner himself. Even otherwise also a perusal of the order passed by the learned Additional Sessions Judge would show that assistance was called for from Amicus Curiae for the purpose of ascertaining the facts regarding the terms which were settled between the parties as he was earlier the counsel for the petitioner.

13. It is a settled law that for the purpose of cancellation or setting aside of a bail order, strong and cogent reasons are required so as to deprive a person of his liberty in the light of Article 21 of the Constitution of India. Reference of the same may be made from 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 caprice. It has to be guided by the established parameters of law.”

14. Therefore, this Court is of the view that a balance has to be maintained between the grounds taken by the complainant/petitioner for cancellation of bail on the one hand and liberty under Article 21 of the Constitution of India on the other hand. In the present case, the aforesaid grounds taken by the learned counsel for the petitioner cannot be considered to be strong reasons for deprivation of right to life and liberty guaranteed under Article 21 of the Constitution of India and more particularly when the investigation of the case has already been completed and the challan has already been presented.

15. Consequently, the present petition is hereby dismissed with Rs.10,000/- as costs, which shall be deposited by the petitioner before Chief Judicial Magistrate, Patiala within a period of three months from today.

After the receipt of the aforesaid costs amount, Chief Judicial Magistrate,

Patiala shall transmit the same to the District Legal Services Authority, Patiala. In case the costs are not deposited by the petitioner within the aforesaid period, then the same shall be recovered from the petitioner as arrears of land revenue in accordance with law.

11.09.2023

rakesh

Whether speaking

Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

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Yes/No

Yes/No