

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34709-2022
Date of decision :20.03.2023

Khazani Devi
.....Petitioner

Versus

State of Haryana and others
..... Respondent(s)

CRM-M-31234-2022

Khazani Devi
.....Petitioner

Versus

State of Haryana and another
..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms.Shaj Sandhawalia, Advocate for the petitioner
Mr.Dhruv Sihag, AAG, Haryana
Mr.Rajkapoor Malik, Advocate
for the accused-private respondents

AMAN CHAUDHARY, J.

The present petitions have been filed under Section 439(2) Cr.P.C. for cancellation of bail granted to accused-respondent Nos.2 & 3 (CRM-M-34709-2022) and accused-respondent No.2 (CRM-M-31234-2022) in case FIR No.150 dated 12.04.2022, registered under Section 306/34 of Indian Penal Code at Police Station Kaithal City, District Kaithal.

Learned counsel for the petitioner has submitted that the concession of bail has been granted in a heinous offence under Section 306 IPC to the accused-private respondents. She submits that the arrest of the

respondent Nos. 2 and 3, namely, Kulbir Singh and Parkash, respectively, who are father and uncle of accused respondent-Tanvika, who is the daughter in law of the deceased, was stayed, and they were directed to join investigation. The police in its report dated 13.5.2022, though affirmed their joining, however, had stated that they refused to affix their signatures on the disclosure statements and thus did not cooperate in the investigation process, still their interim bail was confirmed by the learned Additional Sessions Judge. The daughter-in-law of the deceased i.e. accused respondent-Tanvika, was granted regular bail just after 25 days of her arrest. The learned Court has granted bail to the accused-private respondents despite there being specific allegations against them and a suicide note specifically mentioning their names. The learned Court, which though allowed the bail petitions by passing a cryptic order, has also returned findings on merits, which shall prejudice the case of the complainant-petitioner. To buttress her submissions, reliance was placed on the judgments in the cases of **Puran vs. Rambilas**, 2001(2) RCR (Crl.) 801, **Gobarbhai Naranbhai Singala vs. State of Gujarat and others**, 2008(1) RCR (Crl.) 903, **Dinesh M.N.(S.P.) vs. State of Gujarat**, 2008(3) RCR (Crl.) 868, **Virupakshappa Gouda and another vs. State of Karnataka and another**, SLP(Crl.) No.8781 of 2016.

Learned State counsel contended that the investigation stands completed, upon which the final report under Section 173 CrPC has been presented in the Court and the case is now fixed for framing of charge. Learned counsel for the accused-private respondents has stated that the orders granting bail have rightly been passed and no findings on merits of the case have been given and are mere observations to decide the applications. The Court has also specifically mentioned that the same shall

be not taken to be an expression of opinion on merits of the case. The accused have neither misused the concession of bail in any manner nor has threatened the complainant or influenced the witnesses or hampered the investigation and there has not even been any such allegation or complaint submitted by the complainant-petitioner. The accused-respondents have no criminal antecedents.

Heard the learned counsel for the parties.

The marriage of the son of deceased (husband of the complainant) was solemnised on 15.01.2017 with accused-respondent Tanvika. Out of the wedlock, two children, son Ayan and daughter Kinjal were born. Due to temperamental differences the said couple had parted ways by obtaining a decree of divorce under Section 13B of the Hindu Marriage Act on 05.08.2021. The custody of the minor son was to remain with the father and that of daughter with the mother. A Panchayati compromise dated 05.10.2021 was entered into to set at rest certain allegations levelled by accused-Tanvika against her father-in-law and husband, as per which he transferred the property in equal shares in favour of his daughter and both the grand-children (Ayaan and Kinjal). On 10.11.2022, another Panchayati compromise was entered into between the parties, in view of an application submitted by her on 26.10.2021, reiterating the previously levelled allegations and it was decided that the accused-respondent-Tanvika would withdraw her complaint, the couple would reunite in matrimony and reside separately. They, accordingly got remarried. But after some time, they again split and accused-Tanvika left for her parental house alongwith her minor daughter. However, on 29.03.2022, FIR No.25 under Sections 323, 34/376(2)(n)/377/406/498A/506 IPC was

registered by accused-respondent-Tanvika against her father-in-law (since deceased) and husband. On 12.04.2022 at about 8.15 am, husband of the complainant committed suicide by firing from his licenced revolver. The FIR in question came to be lodged against the accused-private respondents on 12.04.2022 under Sections 306, 34 IPC (Section 180 IPC added later on) at Police Station City Kaithal and after conducting investigation final report under Section 173 CrPC. was presented on 15.07.2022.

Insofar as the anticipatory bail of accused-respondent Nos. 2 and 3, namely, Kulbir Singh and Parkash, is concerned, the solitary reason for seeking cancellation is that as per police report dated 15.05.2022, they had refused to affix signatures on their disclosure statements. It is apposite to note that the investigating agency added the offence under Section 180 IPC. With regard to the aforesaid, the learned Court while affirming the bail noticed that “on the contrary, it was vehemently contended that the petitioners had not affixed their signatures on the alleged disclosure statements, as those were wrongly & falsely written in the nature of confessional statements and were not of their voluntary act.” and also took into consideration that no recovery of any sort was to be effected from them.

The learned Court while granting regular bail to accused-respondent-Tanvika, took into consideration the fact that despite a decree of divorce by way of mutual consent on 05.08.2021 and a complaint filed by her on 26.10.2021 against her father-in-law and husband, the couple remarried on 10.11.2021 in a temple. “ ‘Panchayati–Rajinama’ of the even date was also reached between the parties and consequently, the said application moved on 26.10.2021 was not pursued by the petitioner and her family members for obvious reasons and perhaps that the things would

improve. The couple started co-habiting in a separate rented accommodation but the things went bad to worse.” Further, the learned Court noticed that, “the petitioner was got arrested by the complainant party by dishonestly calling her for effecting a compromise and she alongwith the minor female child were languishing in jail since then.”

Hon'ble The Supreme Court, after considering a catena of the pronouncements in the case of **Satender Kumar Antil Vs CBI and others**, (2023) 1 SCC (Cri.) 1, held that, “The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”

It has also been observed in **State of Bihar and another vs. Amit Kumar @ Bacha Rai** 2017(3) RCR (Crl.) 690, by the Supreme Court that, “Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the

courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.”

The judgments as relied upon by the learned counsel for the petitioner do not lend support, being distinguishable on facts, as referred to hereunder:-

In the case of **Puran** (supra), involving dowry death of 8 months pregnant wife of the accused husband having electric burn injuries, which was cancelled by High Court was upheld by Hon’ble The Supreme Court observing that, “the High Court has noted that evidence prima-facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that evidence prima facie indicated that a demand for Rs. 1 lac was made just a month prior to the incident in question. The High Court has stated that the material on record suggested that the offences under Sections 498-A and 304-A were prima facie disclosed. The High Court has concluded that the material on record, the nature of injuries, demand for Rs. 1 lac and the other circumstances were such that this was not a fit case for granting bail.” It was further observed that, “It must be remembered that such offences are on the rise and have a very serious impact on the Society.”

In the case of **Gobarbhai Naranbhai Singala** (supra) Hon’ble The Supreme Court noticed that the High Court on 14.09.2014 dismissed the bail application of accused-Shivbhadrasinh @ Gopalsinh Giriraj Jadeja, the same learned Judge who had previously turned down the prayer, granted

bail without adverting to any of the reasons given by him declining to release the respondent on bail and that there was no change of circumstances and observed thus:

“21. That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. It may be mentioned here that apart from the present two cases of murder, respondent has been named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder.”

“27. We are of the view that the High Court has completely ignored the general principles, for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.”

Regarding the bail granted to accused-Jayrajsinh Temubha Jadeja, it was held to be not a fit case for grant of bail taking overall view of the entire matter and in particular to his antecedents, the alleged statements made by the witnesses, who were present at the spot to the police and the admitted enmity between the parties.

In the case of **Dinesh M.N. (S.P.)** (supra), Hon’ble The Supreme Court upheld the order of the High Court cancelling the bail while noticing that, pursuant to the directions issued from time to time, in a petition filed by brother of Sohrabuddin, the Investigation Agency found that death of Sohrabuddin and subsequently reported death of his wife, Kausarbi, was a result of fake encounters carried out by the then officers of the Anti-Terrorist Squad and senior IPS officers were involved in the fake encounters. The definite role of the accused appellant-Dinesh, whose bail was cancelled had surfaced as the wanted accused-Sohrabuddin was involved in an offence registered in police station under his jurisdiction. He

was leader of the team sent to Ahmedabad to trace him out. Before any formal order came to be passed for forming a team, weapons were procured from Kotwali upon his arrival in Ahmedabad. He coordinated in the fake encounter alongwith ATS officers. It was a clear case of conspiracy and needle of suspicion unerringly pointed out at him. The trial Court should not have granted bail to him in view of the role played by him and the circumstantial evidence even the form of statements of witnesses. It was further noticed that the High Court on consideration of the rival submissions held that the learned trial Judge has not kept in view the seriousness of the offences, punishments prescribed for such offences and involvement of the accused, a high ranking officer when allegations or misuse of power necessary in law by registering false FIR has been lost sight of. Another significant factor which was highlighted by the State before the High Court was that an FIR allegedly was filed to divert attention from the fake encounter.

In the case of **Virupakshappa Gouda and another** (supra), the bail cancelled by the High Court was upheld by Hon'ble The Supreme Court by observing, "That apart, as we find from the narration of allegations from the order of the High Court, it is not a case where the trial court could have entertained a bail application by elaborate dissection of facts and appreciation of statements recorded under Section 161 Cr.P.C. The gravity of the crime should have been taken note of by the learned trial Judge. The deceased and his wife (the daughter of the accused-appellant No.1) were staying in peace away from the acrimonious community, but due to some kind of "misconceived class honour", the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as

alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man.”

The law regarding cancellation of bail has been expounded and reiterated by Hon’ble The Supreme Court in the case of **State (Delhi Administration) vs. Sanjay Gandhi** 1978(2) SCC 411 and **Dolat Ram and others vs. State of Haryana**, (1995) 1 SCC 349. In *Sanjay Gandhi (supra)*, it was held that, “Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another, It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. (Emphasis supplied)”

In the case in hand, there is no apprehension expressed by the State of any threat given by the accused-private respondents or that they have tried to tamper with any evidence in any manner or that the complainant had ever submitted any representation in that regard or that there was danger of accused absconding or fleeing from justice or that they have misused the concession of bail. The challan has also since been presented in the case and the case is fixed for framing of charges.

Hon'ble The Supreme Court of India in the case of **Ms. X vs The State of Telangana** (2018) 16 SCC 511 finding no supervening circumstance made out to warrant the cancellation of the bail dismissed the appeal. The paras as relevant to the present case read thus:

“9. During the course of the hearing, learned counsel appearing on behalf of the complainant alleged before the Court that her submissions in assailing the order of the High Court deal with two facets namely:

(i) Whether the High Court was justified in granting bail to the accused under Section 439;

(ii) Whether there are any supervening circumstances which would warrant the cancellation of the bail granted by the High Court.

10. While the principles in regard to the grant of bail under Section 439 are well settled, we may note for the completeness of the record, that reliance has been placed on behalf of the appellant on the decisions of this Court in *Kanwar Singh v State of Rajasthan* 2012 (120) SCC 180, *Neeru Yadav v State of UP* 2016(15) SCC 422 and *State of Bihar v Rajballav Prasad* 2017(2)SCC 178.

11. In *Kanwar Singh*, a Bench of two learned Judges of this Court has held thus:

"Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court."

12. In *Neeru Yadav*, applying the same principle, this Court held that:

“It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of

supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge.”

13.The decision in Rajballav Prasad emphasises that while the liberty of the subject is an important consideration, the public interest in the proper administration of criminal justice is equally important:

"...undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations."

14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in *Dolatram v State of Haryana*, (1995) 1 SCC 349 observed that:

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer

conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

15. These principles have been reiterated by another two Judge Bench decision in Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan (2011) 5 SCC 296 and more recently in Dataram Singh v State of Uttar Pradesh (2018) 3 SCC 22:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

There is a significant difference between an order rejecting an application for bail and an order for cancellation of bail. It is within the discretionary domain of the Court to reject a plea for grant of bail, without even delving into the details, simpliciter on the gravity of the offence and the perception that liberty, if granted, will be misused. However, in the case of cancellation of bail, the Court is called upon to extinguish the liberty that had been formerly granted, thus, it must tread with utmost circumspection and only after examining the facts and on finding supervening circumstances, which are not conducive to fair trial and unless and until it is established that the accused does not deserve to be at liberty either by reason of violation of the conditions of bail or due to the conduct which bears upon

the misuse of liberty by the accused or threatening the victim or is tampering with evidence or influencing prosecution witnesses to the extent that it would vitiate the trial and lead to a miscarriage of justice. It is trite that, if two views are possible, once the bail has been granted it should not be cancelled and there is no scope for cancellation of bail on re-appreciation of evidence.

It is apparent that there was a long standing dispute on going between the parties, with allegations and counter-allegations, divorce by mutual consent, decision of sharing the custody of the two minor children, panchayati compromises, transfer of property in favour of the grand children, re-marriage of couple-inspite all the bitterness, accused-respondent-Tanvika and her husband living separately thereafter from her in-laws, leaving the matrimonial house again, incident in question having taken place after more than ten days of filing of complaint by her, accused-respondent-Tanvika being in custody for about a month alongwith her minor daughter, being another fact that weighed with the trial Court, the allegations of accused-respondents (father and uncle of accused-Tanvika) against the investigating agency for being pressurised to admit their guilt, addition of another section for not adhering, no recovery to be affected of any sort. In wake of the aforesaid facts and circumstances, the orders of grant of bail to the accused-respondents coupled with no supervening facts being present, the challan having been presented and the case now is fixed for framing of charges, require no interference.

Applying the law as enunciated to the facts and circumstances of the case, this Court finds that no ground is made out for allowing the

present petitions. As such, the same are hereby dismissed, being devoid of merits.

Before parting, to ward off the apprehensions as expressed by the learned counsel for the petitioner made during the course of arguments, regarding the observations in the orders granting bail, it is clarified that the same shall have no bearing whatsoever, on the merits of the case. The trial Court shall proceed uninfluenced not only therefrom but also the observations made hereinabove, as also the fact that present petition has been dismissed.

A photocopy of the judgment be placed on the file of the connected case.

20.03.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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