

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

CRM M-31984-2022 (O&M)
Date of Decision: 17.08.2023.

Brij Lal Banduni

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present: Mr. Sumeet Goel, Sr. Advocate with
 Mr. Amit Jain Advocate,
 for the petitioner.

 Mr. Kiran Pal Singh, AAG Haryana.

 Mr. Akshay Jindal, Advocate
 for respondent No.2.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 439 (2) of the Code of Criminal Procedure (for short "Cr.P.C.") for cancellation of pre-arrest bail granted to respondent No.2 by learned Additional Sessions Judge, Gurugram vide impugned order dated 15.06.2022 in FIR No.100 dated 22.02.2022 under Sections 406, 420, 447, 467, 468, 471 & 120-B IPC, registered at Police Station Sohna City, District Gurugram.

(2) Additional affidavit of Sh. Harinder Kumar, HPS, Assistant Commissioner of Police, Pataudi, Gurugram filed on behalf of respondent No.1-State is taken on record. Registry to do the needful.

(3) It is contended by learned Senior counsel that respondent No.2 had impersonated himself to be the director of Blue Infrastructure Pvt. Ltd., Chhattarpur, New Delhi and deliberately executed General Power of Attorney bearing No.379 & 380 dated 20.08.2020 in favour of Smt. Munni Devi & Sonia Devi, respectively despite the fact that after 30.07.2020, he ceased to be the Director of Company. Also contended that respondent No.2 had received an amount of Rs.15,00,000/- from both the abovesaid purchasers by committing a fraud, but learned Additional Sessions Judge, ignored this aspect of the matter while granting pre-arrest bail; hence, impugned order is not legally sustainable.

(4) On the other hand, learned counsel for respondent No.2 while opposing the prayer of petitioner submitted that learned Additional Sessions Judge has considered each and every aspect of the matter carefully; hence the order impugned granting pre-arrest bail does not warrant any interference by this Court. Further contended that respondent no.2 has no concern with the alleged amount of Rs.15,00,000/- as the same has been credited in the account of one Suleman and this fact was duly considered by learned Additional Sessions Judge. Lastly submitted that parameters for grant of bail vis-à-vis cancellation of the same are entirely different and moreover, there is no allegation that respondent no.2 has misused the concession of interim bail in any manner.

(5) Heard learned counsel for the parties and perused the paper book.

(6) Precisely, the case of petitioner is that respondent no.2 remained as Director of the company uptill 30.07.2020; but he got registered forged power of attorney dated 20.08.2020 in favour of Smt. Munni Devi and Smt. Sonia Devi, without there being any authority; thus committed a fraud.

(7) Learned Additional Sessions Judge, Gurugram while granting pre-arrest bail to respondent No.2 observed as under:-

“The applicant-accused and the Director of the company have litigation pending between them. It is interesting to note that after the execution of GPAs in question. M/s Blue Infrastructure Pvt. Ltd. Through Director Ashish Tiwari, shareholder Shri Anil Kumar Jain has again given a GPA on 07.12.2020 with regard to company’s land in favour of applicant Hari Dutt Jain, claiming him to be their ‘man of confidence’ along with complainant Brij Lal. Therefore, from the facts of the case of the prosecution, it is clear that no financial loss to the complainant company, has been caused on the basis of GPAs. The case is based on documentary evidence. The original GPAs have to be with the GPA holders and admitted the same stood cancelled. The amount of Rs.15,00,000/- has admittedly been transferred in the account of co-accused Suleman not the applicant. Therefore, custodial interrogation of accused is not required. It is also necessary to point out that Inspector Sandeep I.O. submitted that applicant-accused has sold many properties to accused persons and amount has also been recovered. However, concededly, there is no such other FIR registered upto now. If there is any other FIR that has to be dealt with in accordance with the facts and circumstances of the case and without commenting anything on

merits, the application for anticipatory bail of applicant Hari Dutt Jain is allowed.

From perusal of the above extract, it is clearly discernible that the “amount of Rs.15,00,000/- has admittedly been transferred in the account of co-accused Suleman” and not the applicant (respondent no.2). Therefore, in such a scenario, the learned Additional Sessions Judge has rightly observed that “custodial interrogation of the accused is not required”.

(8) Concededly, after 30.07.2020 also, respondent No.2 was given GPA dated 07.12.2020 for dealing with the land of the Company considering him as ‘man of confidence’.

(9) Also noteworthy that this Court on 07.08.2023 after hearing the matter for sometime, passed the following order:-

Learned counsel for petitioner seeks time to place on record material to the effect that amount of Rs.15,00,000/- was credited in the account of respondent No.2.

Posted on 17.08.2023.

07.08.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

(10) Today despite repeated asking, learned Sr. counsel for the petitioner is not able to point out or show any material that alleged amount of Rs.15,00,000/- has gone into the account of respondent No.2.

(11) Moreover, it is quite elementary that parameter(s) for cancellation of the bail are entirely different, to that of granting bail and reference in this regard can be made to a judgment of Hon’ble Supreme

Court in ***Bhuri Bai versus State of Madhya Pradesh, 2020 Live Law (SC)***

956 held as under:-

“...We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) Cr.P.C. is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirement of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail.”

(12) In view of the above, this Court does not find any ground to interfere with the discretion exercised by learned Additional Sessions Judge while passing the impugned order dated 15.06.2022.

(13) As a result thereof, there is no option except to dismiss the present petition.

(14) Ordered accordingly

(15) Needless to say that in case respondent No.2 is required for further investigation, he shall fully co-operate in the matter; as and when required to do so.

(16) Also made it clear that above observations may not be construed as an expression of opinion on the merit of controversy in any manner.

17.08.2023
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(MAHABIR SINGH SINDHU)
JUDGE.

Whether speaking/reasoned: Yes/No.
Whether Reportable: Yes/No.