

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-39663-2021

Date of Decision: 14.03.2023

Rekha

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sumit Sangwan, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

Mr. V.P. Sangwan, Advocate for respondent Nos.2 and 3

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439(2) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Section 482 Cr.P.C. is seeking cancellation of regular bail which was granted to respondent Nos.2 and 3 by Ld. Additional Sessions Judge, Charkhi Dadri vide order dated 09.08.2021 (Annexure P-4) and order dated 11.08.2021 (Annexure P-5), respectively, in FIR No.0121 dated 05.07.2021 (Annexure P-1) under Sections 376(3), 376(2)(n), 450, 506 & 34 of Indian Penal Code, 1860 (for short 'IPC') and Section 4, 6, 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Section 354-D of IPC added later on) registered at Police Station Jhojhu Kalan, District Charkhi Dadri.

2. The respondent Nos.2 and 3 along with two more accused were arrested in the afore-stated FIR on 22.07.2021. The respondents

preferred petition under Section 439 Cr.P.C seeking regular bail before Sessions Court which came to be allowed vide order dated 09.08.2021 and 11.08.2021. The petitioner is seeking cancellation of bail primarily on the ground that Sessions Court while passing impugned orders has not complied with mandate of Section 439 (1A) Cr.P.C. The Sessions Court prior to passing bail order was duty bound to issue notice to complainant/petitioner herein. The petitioner is relying upon judgment of Hon'ble Supreme Court in ***Hariram Bhambhi Versus Satyanarayan and Another; 2021 (4) R.C.R. (Criminal) 629***. It is further argument of the petitioner that respondents are threatening the petitioner.

3. Learned counsel for respondent Nos.2 and 3 submits that there are criminal cases pending against family members of the complainant which have been registered at the behest of family members of the respondents. The petitioner wants to get regular bail of the petitioner cancelled by one or another way.

4. Learned State counsel submits that charges stand framed and the prosecutrix as well as the complainant stand examined. The Investigating Officer has not come across any evidence to file application seeking cancellation of bail granted to the private respondents.

5. I have heard learned counsels for the parties and perused the record.

6. From the perusal of FIR, it comes out that there is no allegation of rape against the private respondents. There was allegation

of stalking and harassing which are punishable under Section 354-D of IPC and Section 12 of POCSO Act. The Trial Court has framed charges under Section 354-D IPC and Section 12 of POSCO Act. From the conjoint reading of contents of FIR and order framing charge, it is quite evident that there is no allegation against the respondents for commission of offence punishable under Section 376(3), 376-AB, 376-DA or 376-DB of IPC. In the absence of allegation of commission of offence punishable under afore-stated Sections of IPC, there was no question of applicability of Section (1A) of Section 439 Cr.P.C. It is apt to notice that there are two more accused who are still in custody and they are facing charge of commission of offence punishable under Section 376 IPC.

7. The maximum prescribed sentence under Section 354-D of IPC and Section 12 of POCSO Act is 3 years and respondents had already remained in custody. The main accused are in custody.

8. The prosecutrix as well as the complainant stand examined. The complainant and prosecutrix are at liberty to file complaint against private respondents, if they commit any further offence. The police is duty bound to register FIR, if any cognizable offence is committed by the private respondents.

9. The State is not seeking cancellation of bail and petitioner has not brought on record any evidence disclosing misuse of concession of bail granted by Trial Court. Therefore, there is no reason to cancel the bail already granted by the Court.

10. The parameters of granting and cancellation of bail are totally different. Bail cannot be cancelled unless and until there is evidence of misuse of bail in the form of commission of similar or identical offence, tampering or destruction of evidences, threatening or winning over of witnesses or there is total non-application of mind. Bail already granted cannot be cancelled in a mechanical manner.

11. In the case in hand, there is no evidence of misuse of bail. The Court while granting bail is not supposed to deal with each and every contention of the complainant. A bail once granted cannot be cancelled on the basis of bald allegations of the complainant especially when there is no complaint by prosecuting agency supported by evidence of misuse of bail. From the perusal of impugned orders, it comes out that the Court below while granting regular bail has passed a reasoned order which needs no interference. The present petition being bereft of merit deserves to be dismissed.

12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

14.03.2023

Mohit Kumar

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*