

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

107

CRM-M-37687-2023 (O&M)

Date of decision: 03.08.2023

Karan Arora

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Piyush Aggarwal, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439(2) Cr.P.C. for cancellation of anticipatory bail of respondent No.2 and 3 in FIR No.107 dated 07.06.2023, registered under Sections 177, 417, 465, 468, 471 and 120-B IPC, at Police Station Salem Tabri, Ludhiana granted by Additional Sessions Judge, Ludhiana vide order dated 14.07.2023.

2. Brief facts of the case as emerge from the FIR are that the wife of the petitioner, who is accused No.1 Divya Vashisth, in connivance with her family had submitted false complaints dated 23.07.2018 and 31.08.2018 and to prove the allegations, had prepared fake bills that were submitted before the police, as no such shop was in the area as mentioned in them and as such, the matter needs to be reinvestigation as no woman files a case for dowry by preparing fake /forged bills.

3. Learned counsel for the petitioner has submitted that the accused-respondent Nos. 2 and 3, namely Divya Vashisth and Vibhu Vashisth, respectively,

who are wife and brother-in-law of the complainant, were granted the concession of interim anticipatory bail vide order 04.07.2023 by Additional Sessions Judge, Ludhiana and directed them to join the investigation. Thereafter, on 14.07.2023, on the statement of the police official that the said accused had joined the investigation, but had not got recovered the original bills, for which their custodial investigation was required, still their interim bail was confirmed. There being specific allegations against the accused-private respondents, they were still granted bail. The learned Court, which though allowed the bail petition by passing a cryptic order has also returned findings on merits, which shall prejudice the case of the complainant-petitioner.

4. On receipt of advance notice, Mr.MS Atwal, DAG, Punjab puts in appearance and submits that the accused have neither misused the concession of bail in any manner and there is no complaint of any threat or influencing the witnesses or hampering the investigation, with which they are duly cooperating. The accused-respondents have no criminal antecedents.

5. Heard the learned counsel for the parties.

6. Hon'ble The Supreme Court, after considering a catena of the pronouncements in the case of **Satender Kumar Antil vs. CBI**, (2022) 10 SCC 51, 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.”

7. It has also been observed in **State of Bihar vs. Amit Kumar**, (2017) 13 SCC 751, by Hon’ble The Supreme Court that, 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. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence.

8. 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)

9. An order rejecting the application of bail and an order of cancellation of bail are vastly different. In the case of rejecting bail, the Court has discretion to pass the order simpliciter on the ground of severity of the offence and the belief that granting the bail would result in its abuse. However, in the latter, the Court is tasked with the duty to revoke a liberty previously granted to a person, thus the same should be exercised with utmost care and 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, once the bail has been granted it should not be cancelled, further there is no scope for cancellation of bail on reappraisal of evidence.

10. 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 (12) 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."

11. It is apodictic, that the parties are involved in inter-se litigation emanating from matrimonial discord. Despite efforts at mediation, no middle ground could be arrived at, leading to a petition being filed under Section 9 HMA by the petitioner and as stated, a criminal complaint under Sections 406, 498-A,

323, 506, 34 IPC was filed by respondent No.2, as a counter blast.

12. In the case in hand, no apprehension is 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 impugned order is neither found to be bad in law nor suffers from any illegality and also there being no supervening facts, that may require intervention by this Court, as such, the present petition being devoid of merit, is hereby dismissed.

13. It is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

August 03, 2023
M.Kamra

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