

CRM-M No.41581 of 2022 (O&M)

2023:PHHC:156458

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

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CRM-M No.41581 of 2022 (O&M)
Date of Decision: 07.12.2023

AJAY KUMAR

.....Petitioner

Vs

STATE OF HARYANA AND ANOTHER

....Respondents

CORAM: **HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. V.P. Sangwan, Advocate
for the petitioner.

Mr. Krishan K. Chahal, Addl. A.G., Haryana.

Mr. Sushil Sheoran, Advocate
for respondent No.2.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition under Section 439(2) read with Section 482 Cr.P.C, prayer has been made for cancellation of regular bail granted in favour of respondent No.2 vide order dated 09.08.2022 passed by the Addl. Sessions Judge, Bhiwani in Bail Application CIS No.1194 of 2022 (Annexure P-5) in case arising out of FIR No.0249 dated 13.12.2021 (Annexure P-1) registered under Sections 302, 323, 34 IPC at Police Station Jue Kalan, District Bhiwani.

[2]. Briefly stating, in the present case respondent No.2 was implicated as an accused in aforementioned FIR for having caused murder of victim Ravi son of Appal Singh. The relevant portion of the FIR (supra) which was recorded on the statement of petitioner/complainant is reproduced hereunder:-

“After meeting with him, I, Ravi and elder brother of our friend Subham have gone to TAU DHABA at Titani on Kairu road, when we were taking meal at about 9.30-10.00 PM, that Ravi had gone out side for urine.

Ravi had not returned after some time, so I come out to search Ravi, where an altercation of Ravi with driver of pick up Dala No.HR-61C 7388 had taken place. Driver of Pick-up Dala was sitting on driver seat and he caught hold hand of Ravi. I shouted what happened, on this driver of Pick-up Dala caught hold neck of Ravi and run his vehicle, I climbed in the back of vehicle, two other unknown boys were also sitting on back, thereafter, driver, driven the vehicle towards Lohani and Ravi was hanging on the driver side window of vehicle and shouting to stop the vehicle. I have also shouted many times but the driver was saying that he will not leave alive. In the meantime, driver struck the vehicle in side stationed truck from the side of Ravi with intention to kill Ravi and Ravi has sustained many injuries and he died at the spot and fell down behind and sustained injury in right hand due to fall, also sustained some minor injury.”

[3]. After completion of investigation in the present case and filing of challan by the Investigating Agency, respondent No.2 prayed for grant of regular bail in pending trial before the Trial Court which came to be allowed by the Addl. Sessions Judge, Bhiwani vide order dated 09.08.2022. The operative part thereof is reproduced hereunder:-

“4. This Court has paid thoughtful consideration to rival contentions, apart from perusing the record carefully. By this date, custody of applicant-accused Yogesh @ Yogi has approximated a period of 7½ months. Any recovery or some other investigational formality is not pending against the applicant. He is not a previous convict. In given circumstances, without advertent on merits of the case, paying regard to length of custody already undertaken by the applicant and that he is not a previous convict, the applicant Yogesh @ Yogi is held entitled for concession of bail, at his juncture. So, application in hand is allowed, subject to furnishing personal & single surety bonds in the sum of Rs.50,000/- each. Bonds not furnished.”

[4]. By way of present petition, the aforesaid order dated 09.08.2022 passed by the Addl. Sessions Judge, Bhiwani has been impugned while submitting

that the allegations leveled in the FIR were never considered and appreciated in the proper perspective by the Trial Court. Learned counsel also submits that the manner in which the offence was committed by respondent No.2 was never discussed/dealt with while granting concession of bail. Learned counsel further points out that the order passed by the Trial Court was even non-speaking and unreasoned without discussing the material being collected by the Investigating Agency.

[5]. On the other hand, learned counsel for respondent No.2 submits that respondent No.2 was granted concession of regular bail vide order dated 09.08.2022 and even after expiry of almost 01 year and 04 months, he never misused the concession of bail. Learned counsel further submits that the Court below appreciated all the allegations leveled in the FIR and passed well reasoned order while granting bail. He also points out that infact the petitioner himself was the real culprit even as per complaint made by father of deceased. Lastly, in support of his contentions, learned counsel places relies upon decision dated 17.05.2018 made by the Hon'ble Apex Court in **SLP(Crl.) No.3482 of 2023 titled as "XXX vs Union Territory of Andaman & Nicobar Islands & Anr."**.

[6]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioner.

[7]. Perusal of FIR shows that respondent No.2 caught hold of deceased and dragged him along with moving vehicle and thereafter sandwiching him between two vehicles, resulting into his death on the spot. On conjoint reading of the contents of FIR and Post Mortem Report (Annexure P-2) reflects the extreme

brutality and gruesome act committed by respondent No.2. Moreover, perusal of PMR and the photographs of the deceased would show that his footbone was clearly visible with no flesh on the feet which corroborates the version of the FIR; the deceased having been dragged along with the moving vehicle by respondent No.2.

[8]. Hon'ble Apex Court in "**Mahipal v. Rajesh Kumar**", reported as (2020) 2 SCC 118 held that power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. It was further held that no doubt a bail can be cancelled after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred but, if in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, appellate Court can delve into the justifiability and the soundness of the order passed by the Court. Relevant paras of this judgment are reproduced below:

"15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. (2016) 15 SCC 422 (sic)/16 SCC 508.

"13. .. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some

*supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. **If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of the second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.***"

16. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment....."

(emphasis supplied)

[9]. Perusal of impugned order dated 09.08.2022 passed by the Addl. Sessions Judge, Bhiwani shows that while granting concession of bail neither the gravity of allegations nor the manner in which the crime was committed by respondent No.2 were taken into consideration. Bail was granted primarily on the consideration that he had spent 7½ months in custody, however, the fact that he was specifically named in the FIR for the murder of the victim Ravi, which was caused in a brutal manner, was ignored. Additionally, case of the petitioner is also supported by the evidentiary material on record, therefore, in view of **Mahipal's case** (supra), this is not a case where the bail is liable to be cancelled on the basis of subsequent conduct of the accused, rather, this is a case where the order granting

the bail to accused/ respondent No.2 was without any reasonable basis. In fact, no reasoning was given in the impugned order and thus, the same cannot be sustained. Judgment in “XXX”s case (supra) cited on behalf of respondent No. 2 does not come to his rescue as factual circumstances in that case were completely different and even in that case it was recorded that nature and gravity of the accusation and severity of the punishment in the event of conviction, were relevant consideration while granting the bail.

[10]. As regards the plea raised on behalf of respondent No.2 that the petitioner was himself involved in the incident, it may be pointed out here that so far no such *prima facie* finding has been recorded, reflecting the involvement of the petitioner in the incident in question. Be that as it may, respondent No.2 having performed the act of inflicting injuries upon the person of the deceased cannot claim any benefit by alleging the involvement of petitioner in the incident.

[11]. In view of discussion made hereinabove, finding merits in the present petition, the same is allowed. The impugned order dated 09.08.2022 passed by the Addl. Sessions Judge, Bhiwani granting concession of bail in favour of respondent No.2 is set aside. Respondent No.2 is directed to surrender before the Trial Court forthwith, failing which the Trial Court shall take necessary action in accordance with law.

[12]. Nothing expressed hereinabove shall be construed to be an opinion on the merits of the case.

December 07, 2023

Atik

(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No