

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46127-2021 (O&M)
Date of decision : 01.12.2023

Kajal ... Petitioner(s)

Versus

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

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Pratap Singh Nain, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana for respondent No.1.

Mr. S.K. Jindal, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. This is a petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 for cancellation of regular bail granted to respondent No.2, namely, Harender s/o Krishan by the coordinate Bench of this Court vide order dated 29.09.2021 in FIR No.271 dated 13.09.2020 under Sections 323, 452, 376(2)(n), 34 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Israna, Panipat.
2. The grounds on which the cancellation has been sought are two fold - firstly that respondent No.2 has criminal antecedents and that the same was not considered by the coordinate Bench of this Court while granting the

concession of regular bail. The second ground on which cancellation is sought is that respondent No.2 has been misusing the concession of regular bail by threatening the petitioner and her family members.

3. Learned counsel for the petitioner would contend that respondent No.2 after the grant of concession of regular bail has regularly been threatening the petitioner. It is further the contention that the factum that respondent No.2 had been convicted in another case and that his sentence had been suspended, was not brought to the notice of the Court.

4. *Per contra* learned counsel for respondent No.2 has contended that on 12.09.2020 a scuffle had taken place between the family of the petitioner and respondent No.2 and his family members. The present FIR was lodged by the complainant and a complaint case was got lodged by respondent No.2 herein in which the brother of the complainant was summoned for 17.08.2022 to face trial for commission of offences under Sections 323, 325, 307, 452 and 506 read with Section 149 of IPC. Learned counsel has further contended that said complaint is still pending. It is further the contention of the learned counsel that the factum that respondent No.2 herein had been convicted in FIR No.02 dated 07.01.2012 registered at Police Station Israna under Sections 302, 392 read with Section 34 of IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was stated in the petition itself in para 15 of the petition. A copy of the petition being CRM-M-22860-2021 has also been handed over to this Court during the course of the arguments.

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4. Learned counsel for the State has referred to the status report filed by way of an affidavit Virender Singh, HPS, Deputy Superintendent of Police, City Panipat wherein in Para 7 it has been stated as under :

“That the complaint dated 06.10.2021 (Annexure P-5) filed by the petitioner is entered in the record of the police at Sr. No.1244-5P2 dated 06.10.2021 and in the enquiry on the said complaint SI Rajbir Singh has contracted the petitioner but phone call was attended by his son and he has refused to appear before the police by saying that he will get cancel the regular bail of the respondent No.2 through this Hon’ble Court. Thus the said complaint was disposed of vide report dt. 13.01.2021. Except this,

(I) The mother of the petitioner had filed a complaint No.965-SPL-1 dated 25.10.2021 on the same set of allegation and it has also been found baseless in the enquiry by SI Ranbir Singh No.337/RR and disposed of it vide report dated 07.11.2021 by the police.

(ii) The mother of petitioner had filed another complaint No.128-HCW dated 24.11.2001 and the complaint No.111-HCW dated 28.10.2021 on same set of allegations and it has also been found baseless in the deponent (being Dy. Superintendent of Police, Madauda, District Panipat) vide report dated 03.12.2021.

(iii) The mother of petitioner had filed another complaint No.16650-SPL-3 dated 25.11.2021 2201 on same set of allegations and it has also been found baseless in the enquiry by SI Pawan Kumar No.59 and disposed of by the SHO, P.S. Israna, District Panipat 03.12.2021.

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5. Heard.

6. In the present case, respondent No.2 herein was granted the concession of regular bail by this Court in CRM-M-22860-2021 vide order 29.09.2021. It appears to be a case of version and cross version as qua the incident of the same date a compliant has also been filed by respondent No.2 herein in which the brother of the petitioner has been summoned to face trial for commission of offences punishable under Sections 323, 325, 307, 452 and 506 read with Section 149 of IPC. The said complaint is still stated to be pending. The petitioner has given several complaints to the Police which find mention in para 7 of the status report. The petitioner herein filed a complaint dated 06.10.2021 which is also appended with the petition as Annexure P-5. During the course of enquiry, SI Rajbir Singh contacted the petitioner but the call was attended by the son and he refused to appear before the Police and stated that he would get the regular bail of respondent No.2 cancelled through the Court. Hence, the complaint was disposed off vide report dated 13.01.2021. The mother of the petitioner filed a complaint on 25.10.2021 which was enquired into and found to be baseless and was disposed off vide report dated 07.11.2021. Yet another complaint was filed by the mother of the petitioner on 24.11.2021 on the same set of allegations which was found to be baseless vide report dated 03.12.2021 and yet another complaint was filed on the same set of allegations on 25.11.2021 which was also disposed off as having been found to be baseless. All the complaints filed by the petitioner and her mother were found to be baseless and hence the same were filed. There is no other ground for cancellation of bail.

7. The Hon'ble Supreme Court in the case of **Dolat Ram Vs. State of Haryana [1995 (1) SCC 349]** has held as under :

“3. Rejection of 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 bail, broadly (illustrative and not exhaustive) 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted.

4. We are, therefore, satisfied that the cancellation of anticipatory bail granted to the appellants, for the reasons given by the High Court, was not justified.

Nothing has been brought to our notice either from which any inference may possibly be drawn that the appellants have in any manner, whatsoever, abused the concession of bail during the intervening period.”

8. Yet again in the case of **Bhuri Bai Vs. The State of Madhya Pradesh [2022 SCC Online SC 1779]** their Lordships of the Supreme Court while dealing with the cancellation of bail have held as under :

“17. The order dated 05.08.2021 as passed by the learned First Additional Sessions Judge, Jaura, District Morena, though had not been explicit on all the surrounding factors but then, the facts were indeed taken into consideration that two of the co-accused were granted pre-arrest bail whereas the other co-accused person, husband of the appellant, was granted regular bail. In the given set of facts and circumstances, if the Trial Court was satisfied that the appellant was entitled to be given the concession of bail while putting her to specific terms and conditions, the order so passed had neither been suffering from any fundamental error nor there was any other material factor for which the bail granted to the appellant was to be annulled.

18. In our view, even if the High Court had its reservations in the order so passed by the Trial Court granting bail to the appellant, particularly when the fact of long absence of the appellant was not adverted to, it was yet required to be taken note of by the High Court that the power being exercised was not that of a regular appeal or revision but, it was that of cancellation of bail under Section 439(2) CrPC.

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19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC.

20. It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. 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) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements 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.”

9. In the present case, there was no concealment qua the previous conviction as the same was found duly mentioned in para 15 of the previous petition filed by respondent No.2 for grant of regular bail being CRM-M-22860-2021. Qua the complaints, the status report clearly mentions that the complaints filed by the petitioner and her mother on various occasions were all found to be baseless.

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10. In view of the above, I do not find any ground to entertain the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.12.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO