

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

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CRM-M-6473-2022

Date of Decision: 08.02.2023

Gurwinder Kaur**...Petitioner****Versus****State of Punjab and Another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Kushagra Mahajan, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Inderjit Singh)

Mr. Sidhant Vermani, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439(2) Cr.P.C. is seeking cancellation of bail granted to respondent No.2 vide order dated 12.09.2018 (Annexure P-4) passed by this Court in *CRM-M-39914-2018; Swaran Singh Versus State of Punjab and Another*.

2. Learned counsel for the petitioner, *inter alia* contends that respondent No.2 is residing in Dubai and he is not facing the trial. The respondent No.2 has got bail from this Court by misrepresenting the facts. The respondent No.2 left country without seeking prior approval of the Court which amounts to violation of concession of bail.

3. Learned counsel for the respondent No.2 submits that respondent is residing in Dubai since 1982. This Court vide order dated 12.09.2018 directed the respondent to appear before the Trial Court and furnish bail bonds and Trial Court was directed to release the respondent on bail subject to its satisfaction. The respondent appeared before the

Trial Court and furnished bail bonds subject to satisfaction of Trial Court. There was no condition in terms of Section 438(2) Cr.P.C. prescribing that respondent No.2 shall not leave country without prior approval of the Court. The respondent No.2 at present is in India and he is regularly facing the trial. He has never missed the date. Learned counsel for the respondent No.2, at this stage, undertakes that he shall not leave country without seeking prior approval of the Trial Court.

4. Learned State counsel, on instructions from ASI Inderjit Singh, submits that there is nothing on record disclosing that respondent No.2 has not appeared before the Trial Court or misused the concession of bail.

5. In the case in hand:

- i. Respondent No.2 is regularly appearing before the Trial Court and facing trial;
- ii. The complaint was filed under Section 498-A, 406, 506, 323, 120-B of IPC against respondent and others;
- iii. The petitioner has already withdrawn his case against her husband and mother-in-law;
- iv. The respondent No.2 is brother-in-law (*Devar*) of the petitioner.

6. The complaint qua other members stands withdrawn and the petitioner is pursuing complaint against brother-in-law (*Devar*), who is staying in Dubai since 1982.

7. 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.

8. 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.

9. In the case in hand, there is no evidence of misuse of bail. 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. The present petition being bereft of merit deserves to be dismissed. The respondent No.2 shall not leave country without seeking permission of the Trial Court.

(JAGMOHAN BANSAL)
JUDGE

08.02.2023

Mohit Kumar

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*