



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

290

CRM-M-676-2024

Date of decision: 20.08.2024

Amandeep Kaur

....Petitioner

V/s

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Amit Sharma, Advocate for the petitioner.

Mr. Yuvraj Singh, AAG Punjab.

Dr. Sandeep Kumar Passi, Advocate for respondent Nos.2 to 4.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) read with Section 482 of Cr.P.C. of 1973, for setting-aside of anticipatory bail granted to respondent Nos.2 to 4 vide order dated 30.11.2023 (Annexure P-5) passed by Additional Sessions Judge, Sri Muktsar Sahib in FIR No.0188 dated 25.10.2023 registered for offences punishable under Sections 498-A and 406 of IPC at Police Station City Malout, District Sri Muktsar Sahib.

2. The relevant portion of the order passed by Additional Sessions Judge, Sri Muktsar Sahib, reads as under:

“5. In view of statement of the Investigating Officer, the recovery of dowry articles is not to be effected from the applicants. Thus, without commenting upon the merits of the case, all the applications stand allowed and the applicants are directed to surrender before the learned trial Court/Duty Magistrate and in the event of their surrender, they shall be released on anticipatory bail on furnishing bail bonds to the satisfaction of learned Illaqa/Duty Magistrate/Arresting Officer, subject to the following conditions enumerated in 438 (2) CrPC, failing which, the order will cease to have effect :-

i). that the applicants shall make themselves available for interrogation before the investigating officer as and when required;



ii). That the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

iii). That the applicants shall not leave the country without prior permission of the Court;

6. Record be returned. However, it is also made clear that observations made here-in-above shall not be construed as an expression on the merits of the main case. Copy of this bail order be placed in the connected bail applications. Bail application files be consigned to the Record Room.”

3. Learned counsel for the petitioner has argued that the private respondent(s) ought not to have been granted the concession of anticipatory bail by the Additional Sessions Court since there were serious allegations against the said respondent(s). Learned counsel has further argued that the matter was referred to Mediation and Conciliation Centre to explore the possibility of amicable settlement but the same could not be fructified which in itself casts serious doubts about their bona fide. It has been further argued that recovery of the dowry articles/Istridhan was not made and hence the Additional Sessions Court ought to have dismissed the anticipatory petition filed by the private respondent(s). It has been further argued that the impugned order has been passed in a mechanical manner without application of mind. Thus, keeping in view the gravity of offence, cancellation of the anticipatory bail granted to the private respondent(s) is sought for.

4. Learned counsel appearing for the State has submitted that the custodial interrogation of the private respondent Nos.2 to 4 are required for effecting the recovery of remaining dowry articles/Istridhan of the complainant. It has been further submitted by the learned State counsel that the police has not received any complaint, made by the petitioner, about the



private respondent(s) having extended any threat etc. to the petitioner or having tried to influence witnesses(s), after being enlarged on anticipatory bail.

5. Learned counsel appearing for respondent Nos.2 to 4 has argued that the FIR in question is result of a matrimonial discord. Various conciliation attempts were made between the parties but to no avail. It has been further argued that the allegations pertaining to demand of dowry are false and the same have been made only to exert pressure upon respondent Nos.2 to 4 for arriving at a settlement.

6. I have heard learned counsel for parties and have perused the record.

7. It would be apposite to refer herein to a judgment of this Court passed in **CRM-M-9029-2023**, titled as **Dinesh Madan vs. State of Haryana and another**, decided on 17.05.2024; relevant whereof reads as under:-

“17. As an epilogue to above discussion, the following principles emerge:

I. (i) There is a conceptual distinction, between “cancellation of bail” & “setting-aside of a bail order”. In a plea seeking “cancellation of bail”; the factors required to be considered are akin to supervening circumstances/events or mis-conduct of accused whereas in a plea seeking “setting-aside of a bail order”; the factors required to be considered are akin to the order in question being unjustified or illegal or not based on relevant consideration(s). In other words, a plea seeking “setting aside of a bail order” is more in the nature of laying challenge to an order granting bail before a superior Court upon merits thereof.

(ii) It would be pragmatic as also desirable, for the cause of ease and clarity, that a plea filed under Section 439 of Cr.P.C., 1973 clearly states as to whether the plea is for “cancellation of bail” or for “setting aside of a bail order.” or on both accounts.

II. Plea seeking cancellation of Regular Bail.

(i) A High Court has power to cancel regular bail granted by itself or by a Sessions Court or by a Magistrate’s Court.



(ii) *A Sessions Court has a power to cancel regular bail granted by High Court or by itself or by a Magistrate's Court. However, the Sessions Court can cancel regular bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting bail) or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel bail granted to an accused by High Court only on account of such like supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby bail was granted to such accused.)*

(iii) *A Magistrate does have the power to cancel a regular bail granted by him in terms of Section 437(5) of Cr.P.C. 1973. However, a Magistrate does not have the power to cancel regular bail granted by the High Court or Sessions Court except in a situation wherein the accused has violated any condition(s) imposed upon him when granted such bail by the High Court or the Sessions Court.*

(iv) *In case cancellation of a regular bail granted by the Sessions Court is sought for; such plea ought to be ordinarily filed before the Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not ipso facto barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.*

(v) *The factors for consideration in a plea for cancellation of a regular bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether the accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.*

(vi) *Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.*

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xxxx	xxxx	xxxx	xxxx

8. The averments made in the petition as also the arguments raised by learned counsel for the petitioner, indubitably, show that petition has been filed for setting-aside of the anticipatory bail order granted to the private respondents vide order dated 30.11.2023 (Annexure P-5) passed by Additional Sessions Judge, Sri Muktsar Sahib. It is worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the private respondent(s) has misused the concession of anticipatory bail granted by the Additional Sessions Court by threatening/intimidating the witness(s) or by trying to influence the investigation/trial etc. The sole plank argument raised on behalf of the petitioner is that the complete recovery of dowry articles/Istridhan has not been made and hence the Additional Sessions Court ought not to have granted the anticipatory bail to the private respondent(s). It is trite law that non-recovery of dowry articles/Istridhan cannot, by itself, be a ground for declining a plea for grant of anticipatory bail to the private respondents. The factum, as to what were the dowry articles/Istridhan in question and whether complete recovery thereof has been made or not, is essentially required to be gone into during the course of trial. This issue cannot be delved into at the stage of consideration of a plea for grant of anticipatory bail in a meticulous manner. The order passed by the Additional Sessions Court is a well-reasoned speaking order and cannot be said to be



suffering from vice of non-application of judicial mind. This Court, keeping in view the entirety of the facts and circumstances of the case(s) in hand, does not find any good ground to hold that the Additional Sessions Court, while passing the impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition(s) in hand deserves rejection.

9. Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to set-aside the anticipatory bail earlier granted to respondent Nos.2 to 4 vide the impugned order. Therefore, the petition in hand deserves rejection.

Decision

10. As a sequel to the above discussion, the present petition filed under Section 439(2) of Cr.P.C. of 1973 read with Section 482 of Cr.P.C. of 1973, seeking cancellation of anticipatory bail order dated 30.11.2023 (Annexure P-5) passed by learned Additional Sessions Judge, Sri Muktsar Sahib is dismissed.

11. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 20, 2024
Ajay