

2024:PHHC:076752



213

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

**CRM-M-2754-2024 (O&M)
Date of decision : 29.05.2024**

Subhash Chand

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No. 2/accused.

MANISHA BATRA, J.(Oral)

1. The present petition has been filed by the petitioner/complainant under Section 439(2) read with Section 482 of Cr.P.C. seeking cancellation of regular bail as granted to respondent No. 2-Mohit in case FIR No. 02 dated 01.01.2022, registered under Sections 304-B, 498-A, 34 and 406 of IPC at Police Station City Narnaul; as well as for setting aside the order dated 25.12.2023, passed by learned Additional Sessions Judge, Narnaul in Bail application No. 447 of 2023.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforesaid FIR was got registered by the present petitioner

on 01.01.2022 making allegations that his daughter Priyanka, who was married with respondent No. 2 Mohit on 15.03.2021, had died an unnatural death on 01.01.2022 in her matrimonial house. He alleged that his daughter was subjected to cruelty on account of demand of dowry by respondent No. 2 and his family members continuously and they had killed her by hatching some conspiracy. During trial, respondent No.2 had moved the aforesaid bail application bearing No. 447 of 2023 for grant of regular bail, which had been allowed, vide order dated 25.12.2023, passed by the Court of learned Additional Sessions Judge, Narnaul.

3. Learned counsel for the petitioner has vehemently argued that the benefit of bail as granted to respondent No. 2 was liable to be cancelled keeping in view the fact that a *prima facie* case for commission of offence punishable under Section 304-B of IPC is clearly made out against respondent. The first bail application of respondent No. 2 was dismissed as withdrawn by the trial Court on 10.11.2023, however, within a short span of one month, he had been granted benefit of regular bail by passing the impugned order, while appreciating the plea which was not even taken by respondent No. 2 in this application. There was a presumption under Section 113-B of IPC that it was a dowry death but the trial Court has ignored the same while granting bail to respondent No. 2. It is also submitted that there were quite serious and specific allegations against respondent No. 2 and he was not entitled to get the benefit of bail. Therefore, it is argued that the trial Court, while passing the order dated 25.12.2023, committed an error and accordingly, it is urged that the impugned order dated 25.12.2023 is liable to be set aside and the petition for cancellation of bail of respondent No. 2

deserves to be allowed. To fortify his arguments, learned counsel for the petitioner has relied upon the judgment rendered by Hon'ble Supreme Court in *Kamla Devi vs. State of Rajasthan*, Criminal Appeal No. 342 of 2022, decided on 11.03.2022.

4. Respondent No. 1-State has filed status report, as per which, on finding sufficient evidence against respondent No.2, he was arrested on 02.01.2022. It is further submitted that as per post-mortem report, the cause of death of the victim was asphyxia as a result of ante-mortem drowning. While supporting the pleas as taken by the petitioner, it is submitted that the concession of bail extended to respondent No. 2 is liable to be cancelled.

5. The respondent No. 2 has filed reply converting the pleas as taken in the petition. Learned counsel for respondent No.2 has vehemently argued that he has been falsely implicated in this case. The victim was never subjected to harassment or cruelty on account of demand of dowry. In fact, the victim was betraying him as she was having illicit relations with one Arun and when this fact came to light, she ended her life out of shame and due to fear of being defamed. He was not even present in his house on the fateful day as he was on duty on 01.01.2022 and had booked tickets on 01.01.2022 to avail leave from 02.01.2022 to 30.01.2022. He has regularly attended the trial and has not violated any term and condition of grant of bail. It is argued that the trial is going at a proper pace and the trial Court, while taking all these factors into consideration, had rightly extended benefit of bail to him earlier, vide order dated 25.12.2023. With these broad submissions, it is urged that the petition is liable to be dismissed.

6. Learned counsel for the parties have been heard at considerable length and due deliberations have been given to the contentions so raised.

7. Before delving into the contentions as raised by learned counsel for the parties, this Court finds it necessary to discuss certain principles which govern the cancellation of bail as enunciated by Hon'ble Supreme Court in various pronouncements. Reference can firstly be made to ***Myakala Dharmarajam vs. the State of Telangana : (2020) 2 SCC 743***, wherein it was observed that an order for cancellation of bail can be made only where such order suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Reliance can further be placed upon ***Sushila Aggarwal v. State (NCT of Delhi) : (2020) 5 SCC 1***, wherein it was observed that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses) or likelihood of his absconding. It was also observed that whether to grant bail or not is a matter of discretion of the Court. Similar position of law had been laid down in ***Dolat Ram and others vs. State of Haryana : 1995 SCC (1) 349***.

8. In view of the proposition of law as laid down in the above discussed authorities, it is clear that the discretion under Section 439(2) Cr.P.C. is to be exercised only if it is proved that bail has been granted to an accused of a heinous crime in a manner, which smacks of arbitrariness,

capriciousness or perversity and on being satisfied on the basis of material placed on record that the accused has actually misused such liberty. The petitioner in this case has sought cancellation of bail of respondent No. 2 on the ground that the allegations against him are serious in nature and that the trial Court, while granting him concession of bail, had ignored the presumption under Section 113-B of IPC. So far as the gravity of the nature of allegations against him is concerned, the trial Court while deciding the plea of respondent No. 2 qua grant of bail is shown to have taken into consideration the contentions raised by the parties as well as the material placed on record at that stage. Further, so far as the submission that the trial Court had not taken into consideration the presumption under Section 113-B of IPC is concerned, the same can be very well decided by it during trial after assessing and evaluating the evidence produced on record by both the sides. The authority as relied upon by the petitioner is distinguishable on the basis of the facts and circumstances of this case because as per call details record as well as Whatsapp chat, which have been proved as Ex. P7 and Ex. P10 respectively before the trial Court, the victim was having illicit relationship with one Arun and due to fear of her defamation, she committed suicide. Respondent No. 2 had neither misconducted himself nor misused the concession of bail. The freedom made available to an accused by the grant of bail cannot be taken away on inadequate grounds, on mere assertions or allegations. He had been regularly attending hearing of the cases. There is no complaint that he has intimidated either of the witnesses or has tried to abscond at any stage of trial. He is also not shown to have made any interference or attempt to interfere with due course of administration of justice. The trial Court, while passing the

order dated 25.12.2023, had discussed all these points in detail and have given a well reasoned finding, which does not warrant any interference. More so, in view of the discussion as made above also, no ground for cancellation of bail is made out.

9. In view of what has been discussed above, the present petition is dismissed being devoid of any merit.

29.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>