

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

CRM-M-4524-2023 (O&M)
Pronounced on : 16.04.2024

Mohan Singh ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Sanjiv Kumar Yadav, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Mr. Rabinder Singh, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner/complainant under Section 439(2) of Cr.P.C. seeking cancellation of regular bail as granted to respondent No. 2-Parvinder Singh in case FIR No. 20 dated 28.01.2020, registered under Sections 304-B, 34 of IPC (Sections 323, 406, 498-A of IPC added later on) at Police Station Loharu, District Bhiwani; as well as for setting aside the order dated 11.03.2022, passed by learned Additional Sessions Judge, Bhiwani in CRM No. 23 of 2021.
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 28.01.2020 making allegations that his daughter Sunita, who was married with respondent No. 2 on 28.11.2013, had died due to consumption/ingestion of some poisonous substance on 27.01.2020. 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. As per the postmortem examination report, the cause of death of the victim was also found to be due to consumption/ingestion of some poisonous substance. Initially, a case under Section 304-B IPC was registered. During the course of investigation, offences under Sections 323, 406 and 498-A of IPC were also added. During trial, respondent No.2 had moved an application bearing No. 215 of 2020 for grant of regular bail, which had been allowed, vide order dated 20.07.2020.

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 specific allegations in the form of testimony of the daughter of the victim had come on record to show that it was respondent No. 2, who with the aid of his parents, had killed the victim by forcibly ingesting some poisonous substance but the concerned Court, while passing the order dated 20.07.2020, ignored this fact as well as the fact that even as per postmortem examination report, injuries were found on the person on the victim, thereby proving that in fact it was a case of homicidal death. It is further argued that respondent No. 2, in connivance with the police, subsequently managed to get the statement of the minor daughter of the victim recorded in his favour before the Child Welfare Committee with a view to seek benefit of bail. It is further contended that after being released on bail, respondent No. 2 visited Jodhpur, wherein the petitioner had been residing with the daughter of the victim and had criminally intimidated Sumitra, sister of the victim on 24.03.2021, with regard to which, proceedings under Section 107 read with Section 116 of Cr.P.C. were also initiated against him. The

second instance of misuse of concession of bail, as quoted by learned counsel for the petitioner, is lodging of FIR No. 147 dated 18.08.2020 as per his complaint under the provisions of Information Technology Act. It is argued that since there were serious and specific allegations against respondent No. 2, which did not make out any case for grant of benefit of regular bail to him and since he is proved to have misused the concession thereof, therefore, it is the trial Court, while passing the order dated 11.03.2022, committed an error and accordingly, it is urged that the impugned order dated 11.03.2022 is liable to be set aside and the petition for cancellation of bail of respondent No. 2 deserves to be allowed.

4. Respondent No. 1-State has filed reply submitting that the parents of respondent No. 2 were found to be innocent during investigation and had not been arrested and challaned but subsequently during trial and on filing of an application under Section 319 Cr.P.C., they were ordered to be summoned as additional accused. 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. Learned counsel for respondent No.2, on the other hand, strenuously argued that he has never misused the concession of bail. Out of 31 prosecution witnesses, 28 witnesses have since been examined. He has regularly attended the trial and has not violated any term and condition of grant of bail. He has been tried to be involved in false litigation by the petitioner by lodging aforesaid FIR No. 147 by alleging that he had misused the Facebook ID of the victim. The proceedings under Section 107 read with Section 116 of Cr.P.C. had also been initiated falsely as he had simply gone to

meet his daughter at Jodhpur on 24.03.2021. It is argued that the trial is at its fag end and the trial Court, while taking all these factors into consideration, had rightly extended benefit of bail to him earlier, vide order dated 20.07.2020 and had rightly dismissed the application of the petitioner, vide order dated 11.03.2022. 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, I consider 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 further that he has misused the liberty of bail so granted. 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 allegation that respondent No. 2 had misconducted himself and misused the concession of bail, it may be stated that the freedom made available to an accused by the grant of bail cannot be taken away on inadequate grounds, on mere assertions or allegations. The veracity of allegations made by the petitioner that he had extended threat to Sumitra, who is a prosecution witness in this FIR and is sister of the victim, is yet to be tested because no material has been placed on record as to the fate of proceedings initiated under Section 107 read with Section 116 of Cr.P.C. at Jodhpur. Similar is the position with regard to FIR No. 147 dated 18.08.2020, which is alleged to have been lodged against respondent No. 2. Respondent No. 2 had been regularly attending hearing of

the cases. Most of the prosecution witnesses stand examined, which point out that he has not 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. Benefit of bail granted to respondent No. 2 cannot be cancelled only because of his involvement in some other cases, which too had been lodged/initiated on the basis of the complaints by none else but the complainant/his family members themselves. The trial Court, while passing the order dated 11.03.2022, 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 has become liable to be dismissed having no merit. It is ordered accordingly.

16.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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