

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M No.5638 of 2023
Date of decision: 16.04.2024
Reserved on: 04.03.2024

Priya Rathore ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Anoop Verma, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

Mr. Abhay Gupta, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The petitioner has filed the instant petition under Section 439 (2) read with Section 482 of the Code of Criminal Procedure seeking cancellation of benefit of anticipatory bail granted to the respondent No.2 by the Court of learned Additional Sessions Judge, Rewari vide order dated 18.01.2023 in an application for bail arising out of FIR No.236 dated 08.11.2022 registered under Sections 406, 498-A and 506 read with Section 34 of IPC at Police Station, Sector-6, Dharuhera, Rewari,

Haryana.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been got registered by the present petitioner against the respondent No.2 who is her husband and his family members making allegations of her being subjected to cruelty and harassment on account of demand of dowry, her criminal intimidation at the hands of the respondent and his family members and on the allegations that her istridhan has been criminal misappropriated by the respondent No.2 and his family members. After initiation of investigation proceedings in the abovesaid FIR, the respondent No.2 had moved an application for grant of anticipatory bail before the Sessions Court, Rewari and vide order dated 18.01.2023 passed in bail application bearing No.BA/49 of 2023, the Court of learned Additional Sessions Judge, Rewari extended the benefit of pre arrest bail to the respondent No.2 on compliance of certain conditions.

3. The instant petition has been filed by the petitioner on the grounds and it has been argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and the benefit of bail as granted to the respondent No.2 is liable to be withdrawn as while passing the impugned order, the fact that huge recovery of dowry articles and material documents which are in the form of educational certificates, passport of the petitioner as well as her laptop and phone etc. had not been effected, was not taken into consideration. It is also submitted that the respondent is also misusing the concession of bail by extending

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threats of life to the petitioner and has been pressurizing her to withdraw the FIR lodged against him and otherwise to face dire consequences.

4. Learned counsel has further submitted that in view of the fact that recovery is yet to be effected, custodial interrogation of the respondent is very much required. He has also produced on record, copy of FIR bearing No.153 dated 28.08.2023 shown to have been registered against the respondent No.2 on the complaint of the petitioner making allegation that despite having obtained an ex parte decree of divorce against her, the respondent No.2 had come to her parental house on 24.06.2023 and had committed rape upon her while concealing the factum of the ex parte decree of divorce and by misrepresenting himself as her husband. It is argued that on account of the acts so committed, the respondent No.2 does not deserve to enjoy the concession of pre-arrest bail and hence it is urged that the benefit so granted to him vide the impugned order is liable to be withdrawn.

5. Status report has been filed by the respondent No.1-State as per which the respondent No.2 has joined the investigation on 04.02.2023. He had been formally arrested and extended benefit of anticipatory bail. Investigation has since been completed and challan has been presented in the Court.

6. The respondent No.2 has also filed reply to the petition contesting the same by taking preliminary objections as to non-maintainability of the petition and the same being moved to abuse the process of law. On merits, it is submitted that the respondent No.2 had

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not misused the concession of anticipatory bail as granted to him. He is posted in Jammu and Kashmir since 19.04.2022 and there was no occasion for him to violate the conditions of bail and extended any threat to the petitioner. It is also submitted that he has even been granted benefit of regular bail by the trial Magistrate on 16.03.2023 and is facing trial. Learned counsel for the respondent No.2 has argued that since no condition of bail is proved to have been violated by the respondent No.2 hence, the instant petition is liable to be dismissed.

7. I have considered the submissions raised by both the sides and have carefully gone through the record.

8. At the outset and before considering the contentions as raised in this petition, I consider it necessary to discuss certain principles which govern the grant of anticipatory bail as enunciated by several pronouncements of Hon'ble Supreme Court. Reference can firstly be made to **Myakala Dharmarajam v. The State of Telangana**, (2020) 2 SCC 743, wherein the Hon'ble Supreme Court observed that the cancellation of bail can be ordered in cases where the order granting bail 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. In view of this position of law, it is clear that an appellate or superior Courts can set aside the order granting bail, if the Court granting

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bail did not consider the relevant factors. Reference can further be made to **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1, wherein the Hon'ble Supreme Court has enunciated the consideration governing the grant of anticipatory bail by observing 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.

9. The well settled proposition of law is also that once bail is granted to an accused, cancellation thereof would require cogent and overwhelming circumstances for its cancellation. Reference in this regard can be made to **Vipan Kumar Dhir v. State of Punjab**, 2021 SCC OnLine SC 854.

10. Taking into consideration the abovesaid discussed position of law and applying the same to the peculiar facts and circumstances of the present case, it may be mentioned that the petitioner herein has sought cancellation of the bail of respondent No.2 by alleging that he has misused the concession of the same by extending threats to her and also by pleading that while passing the order for grant of bail, the concerned Court did not take into consideration the fact that the recovery of dowry articles of the petitioner as well as her educational qualification certificates had not been effected. So far as the allegation that the

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respondent No.2 had been extending threats to her is concerned, no specific instance in this regard had been quoted by the petitioner in the petition which was filed in January 2023 and had been taken up firstly as on 03.02.2023. It is noteworthy that at the time when the impugned order dated 18.01.2023 was passed, the present petitioner was duly represented by a counsel. No argument is shown to have been raised on behalf of the present petitioner to the effect that recovery of any dowry articles or documents is to be effected from the present respondent No.2 and for that purpose, his custodial interrogation is required. If any such recovery was to be effected, then it was for the petitioner to take such plea before the concerned Court at that time. As such, non recovery of any article or documents at the instance of the petitioner cannot be stated to be a cogent and overwhelming circumstance for passing an order directing the cancellation of bail. In support of this view, I rely upon **Dilip Singh v. State of Madhya Pradesh**, (2021) 2 SCC 779, wherein it was observed by Hon'ble Supreme Court that a criminal Court exercising jurisdiction to grant bail/anticipatory bail is not expected to act as a recovery agent to realise the dues of the complainant, that too without any trial.

11. In the instant case, the benefit of anticipatory bail had been granted to respondent No.2 by the concerned Court subject to joining investigation by him which had been so joined by him. In view of the fact that though the petitioner alleged that the respondent No.2 had misused the concession of bail by extending threats to her but no specific instance with the date and month when such threat had been extended had been

quoted by her.

12. So far as the fact that she has lodged another FIR bearing No.153 of 28.08.2023 as against the respondent No.2 levelling allegations of rape is concerned, this FIR is shown to have lodged after two months of the date of alleged occurrence and after a gap of about eight months from the date of passing of the impugned order. It is worthwhile mentioning that copy of this FIR had simply been placed on record by learned counsel for the petitioner without further explaining as to what is the fate of this FIR. As such, the lodging of this FIR also cannot be considered to be a ground for cancellation of benefit of bail as granted to respondent No.2. In this regard, reliance is placed upon **Dolat Ram v. State of Haryana**, (1995) 1 SCC 349, wherein the Hon'ble Supreme Court had observed that bail can be ordered to be cancelled if there is any interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of concession granted to the accused in any manner. It was also observed that 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 trial. However in this case, nothing of that sort has come on record to accept the contentions as raised by the petitioner.

13. Having regard to all the aforesaid facts and circumstances as discussed above, I am of the considered view that there is no merit in the

petition. Hence, the same is dismissed.

16.04.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No