



CRM-M-7783-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

287

CRM-M-7783-2024

Date of decision: 03.09.2024

Davinder Kumar

...Petitioner

V/s

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. C.S. Singhal, Advocate for the petitioner.
Ms. Ankita Ahuja, AAG Haryana.
Mr. Brijender Kaushik, Advocate for respondent Nos.2 and 3.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) of Cr.P.C., 1973, seeking cancellation of anticipatory bail granted to respondent Nos.2 and 3 vide order dated 08.01.2024 (Annexure P-2) passed by Additional Sessions Judge, Ambala in FIR No.64 dated 21.03.2023 registered for offences punishable under Sections 304-B and 120-B of IPC at Police Station Sehzaadpur, District Ambala.

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

“4. Having due regards to the rival contentions and facts on record, without commenting upon the merits of the case, this court is of the view that in the instant case, admittedly, applicant/accused Kapil is elder brother of husband/accused Chelan and Pushpita is wife of Kapil and both had been staying separately from matrimonial home of Ritika with their children. It may or may not be true that they joined Chetan who is younger to them in the ill treatment of his wife Ritika when Ritika had not brought adequate dowry. Even otherwise, if Ritika had brought any dowry that would have benefited Ritika and her husband Chetan, but certainly that item could not have been used by Pushpita and her husband Kapil. With



CRM-M-7783-2024

2

these facts on record, this court deem it a fit case to grant anticipatory bail to applicant/accused, as their actual role in commission of crime would be decided only when evidence comes.”

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 life of the petitioner and his family members is in danger as respondent Nos.2 and 3 are misusing the concession of anticipatory bail by extending threats to the petitioner to withdraw the instant case. It has been further argued that after the aforesaid threat being issued by the private respondent(s), the petitioner has moved a representation dated 23.01.2024 to Superintendent of Police, Ambala but no action has yet been taken against the private respondent(s). Thus, the petitioner has been constrained to file the instant petition seeking the prayer(s) as indicated hereinabove. Moreover, 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 and 3 is required for eliciting the truth as they are the one who have instigated the main accused for dowry and on account of which the deceased had died within the seven years of the marriage. It has been further submitted by the learned State counsel that pursuant to the aforesaid complaint, made by the petitioner,



CRM-M-7783-2024

3

enquired into by the Police. After proper enquiry, the complaint was ordered to be filed by the Superintendent of Police, Ambala on 01.03.2024. In this regard, learned State counsel has referred to para Nos. 15 and 16 of the status report dated 10.07.2024 by way of affidavit of Randhir Singh, Deputy Superintendent of Police, Naraingarh, District Ambala; which reads as under:

*“15. That after receiving the Complaint bearing no.5-SHZP dated 31.01.2024, the SHO prepared its point wise inquiry report on dated 01.02.2024, which was verified by the DSP, Naraingarh on dated 02.02.2024 with the directions to file the complaint in the office. For the kind perusal of this Hon’ble Court, the contents of the Inquiry Report are annexed herewith as **Annexure R-3**.*

16. That is very much necessary to mention here that the after receiving the above said complaint by the Petitioner-Complaint, and the Inquiry Report of the SHO, PS Shahzadpur and the evidence on the case file, the same was seen & file by the Superintendent of Police, Ambala on dated 01.03.2024 and the Superintendent of Police, Ambala found the report of the IO as satisfactory.”

It has been further submitted by the learned State counsel that as per her instructions, the challan in this case has been presented on 04.04.2024 but charges are yet to be framed.

5. Learned counsel appearing for respondent Nos.2 and 3 has argued that the Court below, while granting the concession of anticipatory bail, had considered all the relevant factors i.e. allegations levelled, evidence, antecedents of the private respondents. It has been further argued that after being enlarged on bail, the private respondents have neither threatened the petitioner nor misused the concession of anticipatory bail and have abided by all the conditions of the bail.



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.

(vii) The degree and nature of proof required to be shown by an applicant (seeking cancellation of regular bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.

xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx

VI. Where a plea made under Section 439(2) of Cr.P.C. 1973 raises grounds regarding “cancellation of bail” as also for “setting aside of bail order”, such plea has to be essentially made before the superior Court.”

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 seeking cancellation of the anticipatory bail order granted to the

**CRM-M-7783-2024****6**

Additional Sessions Judge, Ambala. The plea raised on behalf of the petitioner that the private respondent(s) has misused the concession of anticipatory bail granted by the Additional Sessions Court, as after their release, they have extended threats to the petitioner, is based on irrelevant assumptions as no material has been brought forward by the petitioner to substantiate the same. The sole plank argument raised on behalf of the petitioner is that the private respondent(s) has extended threats to the petitioner and hence the bail granted by the Additional Sessions Court ought to be cancelled. Furthermore, it appears that the complaint moved by the petitioner with regard to extension of threats, has already been looked into by the Police. 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 and 3 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., 1973, seeking cancellation of anticipatory



CRM-M-7783-2024

7

bail order dated 08.01.2024 (Annexure P-2) passed by Additional Sessions Judge, Ambala 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

September 03, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No