

CRM-M-16107-2023

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16107-2023
Date of Decision 04.03.2024

MAHENDER SINGH CHAWLA

... Petitioner

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sanjay Gahlawat, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

Ms. Tanu Bedi, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. read with Section 439(2) Cr.P.C. is for cancellation of regular bail which has been granted by the JMIC, Panipat to respondent No.2 vide order dated 29.06.2015 (Annexure P-3) in FIR No.243 dated 13.05.2015 registered under Sections 307, 452, 195-A, 120-B, 34 IPC at Police Station Sadar, Panipat, District Panipat and further, to quash the order dated 23.12.2022 (Annexure P-9) passed by the Addl. Sessions Judge, Panipat whereby the petitioner's application for cancellation of bail of respondent No.2 on addition of charges has been dismissed.

2. The brief facts of the case are that FIR No.243 dated 13.05.2015 under Sections 307, 452, 195-A, 120-B, 34 IPC, Police Station Sadar, Panipat, District Panipat came to be registered on the statement of Devender Chawla son of Kishori Lal to the effect that his brother Mahender Singh Chawla (petitioner) had been shot at by certain persons as he was a witness in a case against Asha Ram Bapu and his son Narayan Sai. The copy of the FIR is attached as Annexure P-1 to the present petition.

3. Pursuant to the registration of the FIR, respondent No.2 was arrested and enlarged on regular bail by the JMIC, Panipat vide order dated 30.06.2015. The copy of the said order is attached as Annexure P-3.

4. Thereafter, the Addl. Sessions Judge, Panipat framed charges against the accused namely, Narain Sai, Kartik alias Raju, Neeraj and Nishant Gangas (respondent No.2) under Sections 120-B, 452, 307, 195-A and 506 IPC. The order of framing of charges and the charge-sheet dated 16.09.2022 are attached as Annexures P-4 & P-5 to the petition.

5. The petitioner moved an application dated 30.11.2022 before the Addl. Sessions Judge, Panipat seeking cancellation of regular bail of respondent No.2 on account of the addition of more grievous and non-bailable offences under Section 120-B IPC for conspiracy to commit the murder of the petitioner. The State as well as respondent No.2 filed their respective replies. The copy of the application and the replies of the State and respondent No.2 are attached as Annexures P-6 to P-8 to the petition.

6. The Court of Addl. Sessions Judge, Panipat dismissed the application for cancellation of bail filed by the petitioner vide order dated

CRM-M-16107-2023

-3-

23.12.2022. The copy of the said order is attached as Annexure P-9 to the petition.

7. The order dated 30.06.2015 (Annexure P-3) granting bail to respondent No.2 and the order dated 23.12.2022 (Annexure P-9) whereby the application for cancellation of bail has been rejected are under challenge in the instant petition.

8. The learned counsel for the petitioner contends that the Addl. Sessions Judge, Panipat erroneously dismissed the application of the petitioner ignoring and misinterpreting the law governing cancellation of bail. Once a graver and non-bailable section was added at the time of framing of charges, the accused was required to apply for bail in the newly added offences or the Investigating Agency ought to have arrested him. Therefore, the bail of respondent No.2 was required to be cancelled on account of the newly added Section 120-B IPC.

9. On the other hand, the learned State counsel along with the counsel for respondent No.2/complainant contend that respondent No.2 had already been granted the concession of bail vide order dated 30.06.2015 (Annexure P-3). Pursuant to the framing of charges, as the Investigating Agency did not require the custody of respondent No.2, the State never sought cancellation of bail. Further, even the Court which had framed charges did not deem it appropriate to cancel the bail already granted to the petitioner. Therefore, no ground for cancellation was made out and the petition was liable to be dismissed. Reliance is placed on the judgments in **Pradeep Ram Versus State of Jharkhand & another, (2019) 17 Supreme Court Cases 326**

and *Rajendra Singh Versus State of Rajasthan & others, S.B. Criminal Bail Cancellation Application No.52/2018, Decided on 20.11.2021.*

10. I have heard the learned counsel for both the parties.
11. In *Pradeep Ram* (supra), Pradeep Ram accused had been arrested and was granted bail. Meanwhile, the offence was enhanced qua him. However, in the meantime, he had been arrested in another case. When the offence was enhanced in the case in which he had been granted bail, the Investigating Agency took his production warrants in the case in which he had been granted bail (but later the offence had been enhanced). The Hon’ble Supreme Court held as under:-

9. From the submissions of the learned counsel for the parties and the pleadings on the record, following are the issues, which arise for consideration in these appeals:-

9.1. (i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?

*** *** ***

30. Coming back to the present case, the appellant was already into jail custody with regard to another case and the investigating agency applied before Special Judge, NIA Court to grant production warrant to produce the accused before the Court. The Special Judge having accepted the prayer of grant of production warrant, the accused was produced before the Court on 26.06.2018 and remanded to custody. Thus, in the present case, production of the accused was with the permission of the Court. Thus, the present is not a case where investigating agency itself has taken into custody the appellant after addition of new offences rather

accused was produced in the Court in pursuance of production warrant obtained from the Court by the investigating agency. We, thus do not find any error in the procedure which was adopted by the Special Judge, NIA Court with regard to production of appellant before the Court. In the facts of the present case, it was not necessary for the Special Judge to pass an order cancelling the bail dated 10.03.2016 granted to the appellant before permitting the accused appellant to be produced before it or remanding him to the judicial custody.

31. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under section 437(5) or 439(2) of Cr.P.C., 1973 for arrest of the accused and his custody.

31.3. The Court, in exercise of power under section 437(5) or 439(2) of Cr.P.C., 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences

it need to obtain an order to arrest the accused from the Court which had granted the bail.

32. The issue (i) is answered accordingly.

(emphasis supplied)

12. In **Rajendra Singh** (supra), it was held as under:-

“10. A perusal of bail order dated 13.10.2017 of respondent No.2, goes to show that the High Court released him on bail, after taking into consideration the charge-sheet and the evidence, available on record as also considering the fact that co-accused Smt. Nirmal Kaur @ Nirmala Devi has already been granted bail. It is true that thereafter the trial court, vide order dated 14.08.2018 has altered/added the charges but the trial court has just altered the charge of Section 306 on the basis of evidence/material already available on record and in the alternative to Section 306 IPC, charges of Section 302 further in alternative 304(B) have been added as alternative charges. The addition of charges for Sections 498(A), 201 IPC is also on the basis of the evidence / material already available on record. It is not that case where the trial court has found any additional evidence or after revelation and accrual of some new / subsequent developments of facts, the additional charges of Section 302 IPC with an alternative charge of Section 304(B) and 498(A), 201 IPC have been added. After passing the bail order dated 13.10.2017, nothing new facts/subsequent developments/ additional evidence have come on record and the previous charge has been altered only on the basis of facts and evidence already available on record. It is worthy to note that in the present case except the alteration of charges in the aforesaid manner no other grounds / reasons have been alleged by the petitioner for seeking cancellation of bail of the respondent No.2.

*** *** ***

13. By perusal of the judgment of Hon'ble the Supreme Court passed in case of Pradeep Ram (supra), on which learned counsel for the petitioner has placed reliance, it reveals that in that case First Information Report No.02/2016 was lodged for offences under Sections 414, 384, 386, 387 & 120-B IPC read with Sections 25(1-B)(a), 26, 35 of the Arms Act and Sections 17(1) and (2) of the Criminal Law Amendment Act. The accused was granted regular bail by the High Court and the charge-sheet was submitted for the aforesaid offences and the Chief Judicial Magistrate took cognizance for the aforesaid offences. Thereafter, on the prayer made by the Investigating Officer, the new offences under sections 16, 17, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 were added against the accused and after re-registering of the FIR No.RC-06/2018/NIA/DLI and further investigation was carried out. During the start of further investigation, the Investigating Agency sought production warrant of the accused as he was under custody in some other case and the Special Judge allowed the prayer of Investigating Agency. In the backdrop of such facts, the issue arose as to whether in a case where accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody? Hon'ble the Supreme Court, while answering the said question has held in para Nos.25 and 29 as under:-

"25. We may have again to look into provisions of sections 437(5) and 439(2) of Cr.P.C., 1973 Subsection (5) of section 437 of Cr.P.C., 1973 uses expression 'if it considers it necessary so to do, direct that such person be arrested and commit him to custody'. Similarly, sub-section (2) of section 439 of Cr.P.C., 1973 provides: 'may direct that any person

who has been released on bail under this Chapter be arrested and commit him to custody'. A plain reading of the aforesaid provisions indicates that provision does not mandatorily provide that the Court before directing arrest of such accused who has already been granted bail must necessarily cancel his earlier bail. A discretion has been given to the Court to pass such orders to direct for such person be arrested and commit him to the custody which direction may be with an order for cancellation of earlier bail or permission to arrest such accused due to addition of graver and non-cognizable offences. Two Judges Bench judgment in Mithabhai Pashabhai Patel (supra) uses the word 'ordinarily' in paragraph 18 of the judgment which cannot be read as that mandatorily bail earlier granted to the accused has to be cancelled before Investigating Officer to arrest him due to addition of graver and non-cognizable offences."

"29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:- (i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under section 437(5) or 439(2) of Cr.P.C., 1973 for arrest of the accused and his custody

(iii) The Court, in exercise of power under section 437(5) or 439(2) of Cr.P.C., 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail."

4. Thus, in the aforesaid case, after addition of the new offences under sections 16, 17, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 and on re-registration of FIR and starting of reinvestigation therein, the Investigating Agency asked for the permission from the Special Judge for taking the accused in judicial custody and the permission was granted. Whereas, the facts and circumstances of present case are different as in the present case after alteration of charges against respondent No.2 and co-accused, the State Investigating Agency has not asked for taking respondent No.2 again in custody for further investigation nor any subsequent / new facts have occurred nor any additional evidence have come on record and it is a case where merely on the basis of the evidence/material, already available on record, the trial court has just framed alternative and additional charges.

16. Further in the present case, the Investigating Agency / State has not moved any application for the cancellation of bail or has not invoked the provisions of section 437(5) and 439(2) of Cr.P.C., 1973 It is also worthy to take note that although the petitioner filed an application for cancellation of bail of both the accused persons namely Bhadur Singh @ Kuku and Smt. Nirmal Kaur @ Nirmala Devi before the Sessions Court but after rejection of his application, the petitioner has filed the present application for cancellation

of bail of only respondent No.2 Bhadur Singh @ Kuku and not for the another co-accused Smt. Nirmal Kaur @ Nirmala Devi. By perusal of order dated 13.10.2017, it is clear that while granting bail to respondent No.2, this Court placed reliance on the fact that co-accused has already been enlarged on bail vide order dated 01.06.2017. For these additional reasons also, the application of petitioner for cancellation of bail of respondent No.2 is not liable to be allowed.

(emphasis supplied)

13. In the instant case, when the Investigating Agency initially filed a challan, the petitioner was granted bail. When the charges came to be framed, it was at that stage that the offence qua the petitioner stood enhanced. The Investigating Agency did not seek custody of the petitioner probably on account of the fact that as the challan stood filed and no fresh evidence was available on record, his custodial interrogation was not needed. Be that as it may, the Court could have directed the petitioner to surrender which it chose not to do. Quite to the contrary, when the petitioner sought cancellation it dismissed the application which order is impugned in this petition. Further, no intervening factual circumstances were brought to the notice of the Trial Court or this Court for which the bail granted to the petitioner ought to be cancelled. In the case of **Pradeep Ram** (supra) the Investigating Agency had asked for permission for taking the accused in judicial custody and the permission was granted whereas in the present case, after the addition of charges, the State/Investigating Agency did not ask for taking respondent

CRM-M-16107-2023

-11-

No.2 again in custody for further investigation or any other purpose. That distinction has been drawn in the case of Rajendra Singh (supra) as well.

14. In view of the aforementioned discussion, I find no infirmity in the impugned order dated 23.12.2022 (Annexure P-9) and therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

04.03.2024

JITESH

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