



CRM-M-10709-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102

CRM-M-10709-2024

Date of decision: 29.08.2024

Rxx

...Petitioner

V/s

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Siddharth Sharma, Advocate with
Ms. Harpreet Kaur, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Haryana.
Mr. Himanshu Sharma, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) of Cr.P.C. of 1973, for setting-aside of anticipatory bail granted to respondent No.2 vide order dated 12.01.2024 (Annexure P-2) passed by Additional Sessions Judge, Ambala in FIR No.70 dated 28.11.2023 registered for offences punishable under Sections 313, 323, 328, 376(2)(n), 506 and 34 of IPC at Police Station Women Naraingarh, Ambala.
2. The relevant portion of the order passed by Additional Sessions Judge, Ambala, reads as under:

“6. With above observations and having relevant law so discussed above in mind, this court allow anticipatory bail as allegations of rape in these circumstances, could only be proved to be trust-worthy once convincing evidence is led, if any. Hence, application for anticipatory bail is allowed and the applicant-accused is ordered to be released on anticipatory bail in the event of his arrest, on his furnishing personal bond and surety bond to the satisfaction of arresting/Investigating Officer, subject to the following conditions as under:-



CRM-M-10709-2024

2

(a) that, the applicant-accused shall join the investigation as and when required by the investigating officer and shall attend the court in accordance with the conditions of the bond;

(b) that, the applicant-accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission of which he is suspected;

(c) that, the applicant-accused shall not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer or tamper with evidence; and

(d) that, the applicant-accused shall surrender/deposit his passport, if any, with the police/trial court and shall not leave India without prior permission of the trial court/ or the court of Magistrate before committal of the case to Court of Session, in case of a Session trial.

*A copy of this order be sent to the SHO concerned for compliance.
File be consigned/tagged after due compliance.”*

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). It was alleged that the petitioner has been sexually abused by the respondent No.2 on the pretext of marriage and hence was cheated by respondent No.2 which fact has completely been ignored by the Court below while granting the concession of anticipatory bail to the petitioner. Learned counsel has further argued that the offence of repeated rape, on the false pretext of marriage, is a serious offence which fact was completely ignored by the Court below while passing the impugned order. 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.



CRM-M-10709-2024

3

4. Learned counsel appearing for the State has submitted that the respondent No.2 had caused the complainant/victim to enter into physical relation(s) by extending false promise of marriage. It has been further submitted by the learned State counsel that during the course of investigation, it was found that the father of respondent No.2 has threatened the petitioner. However, on 05.04.2024, father of respondent No.2 had moved an application for anticipatory bail before the Sessions Judge, Ambala which was allowed vide order dated 08.04.2024.

5. Learned counsel appearing for respondent No.2 has argued that the petitioner, who is a married woman, formed consensual extramarital relationship with respondent No.2. Learned counsel submits that the conduct of the petitioner and the attending circumstances of the incident, speak volumes about the fact that the petitioner had willingly entered into physical relationship with respondent No.2. So far as the allegations regarding rape are concerned, learned counsel has submitted that the petitioner was major during her relationship with the respondent No.2 and could very well understand the consequences of her act.

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 for setting-aside of the anticipatory bail order granted to the private respondents vide order dated 12.01.2024 (Annexure P-2) passed by Additional Sessions Judge, Ambala. It is worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the private respondent(s) has misused the concession of anticipatory bail granted by the Additional Sessions Court by threatening/intimidating the witness(s) or by trying to influence the investigation/trial etc. The sole plank argument raised on behalf of the petitioner is that respondent No.2 has committed rape upon

her on the pretext of false promise of marriage and hence the Additional

**CRM-M-10709-2024****6**

Sessions Court ought not to have granted the anticipatory bail to the private respondent(s). The factum, as to whether the relationship was consensual or not, is essentially required to be gone into during the course of trial. The petitioner was major during her relationship with respondent No.2 and could very well understand the consequences of her act. This issue cannot be delved into at the stage of consideration of a plea for grant of anticipatory bail in a meticulous manner. 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 No.2 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. of 1973, seeking cancellation of anticipatory bail order dated 12.01.2024 (Annexure P-2) passed by learned Additional Sessions Judge, Ambala is dismissed.



CRM-M-10709-2024

7

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

August 29, 2024
Ajay

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