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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 02.08.2024

Rosy

...Petitioner

V/s

Barinder Rana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Deepak Arora, Advocate for the petitioner.
Mr. Arav Gupta, Advocate for respondent No.1.
Mr. Randhir Singh, Advocate for
Ms. Simsi Dhir Malhotra, Addl. P.P. U.T. Chandigarh
for respondent Nos.2 and 3.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) of Cr.P.C. of 1973, for cancellation of anticipatory bail granted to respondent No.1 vide order dated 26.09.2018 passed by this Court in FIR No.29 dated 19.04.2017 registered for offences punishable under Sections 406 and 498-A of IPC at Police Station Women Cell, Sector 17, Chandigarh.
2. The petitioner is the wife, whose marriage was solemnized with Barinder Rana - respondent No.1 (herein) on 19.11.2015 as per Hindu rites and customs. As alleged, sufficient dowry was also given at the time of marriage. The prime allegations in the FIR relate to demand of dowry, harassment and cruelty being meted out to the petitioner-wife by accused-respondent No.1 and hence an FIR *ibid* was got registered by her.



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3. Vide order dated 01.09.2017 passed by this Court, the respondent No.1 – Barinder Rana (husband) was granted the concession of interim anticipatory bail and the same was confirmed vide impugned order dated 26.09.2018; relevant whereof reads as under:

“By order dated 27.04.2018, the petitioner herein had been directed to join investigation and return the dowry articles as well as to make an FD for a sum of Rs1 lac in the name of the complainant and deposit the same before the trial Court. However, in terms of the said order, the petitioner had paid to the complainant a sum of Rs.50,000/- on the earlier date i.e. 06.08.2018 and Rs.50,000/- today in the Court.

Learned counsel for the petitioner submits that the petitioner has joined the investigation.

Learned counsel for the respondent-State, on instructions from the Investigating officer, confirms the factum of joining investigation by the petitioner.

Since the petitioner has joined the investigation, the petition is allowed and the interim order dated 01.09.2017 is hereby made absolute subject to the condition that the petitioner will tamper with evidence or hamper the investigation; will not leave India without permission of the Court and will comply with the conditions contained in Section 438(2) Cr.P.C.”

4. Learned counsel for the petitioner has argued that pursuant to the anticipatory bail having been granted to the respondent No.1 (herein), a Kalandra under Section 107/151 of Cr.P.C. was filed against the respondent no.1 on account of his assaulting the petitioner (herein)-victim. Learned counsel for the petitioner (herein)-victim has further argued that the respondent No.1 (herein) is not paying the maintenance amount as awarded by the competent Courts and, thus, the anticipatory bail earlier granted to the respondent No.1 ought to be cancelled.

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5. Learned counsel appearing for respondent No.1 has argued that the respondent No.1 has been falsely implicated in the present case. It has been further argued that the non-payment of maintenance amount cannot be a ground to cancel the anticipatory bail earlier granted to respondent No.1 as the petitioner is already pursuing the remedy available to her under the law. It has been further argued that pursuant to Kalandra having been filed by the Police against respondent No.1 on account of assaulting the petitioner (herein)-victim, he was arrested and later released on bail and hence the requisite action has already been taken against the respondent No.1 and the same cannot be held a ground to cancel the bail. Furthermore, in compliance of the order passed by this Court, the respondent No.1 has already returned the dowry articles and also paid a sum of Rs.1.00 lac to the petitioner.

6. Learned counsel appearing for the State has submitted that the challan (report under Section 173 of Cr.P.C.) has been presented by the Police in the concerned Court on 31.10.2018 and charges have been framed on 19.12.2018. It has been further submitted by the learned State counsel that the petitioner had filed a complaint on 26.06.2022 against respondent No.1 at Industrial Area Police Station, Phase-1 alleging that she was assaulted by respondent No.1 for not giving divorce regarding which DDR No.48 dated 26.06.2022 was registered against respondent No.1. It has been further submitted by the learned State counsel that the police has also registered another DDR No.2 dated 27.06.2022 under Section 107/151 of Cr.P.C. as respondent No.1 has assaulted the petitioner in the Police Station in front of the police officials. However, learned counsel has further



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submitted that during the pendency of the Kalandra, the Police has not received any complaint, made by the petitioner, about the respondent No.1 having extended any threat etc.

7. I have heard learned counsel for the parties and have gone through the available records of the case.

8. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dinesh Madan vs. State of Haryana and another*** in ***CRM-M-9029-2023***, decided on 17.05.2024; relevant whereof reads as under:-

“12. The concept of “cancellation of bail” is statutorily manifested in terms of Section 439 (2) of 1973 Code. This concept was embodied in the earlier statute i.e. 1898 Code as well albeit with difference(s). The ratio decidendi of judgment in case of ***Gurcharan Singh*** (supra) makes it clear that, in the 1898 Code, the bail granted by the High Court could be cancelled only by it & bail granted by a Sessions Court could be cancelled by such Sessions Court only. However, Section 439(2) of 1973 Code has vested power to cancel bail which has been granted “under this chapter” upon both the High Court as also the Sessions Court. The words “under this Chapter” relates to Chapter XXXIII of Cr.P.C. of 1973 & hence the unequivocal result thereof is that the High Court as also the Sessions Court have requisite powers to cancel “any bail” granted by “any Court” by way of powers vested under this Chapter. In other words; the High Court is well empowered to cancel a bail granted by itself or by a Sessions Court or by the Court of a Magistrate while the Sessions Court is empowered to cancel a bail granted by High Court or by itself or by a Magistrate. However, a Sessions Court can cancel bail granted by High Court only on account of supervening/new circumstances or on account of misconduct of such accused or on account of violation of any condition(s) imposed by the High Court while granting bail. The Magistrate can, of course, cancel bail granted by him but he cannot cancel a bail granted by High Court or Sessions Court except when such accused has violated/contravened any condition(s) imposed upon by such High Court or Sessions Court while granting bail to such accused. This position, is indubitable, as a Magistrate has been vested with powers for cancellation of bail only in terms of Section 437(5) of 1973 Code whereas the



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High Court and Sessions Court have been vested with powers under Section 439 of Cr.P.C., of 1973 to cancel “any bail granted under Chapter XXXIII of 1973 Code”.

12.1 Section 439(2) of Cr.P.C., 1973 deals with “any person who has been released on bail under this Chapter” i.e. Chapter XXXIII of 1973 Code, which engirths in itself, Section 438 of the Code (provision envisaging anticipatory bail/pre-arrest bail) as well. Hence such power operates in realm of all kinds of bails, whether regular bail or anticipatory bail. Ergo, there is no conceptual difference between cancellation of regular bail and cancellation of anticipatory bail except that a Magistrate will not have statutory power to cancel an anticipatory bail granted by High Court or Sessions Court.

12.2. At this juncture, it would be profitable to consider an issue often springing up before Courts. Petition(s) labelled as plea(s) for “cancellation of bail” are filed in Court(s), more often than not, whether such applicant is actually seeking “cancellation of bail” on account of the accused misusing the grant of bail or on account of any supervening developments disentitling such accused to remain on bail OR where the plea raised is that, the bail ought not to have been granted at all vide the impugned order, in the factual conspectus of such case. The 1973 Code neither stipulates the words “cancellation of bail” nor “setting-aside of a bail order” but only stipulates the words “any person who has been released on bail be arrested and committed to custody”. There is no gainsaying that there is a foundational difference between “cancellation of bail” and “setting-aside of a bail order”; a difference which, by way of simile, can be said to be as stark as between chalk and cheese. The Hon’ble Supreme Court in cases of **Ranjit Singh** (supra) and **Neeru Yadav** (supra) has incontestably articulated that “cancellation of bail” is sought for on account of supervening circumstances/subsequent developments/misconduct of accused etc. whereas “setting-aside of a bail order” is sought for by laying challenge to the said bail order on ground of it being perverse or based on irrelevant material(s). The parameters for consideration of the two are, accordingly, different and contrastive.

13. The next aspect that craves attention is as to what are the factors relevant for considering of a plea for “cancellation of bail” or “setting-aside of a bail order.” At the very outset; it deserves to be noted that, it is too far well settled a principle to be ratiocinated upon, that consideration(s) for



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grant of bail vis.-a-vis. cancellation/setting-aside thereof are entirely different.

14. *In a plea seeking “cancellation of bail”; such applicant ought to show, primarily, subsequent supervening circumstances such as accused having endeavored to influence/intimidate witness(s) or accused having violated bail condition(s) or accused having committed another offence(s) or accused having secured bail by misrepresenting/concealing material fact(s) or bail having been granted in ignorance/violation of statutory provisions and factors of akin nature. The Hon’ble Supreme Court in the case of **Himanshu Sharma** (supra) has delineated the nature and kind of such factors as have been stated by this Court hereinabove.*

14.1. *Further, the Hon’ble Supreme Court in the case of **Sanjay Gandhi** (supra) has enounced regarding the nature and degree of burden upon the applicant (seeking cancellation of bail). The plea of such an applicant has to be tested on the anvil of preponderance of probabilities & such an applicant is not required to prove, beyond reasonable doubt, the facts pleaded by him in support of such a plea.*

15. *In a plea seeking “setting-aside of a bail order”; the factors required to be considered are as to whether bail has been granted on relevant consideration(s); grounds required to be evaluated for grant of bail have been duly factored into the order granting bail and other factors of akin nature. The Hon’ble Supreme Court in the case of **Jagjit Singh** (supra) has held that the High Court or Sessions Court can set-aside an order granting bail passed by an inferior Court if such order is based on irrelevant considerations, order granting bail has resulted in miscarriage of justice etc. It goes without saying that the High Court or Sessions Court; while dealing a plea for setting-aside a bail order; sits in a jurisdiction, which is akin to appellate jurisdiction & hence it can look into the veracity and propriety of the order (granting bail) from all the perspectives. However, a Court while dealing with such a plea, ought not to substitute its own opinion with the one expressed in the impugned order.*

16. *It would not be pragmatic to even attempt to lay-down exhaustive parameters in this regard as every case, especially a criminal case, is sui generis. Such a quixotic attempt ought to be avoided as no inexorable formulae can be laid down in this regard.*

17. *As an epilogue to above discussion, the following principles emerge:*



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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*



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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.

III. Plea seeking setting-aside of regular bail order.

(i) A plea seeking “setting-aside of a bail order” has to be essentially filed in the Court, superior to the one which has granted bail.

(ii) In case setting-aside of a bail order granted by the Magistrate’s Court is sought for, such plea ought to be ordinarily filed before the Sessions Court. 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.

(iii) For setting-aside a bail order passed by a Sessions Court; such plea, but of-course, will have to be filed before the High Court.

IV. Plea seeking cancellation of anticipatory bail/pre-arrest order

(i) A High Court has power to cancel an anticipatory bail granted by it or by a Sessions Court.



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(ii) *A Sessions Court has power to cancel an anticipatory bail granted by High Court or earlier granted by it. However, the Sessions Court can cancel anticipatory bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting such 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 anticipatory bail granted to an accused by High Court only on account of such likes supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby such bail was granted to such accused.)*

(iii) *In case cancellation of an anticipatory bail granted by Sessions Court is sought for; such plea ought to be filed ordinarily before 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. of 1973, the filing of such a plea straight away before the High Court is not barred. At the same time, it would be expedient that such a plea (straight away filed before High Court) must show cogent reasons for not approaching the Sessions Court in first instance.*

(iv) *The factors for consideration in a plea for cancellation of an anticipatory 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 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.*

(v) *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.*

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

V. *Plea seeking setting aside of an anticipatory bail/pre-arrest bail order*



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(i) *A plea seeking setting aside of an anticipatory bail/pre-arrest bail order by a Sessions Court has to be essentially filed before High Court.*

(ii) *The factor, required to be considered in a plea seeking setting aside of an anticipatory/pre-arrest bail order; is as to whether the impugned order (granting anticipatory bail/pre-arrest bail) has objectively dealt with nature and gravity of allegations against accused, role of accused in the crime(s) alleged, need for custodial interrogation, likelihood of accused influencing the investigation/witnesses, likelihood of the accused absconding from process of justice etc.*

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.*

9. The FIR in question was lodged on 19.04.2017 whereinafter investigation was completed; challan was presented on 31.10.2018 and charges were framed on 19.12.2018. As per the impugned order, the respondent No.1 was granted the concession of interim anticipatory bail on 08.09.2017 and the same was confirmed vide impugned order dated 26.09.2018. It is worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the respondent No.1 has misused the concession of anticipatory bail granted by this Court by threatening/intimidating the witness(s) or by trying to influence the investigation/trial etc. The factum of Kalandra having been filed against the respondent No.1 (herein) by the Police on 27.06.2022 cannot by itself, be sufficient to cancel the anticipatory bail earlier granted to respondent No.1 by this Court. The Kalandra has been filed on account of an incident arisen out of a dispute having been arising between the petitioner (herein)-victim and respondent No.1 (herein) – husband on account of a settlement talk

having been undertaken and the same having been failed. Still further, there

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is no allegation much less worthwhile allegation against the respondent No.1 (herein) for having caused any trouble to the petitioner (herein)-victim since June, 2022. The arguments raised on behalf of the petitioner-wife that respondent No.1-husband has failed to comply with the order passed by the Court below, whereby he was directed to pay interim maintenance as also alleged that respondent No.1 has committed various offences subsequent to being granted the concession of anticipatory bail and hence the bail granted by this Court deserves to be cancelled. However, the record indicates that the petitioner is already pursuing the remedies available to her under the law. As the petitioner is already pursuing the remedies available to her, this Court should refrain from passing any further orders as this issue cannot be delved into at this stage in a meticulous manner. The order passed by this 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 this Court, while passing the impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition in hand deserves rejection.

10. 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.1 vide the impugned order. Therefore, the petition in hand deserves rejection.



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Decision

11. 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 26.09.2018 passed by this Court is dismissed.

12. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

August 02, 2024
Ajay

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