



CRM-M-18882-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

134/205

CRM-M-18882-2024 (O&M)

Date of decision: 30.05.2024

Neha

....Applicant/Petitioner

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Raghav Sharma, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

Mr. Rishi Pal Singh, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)**CRM-24491-2024**

Present application has been filed for placing on record the reply on behalf of respondent No.2.

Application is allowed as prayed for. Reply is taken on record, subject to all just exceptions. Registry to tag the same at the appropriate place.

CRM-M-18882-2024

1. Present petition has been filed under Section 439(2) of Cr.P.C. of 1973, for cancellation/setting-aside of anticipatory bail granted to respondent No.2 vide order dated 03.04.2024 (Annexure P-3) passed by Additional Sessions Judge (Fast Track Special Court to try the offences of Rape and under POCSO Act), Kurukshetra in FIR No.82 dated 15.02.2024 registered for offences punishable under Sections 354-D, 376, 384 and 511 of IPC at Police Station Sadar Thanesar, Kurukshetra.



2. The petitioner is a complainant in the case in question which has been registered, primarily, on the allegations of rape and criminal intimidation against the respondent No.2. Vide impugned order dated 03.04.2024, the anticipatory bail was granted to respondent No.2; relevant whereof reads as under:

“11. No doubt, that not to grant pre-arrest bail in cases of sexual assault is a deterrent factor but each case has its own facts. It is a delicate balance whereby the liberty of citizens and the operation of criminal justice have both to be equally safeguarded. The order granting or refusing bail must reflect perfect balance between the conflicting interests namely, sanctity of individual liberty and the interest of the society.

12. The question whether the incidents in question, as disclosed in the complaint is concocted story or a case of attempt of rape upon the victim-complainant would be answered only at the appropriate stage of the proceedings of the case that too in the light of surrounding circumstances, in the peculiar facts of the case.

13. However, at this stage keeping in view of offence against the applicant-petitioner and also the fact that no recovery is to be effected from him. He is ready to join the investigation as and when required and to co-operate with the police. He is a permanent resident of village Bahri, Police Station Assandh, District Karnal and is Government employee.

14. Having regard to the above discussion without commenting on the merits of case, this Court is inclined to grant his request and consequently, his request for anticipatory bail is allowed.”

3. Learned counsel for the petitioner has argued that respondent No.2 ought not to have been granted the concession of anticipatory bail as the nature as also the severity of allegations raised against the respondent No.2 are serious in nature. Learned counsel has further argued that in view of the nature of allegations made against respondent No.2, the anticipatory bail ought not to have been granted to respondent No.2. Thus, cancellation of the anticipatory bail granted to respondent No.2 has been sought for.



4. Learned counsel appearing for the State has submitted that the matter is still under investigation. It has been further submitted by the learned State counsel that the police has not received any complaint, made by the petitioner, about the respondent No.2 having extended any threat etc. to the petitioner or having tried to influence witness(s), after being enlarged on anticipatory bail.

5. Learned counsel appearing for respondent No.2 has argued that respondent No.2 has been falsely implicated in the instant case. A false and fabricated story has been concocted by the petitioner just to harass the respondent No.2. Furthermore, after being extended the benefit of anticipatory bail, respondent No.2 has not misused the said concession. Moreover, it is trite law that cancellation of bail should be exercised with extreme care and circumspection and the same cannot be cancelled unless any cogent reason for cancellation thereof is made out.

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

7. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dinesh Madan vs. State of Haryana and another*** passed 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 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 disintitling 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 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:*

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.

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.*

(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



(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.*

8. The FIR in question was lodged on 15.02.2024 whereinafter investigation is underway. As per the impugned order, the respondent No.2 was granted the concession of anticipatory bail on 03.04.2024. A perusal of the impugned order dated 03.04.2024 clearly shows that all the relevant factors i.e. nature and severity of allegations, likelihood of absconding from the process of justice as also likelihood of respondent No.2 being able to influence the witness(s) has been duly looked into by the Court below. Pursuant to the registration of the FIR *ibid*, investigation is underway. Though an apprehension has been raised on behalf of the petitioner (herein) that respondent No.2 may influence the witness(s) or may harass the petitioner (herein) while being on bail; no material worth consideration has been brought forward in this regard. It is, thus, indubitable that said apprehension expressed on behalf of the petitioner is nothing but a bald assertion. The issue whether there was consensual relationship between the petitioner (herein) and respondent No.2 (herein)-accused, cannot, of-course, be looked into at this stage & shall be essentially gone into during the course of trial. There is no gainsaying that such issue, cannot possibly be delved



of anticipatory bail. The order passed by 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 in hand, does not find any good ground to hold that the Sessions Court, while passing the impugned order has overstepped its jurisdiction or has not exercised the same in right perspective after considering relevant factors. Therefore, the petition in hand deserves dismissal.

Decision

9. As a sequel to the above discussion, the present petition filed under Section 439(2) of Cr.P.C. of 1973, seeking cancellation/setting-aside of anticipatory bail order dated 03.04.2024 (Annexure P-3) passed by Additional Sessions Judge (Fast Track Special Court to try the offences of Rape and under POCSO Act), Kurukshetra, is dismissed.

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

11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 30, 2024

Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No