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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 27.05.2024

Anshu

...Petitioner

V/s

State of Haryana and another

...Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. DPS Bajwa, Advocate for the petitioner.
Ms. Ankita Ahuja, AAG Haryana.
Mr. Varshit Garg, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) read with Section 482 of Cr.P.C. of 1973, for cancellation of regular bail granted to respondent No.2 vide order dated 14.02.2024 (Annexure P-2) passed by Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Yamuna Nagar at Jagadhri in FIR No.29 dated 31.01.2024 registered for offences punishable under Sections 376(2)(n), 354-C and 506 of IPC at Police Station Farakpur, District Yamuna Nagar, Haryana.
2. The relevant portion of the order passed by Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Yamuna Nagar at Jagadhri, reads as under:

“The accused has been in custody since 02.02.2024. Prosecutrix herself being a married woman on the alleged dates of occurrence of incident of making physical relations could not be said to have acted under the alleged false promise given by the accused or under the misconception of fact while giving the consent to have sexual relationship with the accused. Even if her deposition before the police and her statement under Section 164 Cr.P.C. are taken on their face value, she being a married woman



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cannot be said to be influence by a false promise of marriage. Therefore, as discussed above the consent of the victim and the intention of the accused has to be seen during the course of trial. The trial of the case will take some more time and no useful purpose would be served by keeping the accused in custody. Accordingly, keeping in view the totality of circumstances and period of incarceration already spent by the accused, the applicant/accused is admitted to bail on his furnishing bail bonds in the sum of 1,00,000/- with one surety in the like amount to the satisfaction of concerned Area/ Duty Magistrate. Copy of this order be sent to the concerned Area/Duty Magistrate for compliance.”

3. Learned counsel for the petitioner has argued that respondent No.2 has misused the concession of regular bail granted to him vide the impugned order by having threats extended to the petitioner-complainant. In this regard, learned counsel for the petitioner has relied upon a representation dated 13.03.2024 submitted before the Superintendent of Police, District Yamuna Nagar (copy whereof has been appended as Annexure P-3 with the present petition); relevant whereof reads as under:-

“2. That I had got lodged FIR No.29 dated 31.01.2024 u/s 376(2)(n), 506 I.P.C. Police Station Farakpur against Manish Kumar for committing rape by way of alluring for marriage, because accused Manish committing desired exploitation by alluring me for marriage. The accused Manish, under conspiracy and in connivance with his friend namely Manoj Rana, sarpanch, Bhambholi, got prepared one affidavit and obtained my signatures on the pretext of marriage and misled me to the effect that until and unless Manish is not released from jail, till then, it is not possible for solemnization of my marriage with Manish, therefore, firstly, Manish had to be brought out and then they would perform my marriage with Manish and its whole responsibility was taken by Manoj Rana, Sarpanch, Bhambholi and Manoj Rana, Sarpanch also assured that if Manish would refuse for marriage, then he himself would get record my deposition in the court against him, but presently, I had to put signatures on his asking and by believing him, but when after trusting Manoj Raja, Sarpanch, got prepared affidavit and put signatures, then I was not allowed to read over above affidavit and again assured that he was responsible in all respects. Manish would come out only for marriage and after marriage, we would



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get stay on further proceedings, whereas I have come to know that Manoj Rana and Manish and their accomplice Viram Singh Phone No.9466561492, in connivance and under conspiracy, obtained my signatures for not taking action in the above case and also did not allow me to read the above document.

Sir, now when I talked with Manoj Rana and Viram Singh on this issue, then they threatened to kill me and told that they would kill me and then how would I depose in the court and for the last 10 days, Manish, Manoj Rana and Viram Singh are gathering my personal information, as they have threatened to kill me.

Therefore, I, the victim, is apprehending from the accused to the effect that in order to save accused Manish in above case, the accused, upon getting opportunity, may not commit some untoward incident with me and if in future, any untoward incident happens with me, then in that circumstance, Manish, Manoj Rana Sarpanch - Phone No.9691016700 and Viram Singh - Phone No.9466561492 shall be responsible in every manner. I want to get punished the accused after taking legal action in my case. It shall be your kindness.”

Thus, it has been argued that the concession of regular bail earlier extended to respondent No.2 deserves to be cancelled.

4. Reply dated 10.05.2024 has been filed by the State of Haryana; relevant whereof reads as under:-

“9.That it is also pertinent to mention here that the petitioner also moved a complaint no. 2144 dated 13-03-2024 to the Superintendent of Police, Yamuna Nagar alleging the obtaining of her signatures on the affidavit by misleading her and threatening to kill her. In this regard, the statements of Manoj Kumar s/o Sh. Ram Pal resident of Village Bhambholi, and the petitioner were recorded and upon inquiry the allegations leveled in the complaint were found to be baseless and it was revealed that the petitioner has signed the said documents voluntarily and as per her own free will.”

Learned State counsel has raised submissions in tandem with the above-said reply.

5. Learned counsel appearing for respondent No.2 has filed reply



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“6. That further, the best case of the petitioner is that one Manoj Rana and one Vikram Singh who are alleged to be the residents of the village of the respondent no. 2 took the responsibility of getting petitioner and respondent no. 2 married are now threatening her of dire consequences. Further, she alleges that they took signatures of the petitioner on one affidavit which she did not read. It is submitted that the above mentioned persons have no concern with respondent no. 2 and no such affidavit of the petitioner exist which is being alleged got signed by her by the above said persons.

7. That further, the second allegation that the respondent no.2, Manoj Rana and Vikram Singh are collecting her personal information is also devoid of any merit and lacks any substance since, there are no specific allegation as to what information is being gathered or in what manner the above said persons are intending to use it.”

Learned counsel for respondent No.2 has raised submissions in tandem with the above-said reply filed on behalf of respondent No.2.

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:-

“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. Indubitably, the present petition seeks to raise grounds for cancellation of regular bail earlier granted to respondent No.2 vide order dated 14.02.2024 passed by the Sessions Court. The prime contention, raised on behalf of the petitioner, is that the respondent No.2 has extended threats to the petitioner-complainant in connivance with one Manoj Rana and Vikram Singh for not deposing in Court against respondent No.2 and to withdraw the said case. The stand put forward by State of Haryana clearly reflects that an inquiry was conducted and the said allegations made by the petitioner-complainant were found to be baseless. The prayer is for cancellation of regular bail granted to respondent No.2 vide the impugned order but neither it has been averred in the petition nor raised in the submissions made before this Court that the impugned order has not been passed by considering all the relevant factors and therefore, the same requires to be set-aside. Accordingly, it is unequivocal that the unsubstantiated allegations of threats made cancellation of regular bail cannot be said to be a good ground for cancelling the regular bail earlier

granted to respondent No.2 by the Sessions Court.



Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to cancel the regular bail earlier granted to respondent No.2 vide the impugned order. Therefore, the petition in hand deserves rejection.

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 of regular bail order dated 14.02.2024 (Annexure P-2) passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Yamuna Nagar at Jagadhri, 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.

(SUMEET GOEL)
JUDGE

May 27, 2024
Ajay

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