



CRM-M-18590-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-18590-2024

Date of decision: 08.08.2024

Aarti Sharma

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gurcharan Dass, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Tarunveer Vashist, Advocate with
Mr. Shoryaveer Vashisht, 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 cancellation of anticipatory bail granted to respondent No.2 vide order dated 06.01.2024 passed by learned Additional Sessions Judge, SAS Nagar, Mohali in FIR No.29 dated 04.10.2023 registered for offences punishable under Sections 406 & 498-A of IPC at Police Station NRI, SAS Nagar, Mohali as also to stay the aforesaid order.
2. The petitioner is the victim, whose marriage was solemnized with Rohit Kaushik son of Mohinder Pal Kaushik - respondent No.2 (herein) on 18.02.2017 as per Sikh rites and customs. As alleged, at the time of marriage, parents of the petitioner spent more than Rs.27,00,000/- on the marriage and sufficient dowry was also given at the time of marriage including Gold, silver ornaments etc. The prime allegations in the FIR relate to demand of dowry, harassment and cruelty being meted out to the petitioner by accused-respondent No.2 and other family members and hence



3. Vide order dated 07.12.2023 passed by learned Additional Sessions Judge, SAS Nagar, the respondent No.2-Mohinder Pal Kaushik (father-in-law) was granted interim anticipatory bail and the same was confirmed vide impugned order dated 06.01.2024; relevant whereof reads as under:

“6. Significantly, the petitioner was granted interim bail on 07.12.2023 by this court. The petitioner has joined the investigation and handed over gold ring, which was gifted to him at the time of marriage of his son. Admittedly, petitioner is a father-in-law and vague and general allegations regarding demand of dowry and cruelty have been levelled by the complainant. The other gold ornaments/istridhan is not in the possession of the petitioner and therefore, he cannot be coerced to get the same recovered. Needless to state that the present dispute has been predominantly arisen out of the matrimonial discord between the son of the petitioner and complainant, who both are presently living in Australia. Added thereto, marriage of the complainant and son of the petitioner has already been dissolved by way of decree of divorce by Federal Circuit and Family Court of Australia by order dated 09.11.2022 which has not been set aside by any court of competent jurisdiction till date. Even complainant had filed a complaint before Victoria Police Australia, which was thoroughly investigated by the police and it was found that there was insufficient evidence to proceed with the matter at court. The present FIR has been got lodged by the complainant being unsuccessful in the aforesaid proceedings initiated by her in Australia.”

4. The afore-said order dated 06.01.2024 has been challenged by the petitioner (herein)-complainant.

5. Learned counsel for the petitioner has argued that respondent No.2 ought not to have been granted the concession of anticipatory bail by the Court below since there were serious allegations against the said respondent. It has been further argued that recovery of the dowry articles/Istridhan was not made and hence the Court below ought to have

dismissed the anticipatory bail petition filed by the respondent No.2. It has



been further argued that the petitioner had spent huge amount of money on the marriage in question and the FIR reflects high-handedness on part of the respondent No.2. Thus, cancellation of the anticipatory bail granted to the respondent No.2 is sought for.

6. Learned counsel appearing for the State has submitted that the challan (report under Section 173 of Cr.P.C.) has not been filed by the Police. Learned State counsel has further submitted that son of the respondent No.2 is currently residing in Australia. 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 witnesses(s), after being enlarged on anticipatory bail.

7. Learned counsel appearing for respondent No.2 has argued that the respondent No.2 has been falsely implicated in the present case. It has been further argued that the allegations pertaining to demand of dowry are false and concocted. Moreover, the present petition is a counter-blast to the divorce proceedings filed by the son of the petitioner (husband) before the Court in Australia whereby vide order dated 09.11.2022 passed by learned Federal Circuit and Family Court of Australia the marriage between the petitioner and son of respondent No.2 was terminated. Furthermore, after solemnization of the marriage, the petitioner has only stayed at her matrimonial home for a very short period and thereafter went back to Australia. While going to Australia, she took away all her ornaments and jewellery etc. It has been further argued that no dowry articles were given in the marriage as alleged. However, only customary gifts were exchanged



respondent No.2 and his family. Moreover, respondent No.2 is an old man aged about 62 years.

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

9. 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 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 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.

10. The FIR in question was lodged on 04.10.2023 whereinafter investigation was carried out. As per the impugned order, the respondent No.2 was granted the concession of interim anticipatory bail on 07.12.2023

and the same was confirmed vide impugned order dated 06.01.2024. It is



worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the respondent No.2 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 the complete recovery of dowry articles/Istridhan has not been made and hence the Additional Sessions Court ought not to have granted the anticipatory bail to the respondent No.2. It is trite law that non-recovery of dowry articles/Istridhan cannot, by itself, be a ground for declining a plea for grant of anticipatory bail to respondent No.2. The factum, as to what were the dowry articles/Istridhan in question and whether complete recovery thereof has been made or not, is essentially required to be gone into during the course of trial. 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 in hand deserves rejection.

11. 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

12. 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 06.01.2024 passed by learned Additional Sessions Judge, SAS Nagar, Punjab is dismissed.

13. 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 08, 2024
Ajay

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