



CRM-M-20041-2022 with connected case

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201

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-20041-2022
Date of Decision: 11.07.2024

Anil Kumar Attri Petitioner
Versus

State of Haryana and another Respondents

CRM-M-20209-2022

Anil Kumar Attri Petitioner
Versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.S. Bedi, Advocate with
Mr. Pawandeep Singh, Advocate,
for the petitioner (in both cases).

Ms. Rajni Gupta, Addl. AG, Haryana.

Mr. Rohan Mittal, Advocate for
Mr. Vikrant Pachnanda, Advocate,
for respondent No.2 in CRM-M-20041-2022.

Mr. Saurabh Dalal, Advocate,
for respondent No.2 in CRM-M-20209-2022.

JASGURPREET SINGH PURI, J. (ORAL)

1. Both the petitions have been filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure and are being taken up together for final disposal with the consent of the learned counsels for the parties, since the prayer made in both petitions is for challenge to the anticipatory bail which has been granted to the private respondents and also for setting aside the order passed by the learned Additional Session Judge by



which the application for cancellation of bail has been dismissed.

2. Both the cases pertain to the same FIR bearing No.201, dated 16.05.2016 under Section 406, 420 IPC and Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 registered at Police Station Rajendra Park, Gurugram, Haryana

3. The present is a case where an FIR was lodged against a Company i.e. M/s A.N. Buildwell Pvt. Ltd. of which respondent No.2 in both the petitions are stated to be the Directors against whom cancellation of bail has been sought. There is an allegation that the Company has violated condition No.6 of the terms and conditions and various allegations were levelled against the Company that the Company has committed fraud on the allottees and other persons and the allegation is also with regard to embezzlement of money done by them. Respondent No.2-Surender Kumar Hooda (in CRM-M-20041-2022) filed an application for grant of anticipatory bail before the Court of learned Additional Session Judge, Gurugram which was allowed vide Annexure P-3 on 27.12.2019. The learned Additional Session Judge in the aforesaid order while granting anticipatory bail to respondent No.2-Surender Kumar Hooda (who is of the age of 78 years) ordered that no recovery is to be effected from him and since the investigation of the case has been completed and the offences are punishable upto 7 years of imprisonment, he was entitled for grant of anticipatory bail under Section 438 of the Cr.P.C. and it was so directed that the application for grant of anticipatory bail is allowed subject to the condition that the applicant/respondent No.2 shall appear before the trial Court within a period of one month of the order and apply for regular bail



and he shall be admitted to regular bail by the trial Court on his furnishing bail bonds and surety bonds to the tune of Rs.50,000/- with one surety in the like amount, to the satisfaction of the trial Court and in case, he does not appear then the order shall stand vacated. The relevant portion of the aforesaid bail in the case of respondent No.2-Surender Kumar Hooda is reproduced as under:-

“ 6. An application for anticipatory bail is maintainable whenever a person apprehends arrest and confinement in custody. The applicant is already on police bail and investigation of the case has been completed. The final report has been submitted before The Learned Ilaqa Magistrate. The applicant is 78 years old and no recovery is to be effected from him. Since the investigation has completed and the offences are punishable upto 7 years of punishment, the applicant is entitled to bail under section 438 of The Code of Criminal Procedure, 1973.

7. For the reasons recorded above, the application for grant of anticipatory bail is allowed to the effect that the applicant shall appear before The Learned Trial Court within one month of this order i.e. by 25.01.2020 and apply for regular bail. He shall be admitted to regular bail by the The Learned Trial Court on his furnishing bail bonds and surety bonds to the tune of Rs.50,000/- with one surety in the like amount, to the satisfaction of The Learned Trial Court. If the applicant fails to appear on or before 25.01.2020, this order shall stand vacated. A copy of this order be sent to The Learned Trial court. File be consigned to record-room after due compliance”

4. Thereafter, the present petitioner, who is the complainant moved an application for cancellation of the anticipatory bail after about two



years which was also decided and dismissed by the learned Additional Session Judge vide Annexure P-5 in the case of respondent No.2-Surender Kumar Hooda.

5. So far as the second petition in which respondent No.2 is Sunil Gandhi is concerned, he also filed an application for grant of anticipatory bail before the learned Sessions Court and he was also granted anticipatory bail vide Annexure P-3 and in his case, it was so directed that the bail is allowed subject to the condition that the applicant shall appear before the trial Court within 15 days from the date of the order and shall apply for regular bail and in case he does not appear then the order shall stand vacated. This order of bail was passed on 16.03.2020. The relevant portion of the same is reproduced as under:-

“7. At this stage, it would not be out of place to maintain that allegations levelled against the accused in case FIR No. 331 dated 22.06.2016 under Section 420/120-B IPC wherein accused has been admitted to interim anticipatory bail by Hon'ble High Court are much more serious than the allegations levelled in the present case because in this case, the only allegation against the accused is that he had violated the condition no. 6 of the licence as builder had collected the advance amount for booking of the project and so far as the allegations of financial irregularities are concerned, those allegations are subject to investigation in another FIR as well because multiple FIRs have been got registered against the accused and as such with regard to financial irregularities, the accused cannot be vexed twice whereas, with regard to remaining offences, his custodial investigation is not required as challan has



already been filed by the police. As such the accused is admitted to anticipatory bail.

8. For the reasons recorded above, the application for grant of anticipatory bail is allowed to the effect that applicant shall appear before Learned Trial Court within 15 days from the date of this order and shall apply for regular bail. If the applicant fails to appear before the Trial Court within 15 days, this order shall stand vacated. A copy of this order be sent to the learned Trial Court.”

6. Thereafter, the present petitioner moved an application for cancellation of bail under Section 439(2) of the Cr.P.C. which was also dismissed by the learned Additional Sessions Judge, Gurugram vide Annexure P-5. It is an admitted position that in pursuance of the orders passed by the learned Additional Session Judge for grant of anticipatory bail, a condition was imposed to appear before the learned trial Court for filing a regular bail, the same was complied with by both the respondents i.e. Surender Kumar Hooda and Sunil Gandhi and they were released on regular bail.

7. Learned counsel appearing on behalf of the petitioner in both the cases submitted that the ground taken for filing both the petitions for cancellation of bail is that when both the private respondents had filed an application for grant of anticipatory bail before the learned Sessions Court then they actively concealed the pendency of number of FIRs and cases against them regarding which the details were given in application filed for cancellation of bail before the learned Sessions Court and since it was an active concealment of pendency of the FIRs and rather it was so stated by



both the respondents that there is no other case pending against them, it amounts to fraud based upon concealment. He further submitted that on this ground, the order by which anticipatory bail was granted to both the respondents is liable to be set aside and cancelled. Learned counsel specifically submitted that it is not the case of the petitioner that after the grant of the bail in the year 2019 and 2020 that both the respondents have jumped the bail or violated any conditions of the bail but his case is only to a limited extent that while granting bail by the learned Sessions Court they have concealed the material facts pertaining to the pendency of the other FIRs against them and only on this ground the bail may be cancelled.

8. On the other hand, learned counsel appearing on behalf of respondent-Sunil Gandhi (in CRM-M-20209-2022) submitted that in pursuance of the orders passed by the learned Sessions Court for grant of anticipatory bail, he appeared before the learned trial Court and was released on regular bail and therefore, even otherwise also, the present petition is only for cancellation of the anticipatory bail but as a subsequent event, he has already been released on regular bail, which has not been challenged by the petitioner in the present case and therefore, the present petition itself is not maintainable. He also submitted that so far as the respondent-Sunil Gandhi is concerned, he did not conceal any fact pertaining to the pendency of any FIR against him. He referred to the order which has been passed by the learned Sessions Court while granting bail wherein it has been so discussed that multiple number of FIRs are pending against the respondent No.2 and therefore, there was no question of any concealment in this regard and also submitted that the ground taken by the petitioner is absolutely



misconceived and against the record. He further submitted that be that as it may, even otherwise also the bail was granted to the respondent-Sunil Gandhi in the year 2020 and in the present case even the charges have not been framed till date by the learned trial Court despite the fact that the FIR is of the year 2016 and respondent No.2 is on bail from the year 2020. He further submitted that it is not a case of the petitioner that respondent No.2 has jumped the bail or violated any of the conditions of the bail but the only case of the petitioner is that the order by which the anticipatory bail was granted to respondent No.2 is erroneous and submitted that in view of the aforesaid facts and circumstances, the present petition may be dismissed.

9. Learned counsel appearing on behalf of respondent No.2-Surender Kumar Hooda submitted that respondent No.2 is of the age of 84 years, having acute heart ailment. He further submitted that about 2-3 weeks ago he was put on pacemaker and he is continuing his life with the support of pacemaker. He also submitted that apart from the heart ailment, respondent No.2 is suffering from a number of other ailments. He further submitted that although it is correct that at the time when respondent No.2-Surender Kumar Hooda had filed an application for grant of anticipatory bail in the year 2019, he did not mention the pendency of FIRs against him but it is not the case as so projected by the learned counsel for the petitioner that there were 24 FIRs against respondent No.2 and he failed to disclose the same whereas in fact the position was that although the aforesaid list of 18 FIRs was given by the petitioner, but respondent No.2 was not even nominated as an accused and it does not pertain to respondent No.2 at all and so far as the remaining FIRs are concerned, since it was arising out of the



same set of allegations by some other persons, the mere fact that the pendency of the FIRs was not disclosed cannot become a ground for cancellation of bail at this stage after a period of five years of the grant of anticipatory bail. He also submitted that likewise as that of the aforesaid respondent No.2, namely, Sunil Gandhi, respondent No.2-Surender Kumar Hooda also obeyed the orders of the learned Sessions Court by which he was directed to appear before the learned trial Court for the purpose of grant of regular bail and he appeared before the learned trial Court in pursuance of the orders passed by the learned Additional Sessions Court and he was granted regular bail and in the present case as well, the learned counsel for the petitioner has not challenged the order by which respondent No.2 was granted regular bail but he has only challenged the order which has been passed by the learned Additional Session Judge for grant of anticipatory bail and therefore, so far as the respondent No.2-Surender Kumar Hooda is concerned, also likewise and that of the other respondent No.2-Sunil Gandhi, the present petition is not maintainable. He further submitted that the present FIR is of the year 2016 and till date even the charges have not been framed and it is a case which is triable by the Magistrate. He also submitted that now after a period of five years, the prayer for cancellation of anticipatory bail is also not sustainable in view of the fact that it is not the case of the petitioner or that of the State that respondent No.2-Surender Kumar Hooda has violated any of the condition of the anticipatory bail or he has jumped the bail. The only ground which has been taken by the petitioner in the present case is that respondent No.2 concealed the pendency of the other FIRs, regarding which, he has already offered an explanation as aforesaid.



He submitted that be that as it may, even otherwise also apart from the aforesaid acute health condition of respondent No.2 wherein he is living his life with the pacemaker, the anticipatory bail granted by the learned Additional Sessions Judge may not be cancelled.

10. Both the learned counsels for respondent No.2 in both the cases have also categorically submitted that it is a settled law that when the bail has already been granted then for the purpose of cancellation or annulling or setting aside the bail order, extreme caution has to be taken by the Court especially when the matter is pertaining to charges which are triable by the Magistrate and in the present case, the maximum sentence is 7 years. They also submitted that the cancellation or setting aside of the bail order would amount to infringing their Fundamental Right guaranteed under Article 21 of the Constitution of India.

11. I have heard the learned counsel for the parties.

12. In both the petitions, the prayer is for setting aside or annulling the orders passed by the learned Additional Session Judge by which the anticipatory bail was granted to respondent No.2 in both cases. It has been brought to the notice of the Court that anticipatory bail was granted subject to the condition that both respondent No.2 in both the cases shall appear before the trial Court and seek regular bail within the aforesaid specified period and in pursuance of the same, both the respondents have already got the regular bail which has not been challenged in the present petitions. The ground which has been taken by the petitioner in both the petitions is that respondent No.2 in both the cases have concealed the pendency of the FIRs against them. So far as the case of respondent No.2-Sunil Gandhi is



concerned, a perusal of the order by which anticipatory bail was granted and thereafter an order by which the application of the petitioner for cancellation of the anticipatory bail has been passed by the learned Additional Session Judge, the pendency of the multiple number of FIRs against respondent No.2-Sunil Gandhi has been noted and therefore, so far as Sunil Gandhi is concerned, it cannot be said that there was any concealment of the fact. So far as respondent No.2-Surender Kumar Hooda is concerned, although the petitioner as so stated that respondent No.2 was involved in 24 more FIRs but as per the learned counsel for respondent No.2, out of the aforesaid FIRs, in 18 FIRs respondent No.2 was not remotely connected nor was he even nominated and so far as the remaining FIRs are concerned, the same were pertaining to similar kind of allegations of different individuals. Apart from the above, respondent No.2-Surender Kumar Hooda is also stated to be having acute heart ailment due to which he is carrying on his life with support of a pace maker and even otherwise also he is of the age of 84 years. The case is triable by the Magistrate.

13. In addition to the above, it is also brought to the notice of the Court that the present FIR is of the year 2016 and till date even charges have not been framed. Admittedly, it is not a case of any of the parties that after the grant of anticipatory bail or even regular bail by the trial Court both respondent No.2 in the both cases have violated any of the conditions of the bail or have jumped the bail.

14. So far as the stand taken by the State in the present case is concerned, a perusal of the affidavits which have been filed in both the cases would show that it has only been stated by the State that in case this Court



cancels the bail then they have no objection to the same and no specific prayer has been made for dismissal of the bail. Therefore, stand taken by the State in the affidavit is absolute innocuous. Even otherwise also the learned State counsel has not advanced any submissions for the purpose of cancellation of anticipatory bail granted by the trial Court to respondent No.2 in both cases.

15. Hon'ble Supreme Court in "Neeru Yadav Vs. State of U.P.", **2015(1) R.C.R. (Criminal) 311** dealt with the proposition of law with regard to the cancellation of bail. It was observed that when the Court is to consider the prayer for cancellation of bail or for setting aside of any bail order, it cannot be dealt with in a lighter manner but a serious and conscious view has to be taken, in view of the fact that it has an effect of curtailing the freedom of an individual which ultimately may infringe the Fundamental Right as enshrined under Article 21 of the Constitution of India. Therefore, a balance has to be struck between the Right which an undertrial has under Article 21 of the Constitution of India and the grounds which have been taken for the purpose of cancellation of bail or annulment or setting aside of the bail order. The aforesaid circumstances of the present case suggest that it is not a case where the grounds which have been taken by the petitioners, the anticipatory bail which has been granted to respondent No.2 in both cases could be set aside because it will amount to taking away the Right to Life and Personal Liberty of both respondent No.2 in both cases under Article 21 of the Constitution of India. The relevant portion of the aforesaid judgment of the Hon'ble Supreme Court is reproduced as under:-

"16. The issue that is presented before us is whether this



Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an



order at its own whim or caprice. It has to be guided by the established parameters of law.”

16. In view of the aforesaid facts and circumstances, this Court does not find any ground to interfere as both the petitions are devoid of merits and the same are hereby dismissed.

17. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

11.07.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |