

2024:PHHC:069305



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37357-2022
Reserved on: 13.05.2024
Pronounced on: 16.05.2024

2024:PHHC:

SURESH KUMAR

.... PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Mukesh Rao, Advocate for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

Mr. Rajinder Goel, Advocate for respondent Nos. 2 and 3.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner-Suresh Kumar, who is the complainant in case FIR No.354 dated 26.08.2021 registered under Sections 148, 149, 302, 307, 323, 452 and 506 IPC at Police Station Sadar Nuh, District Nuh, has prayed for setting aside the order dated 10.03.2022 (Annexure P1) passed by Id. Additional Sessions Judge, Nuh, whereby accused Ombir & Madan (*respondents No.2 and 3 herein*) have been allowed bail in the aforesaid FIR.

2.1 As the paperbook reveals that on 25.08.2021, telephonic information was received in Police Station Sadar Nuh regarding admission of injured Arun, Raj Kumar, Suresh Kumar, Satish and Mahesh, residents of Village Ujina in SHKM Hospital Nalhar, on account of assault injuries and that one Vipin son of Naresh Singh had been brought dead. Police party reached the hospital and after obtaining necessary opinion of the concerned

medical officer, recorded the statement of one of the injured Suresh Kumar (*petitioner herein*). His statement reads as under: -

"To, Respected SHO P.S. Nuh (Mewat),

Sir, I Suresh son of Janak Singh, caste Rajput, is permanent resident of Village Ujina. I am aged about 55 years.

On 18.08.2021 I had got recorded one complaint in Police Station Nuh against some quarrelsome elements. Due to this complaint today on 25.08.2021 in the evening at about 6 O'clock, were coming to attack on my shop situated at Bus Stand Ujina. At the same time, my nephew Vipin son of Late Naresh was coming to the shop to meet me. As soon as Vipin came near my shop, at the same time **1. Naresh** son of Sh. Bhawar Singh, who was having pointed iron rod in his hand. **2. Rinku** son of Ombir, who was having pointed iron rod in his hand. **3. Vinod** son of Sh. Bhawar Singh, who was having a stick in his hand on which iron rings and wire was there. **4. Vijender** son of Shiv Charan was having hockey and pistol in his hand. **5. Pawan** son of Shivcharan was having stick with iron wire in his hand **6. Lokesh** son of Sh. Rajinder, who was having Saria in his hand. **7. Om Parkash @ Kaalu** son of Balkishan Caste Pandit was having iron rod in his hand **8. Bunt** son of Madan was having Saria in his hand. All of them together raised attack on Vipin and gave many beatings and in the end by thinking him to be dead, left him and went away. As soon as he was brought to Nalhar Hospital (Hospital), Doctor immediately declared him dead.

After that above 8 together in collusion with as follows **1. Ombir** son of Bhawar Singh **2. Omprakash** son of Bhawar Singh **3. Madan** son of Shivcharan **4. Rajinder** son of Shivcharan **5. Gagan @ Pintu** son of Madan **6. Narsi** son of Virender **7. Amit** son Lala **8. Sumit** son of Lala **9. Deepchand** son of Satish **10. Yogesh** son of Puran Prajapati **11. Sachin** son of Om Parkash **12. Deepak** son of Omprakash **13. Ankit** son of Vinod **14. Deepanshu** son of Naresh **15. Pankaj** son of Narender **16. Narender** son of Bhawar Singh **17. Devratan (Bandi)** son of Munna **18. Ved Parkash** son of Shivcharan **19. Nepal** son of Virma, **20. Rishipal** son of Ramsharan has tried to kill **1. Arun** son of Suresh **2. Suresh** son of Janak **3. Satish** son of Janak **4. Mahesh** son of Janak **5. Rajkumar** son of Naresh by entering in the shop by giving beatings with pointed rod, stick and danda. Above report is presented before you. It is requested to you that strict action be taken against them. Complaint is presented for appropriate action.

Based upon the aforesaid statement, FIR was registered. Necessary investigation was conducted.

2.2 Two of the accused as named in the FIR i.e. Ombir and Madan (*respondents No.2 and 3 herein*) applied for regular bail before the Court of Addl. Sessions Judge, Nuh under Section 439 CrPC. That application was allowed vide impugned order dated 10.03.2022 (Annexure P1).

3.1 Seeking cancellation of the bail by setting aside the aforesaid order, it is contended by ld. counsel for the petitioner that various important aspects have been ignored by the Court concerned while granting bail to respondents No. 2 and 3. In fact, Bunty @ Sandeep son of Madan (*respondent No.3*) is a man of criminal antecedents, who runs a Gym in Village Ujina, which he uses for gathering of the bad elements. The same was objected to by Raj Kumar @ Kalu, the nephew of the petitioner. Due to that grudge, Bunty @ Sandeep and others had abused the petitioner and manhandled him, regarding which a complaint was made on 18.08.2021. It is contended further that on 25.08.2021, at about 6:00 O'clock, when elder brother Satish of the petitioner was present at his shop and younger brother of the petitioner namely Mahesh was present in the adjoining shop, Vipin nephew of the petitioner was coming to his shop to meet him, when accused Naresh, Rinku etc., including respondents No.2 & 3 (naming as many as 28 persons) came to his shop armed with various kinds of weapons. Naresh, Rinku, Vinod, Vijender, Pawan, Lokesh, Om Parkash @ Kalu and Bunty @ Sandeep gave beatings to Vipin with their weapons; whereas, other assailants including respondents No.2 & 3 caused injuries to Arun son of petitioner, Satish brother of petitioner and Mahesh brother of petitioner besides Raj Kumar.

3.2 Ld. counsel contends that at the time when petitioner made the statement before the police on 26.08.2021, his condition was not well, as he had suffered multiple injuries. The police did not record the statement of the

petitioner with specific allegations against the assailants and when petitioner came to know about the said fact, he gave his supplementary statement, but the same was not made part of the record.

3.3 Ld. counsel contends further that Id. Additional Sessions Judge, Nuh, while granting bail to respondents No.2 & 3 committed grave irregularity by giving finding on the merits of the case by observing that it was the admitted case of the prosecution that respondent No.2 & 3 had not participated in the first occurrence of 6:00 PM, whereas it had been clearly stated by the public prosecutor that both of them were involved in the first incident also. By referring to *Jagjit Singh and others Vs. Ashish Mishra @ Monu and another*, 2022 (2) RCR (Criminal) 788, ld. counsel contends that while considering the grant of bail, the Court is required to examine the *prima facie* issues including reasonable grounds regarding commission of offence by the accused, the severity of offence though the extensive consideration of merits, having the potential to prejudice either the case of the prosecution or the defence, is undesirable. Ld. counsel further contends that the court is also required to look into the aspects like nature and gravity of the offence, severity of punishment in the event of conviction, circumstances peculiar to the accused or victims, the likelihood of the accused fleeing, likelihood of tampering with the evidence and witnesses and the impact that the release of the accused may have on the trial and the society at large.

3.4 Ld. counsel further submits that FIR in itself cannot be treated as an encyclopedia of the events and that final report under Section 173(2) CrPC is required to be looked into. It is submitted that Id. Additional Sessions Judge only considered the contents of the FIR and created an artificial classification of the first and second incident, though both the incidents were continuous,

having taken place together and that all the accused including respondents No.2 & 3 had participated in both the incidents. Ld. counsel contends further that on the same logic, on which respondents No.2 & 3 have been allowed bail, four other accused have also been allowed bail despite pendency of the investigation and despite the fact that number of accused are yet to be arrested and there is likelihood of witnesses being threatened or won over.

3.5 Ld. counsel has also drawn attention towards the postmortem report of the deceased so as to contend that as many as ten injuries were found on his person showing that deceased Vipin was brutally beaten to death.

3.6 With all these submissions, prayer is made for cancelling the bail of respondents No.2 & 3 by setting aside the impugned order.

4. In the reply filed by the respondent-State, it is denied that correct version of the complaint was not recorded. However, it is conceded that supplementary statement had been made by the petitioner. It is also submitted that final report under Section 173(2) CrPC against respondent No.2 & 3 had been filed. It is also submitted that these respondents had equally participated in the crime along with the accused, which had led to the death of deceased Vipin and that respondent-State has no objection in allowing the petition by cancelling the bail granted to respondents No.2 & 3.

5.1 Respondents No.2 & 3 did not file separate reply to the petition despite grant of opportunity. However, ld. counsel appearing on their behalf strongly opposed the petition, by contending that ld. Additional Sessions Judge has rightly observed that respondents No.2 & 3 had not participated in the first occurrence, in which Vipin was murdered; whereas the second occurrence was a free fight amongst two parties. Ld. counsel further submits that no such circumstance has been pointed out by the petitioner showing the

violation of any of the conditions of bail or misuse of liberty by respondents No.2 & 3 or to have influenced the witnesses or to have tampered with the evidence.

5.2 Ld. counsel contends further that parameters for grant of bail and cancellation of bail are totally different and that bail once granted can be cancelled, only if there is violation of conditions of bail or misuse of liberty by influencing the witnesses and tampering the evidence. Ld. counsel has referred to decisions of Hon'ble Supreme Court rendered in *Krishna Sharma @ Krishna Kumar Sharma Vs. The State of West Bengal and another, 2024 (1) RCR (Criminal) 820* and *Bhuri Bai Vs. The State of Madhya Pradesh, 2023 (1) RCR (Criminal) 303*. Prayer is made for dismissal the petition.

6. I have considered submissions of both the sides and have appraised the record carefully.

7. It is a well-established principle that once bail has been granted, it would require cogent and overwhelming circumstances for its cancellation. At the same time, equally important is to note that bail can be revoked by the superior court, if the court granting bail has ignored relevant material available on record, as observed by the Hon'ble Supreme Court in *Vipan Kumar Dhir Vs. State of Punjab 2021 SCC OnLine SC 854*.

8. In *State Through Delhi Administration vs Sanjay Gandhi, 1978 AIR 961*, it has been observed by Hon'ble Apex Court that:

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.”

9. In *Ms. X vs The State of Telangana (2018) 16 SCC 511*, Hon'ble Supreme Court held that:

“In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in **Dolatram v State of Haryana [(1995) 1 SCC 349]** observed that:

“Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. (Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

These principles have been reiterated by another two Judge Bench decision in **Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan (2011) 5 SCC 296** and more recently in **Dataram Singh v State of Uttar Pradesh (2018) 3 SCC 22**.

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered

it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

10. Proceeding further, it is true that FIR is not an encyclopedia of events and that facts emerging in the final report under Section 173 CrPC are also required to be taken into consideration, while considering the grant of bail. However, at the same time, the importance of the facts as disclosed in the FIR cannot be over-emphasized. The objective of prompt lodging of the FIR is not only to obtain earlier information regarding the circumstances, in which the crime was committed, as the delay results in embellishment and the report get bereft of the advantage of spontaneity, at the same time FIR is also important from the point of view that when it is made soon after the occurrence, the memory of the informant is fresh and it is unlikely that he had the opportunity of fabrication. Delay in lodging the FIR; or changing the version by making supplementary statement, is to be viewed with grave suspicion.

11. In the present case, as the bare perusal of the FIR, lodged on the statement of complainant-petitioner Suresh Kumar, reproduced earlier, would reveal that he clearly disclosed about two occurrences to have taken place at two different times on the same day. In the first occurrence, which is alleged to have taken place at about 6:00 PM, he specifically named 8 persons namely, Naresh, Rinku, Vinod, Vijender, Pawan, Lokesh, Om Parkash @ Kalu and Bunty @ Sandeep, who had attacked Vipin with iron rods and Saria etc. resulting in his death. It is further clearly mentioned in the FIR that deceased Vipin was taken to SHKM Hospital, Nalhar and was declared brought dead and it is only after this occurrence i.e. after the death of Vipin that the second occurrence is alleged to have taken place, in which above

named 8 persons along with 20 others, identified by names and who included respondents No.2 & 3, caused simple and grievous injuries with blunt weapons to the five injured including the petitioner. Respondents No.2 & 3 are not named as assailants in the first occurrence, in which Vipin was caused injuries, resulting in his death.

12. Although, petitioner later on made a supplementary statement, stating therein that all the assailants, as named in the second occurrence had participated in the crime since beginning but it will certainly be a matter of crime, having regard to the fact that this is the changed version made by the petitioner. At this stage, the initial statement made by the complainant cannot be ignored. His statement was recorded by the IO only after taking the opinion from the concerned medical officer regarding his fitness to make the statement and so, petitioner-complainant cannot be hard to say that he was not in a proper state of mind due to injuries so as to make the statement.

13. Still further, Id. counsel for the petitioner could not point out any particular circumstance showing the violation of the conditions of bail on the part of respondents No.2 & 3 or to have misused the concession of bail.

14. It has been observed by Hon'ble Supreme Court in the case of ***Bhuri Bai (Supra)*** that power of cancellation of bail should be exercised with extreme care and circumspection. Such cancellation cannot be ordered merely for any perceived indiscipline on part of accused before granting bail. The Court cannot be approached for cancellation of bail, as if disciplinary proceedings are to be initiated against the accused. Hon'ble Supreme Court held further that the order granting bail can be upset only in such cases, where liberty of the accused is going to be counteracting the requirement of the proper trial of the criminal case.

15. Considering all the aforesaid facts and circumstances, but without commenting anything further on merits of the case, this Court is not convinced with the submissions made by counsel for the petitioner so as to cancel the bail granted to respondents No.2 & 3 by way of impugned order. The petition is accordingly dismissed.

16. However, it is made clear that any observation made by Id. Additional Sessions Judge in the impugned order dated 10.03.2022 (Annexure P1) are to be treated only for the purpose of considering the grant of bail to respondents No.2 & 3. Similarly, any observations as made by this Court in the present petition seeking cancellation of bail, are not to influence the mind of the trial Court, while deciding the case on merits.

Pending application(s), if any, also stand disposed of.

16.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>