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2024:PHHC:156089



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

**CRM-M-36297-2024
DECIDED ON: 30.07.2024**

DEVID

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vipul Sachdeva, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG Haryana

SANDEEP MOUDGIL, J

1. By way of instant petition jurisdiction of this Court has been sought to be invoked under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C., for cancellation of regular bail granted to respondent No.2 in FIR No.0544, dated 31.12.2022, under Sections 148, 149, 325, 302, 506, 201 of IPC, 1860 registered at Police Station Sector 50 Gurugram, District Gurugram.

2. Learned counsel for the petitioner has contended that the respondent No.2-Yashu Saini has got the concession of regular interim bail vide order dated 05.06.2024 (Annexure P-2) till 25.07.2024.

3. It is contended on behalf of the petitioner that the lower Court failed to apply legal principles, given the severity of the offence. The premeditated and brutal murder of Sonu, involving multiple assailants with deadly weapons, was not adequately considered. The recovery of the wooden

stick used in the commissioning of offence from respondent No.2-Yashu Saini directly links him to the crime. Furthermore, CCTV footage clearly identifies respondent No. 2 at the crime scene. The lower court overlooked a phone call recording, annexed as Annexure P-3, wherein, father of respondent No.2 has admitted his son's guilt. This admission substantiates the involvement of respondent No.2 and highlights the need for custody to ensure a fair trial. The lower court has failed to consider that the attack was premeditated and pre-planned, as the assailants arrived with muffled faces, bent number plates, and multiple vehicles, indicating a carefully orchestrated brutal murder.

4. Heard the learned counsel for the petitioner.

5. This Court, while hearing the counsel for the petitioner has the occasion to go through the order dated 05.06.2024 (Annexure P-2) passed by the trial Court, wherein the concession of regular interim bail has been granted while not considering the merits of the case specifically only keeping in mind that the investigation is complete and challan stands filed on and all public witnesses have been examined, wherein the respondent No.2 is not required for any custodial interrogation being behind bars since 01.02.2023. Moreover co-accused namely Rohit has already been granted the concession of bail by this Court vide order dated 29.05.2024 and nothing is to be recovered from the possession of respondent No.2.

6. Though, there is no straight jacket formula exists to assess the application for grant or rejection of bail but determination of whether a case is fit for grant of bail or not involves balancing of numerous factors among which nature of offence, severity of punishment and prima facie view of the involvement of accused are of utmost importance.

7. In the instant application the grounds taken by the petitioner are

solely based on factual aspects touching the merits of the case, which have not been considered by the Court while granting bail to respondent No.2 vide order dated 05.06.2024 (Annexure P-2).

8. I am of the firm view that very cogent and overwhelming circumstances or ground are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out an order granting bail is not be lightly interfered with under Section 439(2), Cr.P.C. While considering the petition for cancellation of bail, a Court shall bear in mind that:-

- a) the accused misuses his liberty by indulging in similar criminal activity,*
- b) interferes with the course of investigation,*
- c) attempts to tamper with evidence or witnesses,*
- d) threatens witnesses or indulges in similar activities which would hamper smooth investigation,*
- e) there is likelihood of his fleeing to another country,*
- f) attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency and*
- g) attempts to place himself beyond the reach of his surety, etc.*

9. It is thus clear before this Court that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled.

10. The Supreme Court of India in ***Bhuribai vs. State of Madhya Pradesh in criminal appeal No.1972 of 2022*** elaborating the powers of the Court for cancellation of bail held that it cannot be approached as if of disciplinary proceedings against accused and such power of cancellation of

bail should be exercised with extreme care and circumspection and such cancellation cannot be ordered merely for any perceived indiscipline on part of accused before granting bail.

11. Coming back to the case in hand, I am of the firm view after having examining the arguments and the order of granting regular interim bail dated 05.06.2024 (Anneuxre P-2), that it cannot be inferred at all from the reasons seeking cancellation of bail as put forth by the learned counsel for the petitioner that the respondent No.2 accused had misused the liberty or had violated any of the conditions as envisaged under Section 439 Cr.P.C. This Court is also sanguine of the fact that since the investigation is complete and material witnesses have been examined, the possibility of tampering with the evidence and influencing the witnesses cannot be ruled out.

12. In totality of the circumstances discussed hereinabove, I am unable to agree with the contention raised by the learned counsel for the petitioner and therefore, the petition stands dismissed being devoid of merits.

13. Ordered accordingly.

30.07.2024
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>