



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-38508-2020
DECIDED ON: 29.07.2024

PARAMJIT KAUR

... PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. A.S. Bhatti, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Sahil Kaundal, Advocate for
Mr. Naresh Kumar, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 439(2) has been invoked for setting aside the order dated 05.08.2020 passed in CRM-M-21679-2020 vide which the arrest of respondent No.2 was stayed to enable him to join the proceedings with a direction to put in appearance before the Court below within a period of two weeks from today and on doing so, he would be admitted to bail in accordance with law, subject to the satisfaction of the trial Court/Duty Magistrate concerned. The said order was subsequently extended by this Court vide order dated 14.08.2020 passed in CRM No-19528-2020 in the light of the

fact that respondent No.2 was tested positive as COVID-19 and he was directed to appear before the Court below on or before 15.10.2020, till then his arrest was also stayed.

2. Submissions

On behalf of petitioner:

It has been contended by learned counsel for the petitioner that respondent No.2 has failed to adhere to the terms and conditions of the compromise dated 07.11.2019 wherein, it was agreed that respondent No.2 would pay an amount of Rs.8,00,000/- to the petitioner and out of the settled amount only an amount of Rs.6,00,000/- has been paid to the petitioner till today. The interim relief granted by this Court vide order dated 05.08.2020, which was further extended vide order dated 14.08.2020 is liable to be cancelled, as the same was granted in the light of the fact that a compromise has been effected between the parties.

On behalf of respondent-State as well as respondent No.2:

It is an undisputed fact that the matter between the parties stands compromised, as is evident from the compromise deed dated 07.11.2019 and as per the settlement out of total settled amount i.e. Rs.8,00,000/-, respondent No.2 has paid an amount of Rs.6,00,000/-.

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

3. Analysis & Conclusion:

Before considering the contentions raised in this petition, certain principles, which govern the grant of anticipatory bail, are required to be noticed. In *Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1,

Hon'ble Supreme Court has enunciated the considerations that must govern the grant of anticipatory by holding as under: -

92.3...While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

Similarly, in ***Neeru Yadav Vs. State of UP & Anr., (2016) 15 SCC 422***, it was held by Hon'ble Supreme Court as under: -

“11. It is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge.”

Proceeding ahead, there can be no doubt that all the aforesaid factors are required to be taken into consideration while granting anticipatory bail to an accused, but 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.***

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.”

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."

*In **Myakala Dharmarajam Vs. The State of Telangana, (2020) 2***

***SCC 743**, it has been held by the Hon'ble Supreme Court: -*

*“In **Raghubir Singh v. State of Bihar, (1986) 4 SCC 481** this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes*

with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the Accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.”

Hon’ble Supreme Court in ***Criminal Appeal No.658 of 2022 (arising out of SLP (CrI) NO.27 of 2022) titled as Imran Vs. Mr. Mohammed Bhava and another decided on 22.04.2022***, has held as under:

“26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail

matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles”.

It is, thus, clear that an appellate or a Superior Court can set aside the order granting bail, if the Court granting bail did not consider the relevant factors. Said position of law has been made further clear by Hon’ble Supreme Court in Criminal Appeal No.680 of 2021 arising out of SLP (Crl) No.3155 of 2018 titled as ***M/s Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. The State of Maharashtra and another decided on 26.07.2021.***

Keeping in mind, the legal position as above, there is neither any allegation nor any circumstance in order to show that after grant of anticipatory bail by way of impugned orders, respondent No.2 misused the same in any manner whatsoever. There is nothing on record to suggest that respondent No.2 interfered in the course of investigation or attempted to tamper with the evidence or witnesses or threatened the witnesses or indulged in any such activity or that there was likelihood of his fleeing away from the country or not attending the trial. Now coming back to the present case wherein there is nothing on record that respondent No.2 has ever misused the concession granted by this Court.

There is no dispute that cogent and overwhelming circumstances or ground are required to cancel the bail already granted and inordinarily unless a strong case based on any supervening event is made out the Court should not interfere with Section 439 (2) Cr.P.C. For cancellation of bail, this Court has to 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.”

In State through "**CBI versus Amarmani Tripathi, AIR 2005 SC 3490**", the Hon'ble Apex Court observed that for cancellation of bail supervening circumstances alone are relevant.

In all the aforesaid facts and circumstances, this Court finds no ground to interfere in the impugned orders dated 05.08.2020 (Annexure P-3) passed in CRM-M-21679-2020 and dated 14.08.2020 (Annexure P-4), so as to cancel the interim relief granted to respondent No.2.

Dismissed.

Pending application (s), if any, stands disposed of.

However, in the light of the fact that out of the total settled amount of Rs.8,00,000/-, amount of Rs.6,00,000/- has already been paid to the petitioner, respondent No.2 is directed to pay the remaining amount i.e. Rs.2,00,000/- to the petitioner within a period of two months from the date of receipt of certified copy of this order. In case of failure to do so, the petitioner would be at liberty to proceed with the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

29.07.2024
sham

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