

2024:PHHC:168710



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-36404 of 2024
Date of Decision: 16.12.2024

Kewal Garg		...Petitioner
	Versus	
State of Punjab and others		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. R. Kartikeya, Advocate, for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Deepak Sabarwal, Advocate, for respondents No. 2 and 3.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 483(3) of the Bhartiya Nagarik Surksha Sanhita, 2023, with a prayer to cancel the concession of anticipatory bail granted to respondents No. 2 and 3, vide order dated 16.05.2022 (Annexure P-3) passed by this Court in case FIR No. 615 dated 23.12.2021 under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC and Section 82 of the Registration Act, 1908, registered at Police Station Zirakpur, District SAS Nagar.

2. Learned counsel for the petitioner contends that the petitioner/complainant had lodged one FIR No. 615 dated 23.12.2021

under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC and Section 82 of the Registration Act, 1908, Police Station Zirakpur, District SAS Nagar against respondents No. 2 and 3 and their accomplices. Even, the FIR was registered by the police after a detailed and through inquiry by the DSP (H & F), SAS Nagar, Mohali and seeking legal opinion from the District Attorney. After registration of the FIR, respondents No. 2 and 3/accused filed a petition for grant of anticipatory bail before the Court of Sessions Judge, SAS Nagar, Mohali and vide judgment dated 12.01.2022 (Annexure P-2), the anticipatory bail petition was ordered to be dismissed. Thereafter, respondents No. 2 and 3 approached this Court by way of filing of CRM M-2152 of 2022 and both of them were granted the concession of interim anticipatory bail by this Court. In the meanwhile, the petitioner/complainant also filed another petition before this Court, i.e., CRM M-13921 of 2021 titled as **“Kewal Garg Vs. State of Punjab and others,”** seeking transfer of investigation from the ‘SIT’ to another ‘SIT’ headed by some senior police officers. The anticipatory bail petition filed by respondents No. 2 and 3 finally came up for disposal before this Court on 16.05.2022 and this Court allowed the said petition subject to the conditions laid down under Section 438(2) of Cr.P.C.

3. Learned counsel further contends that the anticipatory bail was granted to respondents No. 2 and 3 subject to the conditions laid down in Section 438(2) of the Cr.P.C. and one of the conditions

laid down in Section 438(2) Cr.P.C. is that the present petitioner shall not leave India without the permission of the Court. In the present case, after the grant of the anticipatory bail, the respondents No. 2 and 3 had travelled to Dubai in June 2023, in breach of the specific condition imposed on them. Learned counsel further contends that since the bail conditions have been violated, then it is the duty of the bail Court to cancel the bail.

4. Pursuant to the notice issued by this Court, a status report has been filed by way of an affidavit of the Jaswinder Singh, the Deputy Superintendent of Police, Sub-Division, Zirakpur, District SAS Nagar, on behalf of the State of Punjab.

5. Learned State counsel submits that vide order dated 02.02.2022, the Senior Superintendent of Police, SAS Nagar, Mohali, had constituted a Special Investigation Team (SIT) comprising of SP (PBI), DSP (H), SAS Nagar, Mohali and SHO, Police Station Zirakpur for conducting further investigation in the present case. On 11.03.2022, the SIT submitted a report to the SSP, SAS Nagar, Mohali that the offences under Sections 465, 467 and 468 IPC were not made out and were ordered to be deleted. Further, respondents No. 2 and 3 were declared innocent in the present case. Learned counsel further contends that respondents No. 2 and 3 were already found innocent on 18.03.2022 and at the time of disposal of the anticipatory bail petition, the State had taken a specific stand that respondents No. 2 and 3 had

been declared innocent during the investigation and were not required further in the matter.

6. Learned counsel further contends that respondents No. 2 and 3 have already been declared innocent in the present case and they alongwith their family had travelled to U.K. and Dubai between 13.06.2023 to 24.06.2023 and visited Itali from 04.08.2024 to 18.08.2024. Consequently, appropriate orders may be passed in view of the said submissions.

7. On the other hand, learned counsel appearing on behalf of respondents No. 2 and 3 vehemently submits that the FIR in the present case was registered on 23.12.2021 and the investigation in the present case was conducted by a 'SIT' constituted by the SSP, Mohali. After investigation, both the respondents No. 2 and 3 were declared innocent by the 'SIT' of Punjab Police. Even, the State had taken a specific stand at the time of final disposal of their anticipatory bail petition that respondents No. 2 and 3 had been declared to be innocent. Even, in the present petition, the State has again reiterated its stand that the respondents No. 2 and 3 have already been declared to be innocent and are no more accused in the present case. He further contends that in the order dated 16.05.2022, it was wrongly mentioned that the petition was wrongly allowed subject to the conditions laid down in Section 438(2) Cr.P.C. In fact, the provisions of Section 438(2) Cr.P.C. would not apply to the facts of the present case as at the time of the disposal of the bail petition, the respondents

No. 2 and 3 were no longer the accused in the present case and had already been declared to be innocent. Since, the respondents No. 2 and 3 are not the accused in the present case at this moment, no purpose will be served by cancelling the concession of bail granted to both of them.

8. I have heard learned counsel for the parties and perused the record.

9. It is an admitted fact that both the respondents No. 2 and 3 were arrayed as accused in the present case initially. During the pendency of the bail petition before this Court, a status report dated 25.03.2022 was filed by way of an affidavit of the Superintendent of Police (PBI), SAS Nagar, Mohali. While allowing the petition filed by respondents No. 2 and 3, this Court had taken notice of the following relevant extract of the status report dated 25.03.2022:-

“10. XXX

I. XXX

II. *That Vishal Garg and Deepika Garg have no relation/transaction with Kewal Krishan Garg nor has any writing or conversation with Kewal Garg regarding these showrooms have come to light during investigation. The form of Vishal Garg and Deepika Garg is a bonafide purchaser, who has purchased the said property from M/s Sai Associates after paying sale consideration through cheque.”*

III. *That in case, Kewal Garg felt that the registries are not correct and valid then, he could have taken recourse*

through courts of law. In case, the complainant Kewal Garg was not paid the sale consideration by Satish Gupta, then he could have initiated the legal proceedings at that time, but he did not initiate any action at that time and now, after the lapse of about one year and 03 months, the partners of M/s Sai Associates are absconding and their whereabouts are unknown.

IV. XXX

V. That from the investigation conducted, no role of the petitioners Vishal Garg and Deepika Garg in the commission of offences of the present case/FIR has come to light and the actual facts of the present case/FIR can be ascertained only after the arrest of accused etc., who are absconding. As per the revenue record, no fake, false or forged document was found to have been used at the time of execution of registry by Satish Gupta in favour of Vishal Garg and therefore, the offences under Sections 465, 467, 468, 471 IPC were not found to be made out. Accordingly, it had been recommended by the SIT for declaring the petitioners as innocent in the present case/FIR and to delete the offences under Sections 465, 467 468 471 IPC from the array of sections of the present case/FIR after seeking legal opinion from the Id. DDA (legal), SAS Nagar. The true translated copy of the report of the SIT dated 11.03.2022 is being annexed herewith as Annexure R-1/T for the kind consideration of this Hon'ble Court.

11. XXX

12. That it is respectfully submitted that consequently, the petitioners were declared innocent in the present case/FIR and the offences under Sections 465, 467, 468,

471 IPC were deleted from the array of sections of the present case/FIR, vide case diary dated 18.03.2022 and the special report in this regard, was prepared and sent to the learned Area Magistrate and senior police officers. The investigation of the present case/FIR is underway and strenuous efforts are being made to take the same to its logical conclusion.”

10. After taking note of the above averments made by the State of Punjab, this Court observed that during the course of investigation, the petitioners (respondents No. 2 and 3 in the present petition) had been declared innocent vide case diary dated 18.03.2022 and they were not required for any further investigation. In view of the stand taken by the learned State counsel, the anticipatory bail petition filed by respondents No. 2 and 3 was allowed by this Court vide order dated 16.05.2022 (Annexure P-3). However, while allowing the bail petition, it appears that the petition was allowed subject to the conditions in Section 438(2) Cr.P.C. It appears that inadvertently, the said phrase “subject to the conditions laid down in Section 438(2) Cr.P.C.,” was added in the last paragraph of the impugned order passed by this Court. Once, the respondents No. 2 and 3 had been declared to be innocent, there was no apprehension of arrest on their part and the anticipatory bail petition itself had been rendered infructuous. Even, the conditions laid down under Section 438(2) Cr.P.C., can be enforced, when the accused continues to face the criminal prosecution and is required either for the purpose of investigation or for the purpose of trial. In the present case also, it is

apparent from the reply filed by the State counsel that State has again taken a categoric stand before this Court that the respondents No. 2 and 3 have been found innocent during the investigation and were no longer required in the present case. Once, the prosecuting agency itself has found both the respondents No. 2 and 3 to be innocent and rather they are no longer arrayed as accused in the present case, this Court would not be justified in cancelling the bail granted to respondents No. 2 and 3. Still further, the order of cancellation of bail is a harsh order as it interferes with the liberty of an individual and should not be passed casually by a Court. Thus, keeping in view the above discussion and the totality of circumstances explained above, this Court does not find grounds to interfere with the order dated 16.05.2022 passed by this Court and the present petition is ordered to be dismissed.

16.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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