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

**CRM-M No.38785 of 2023
Date of decision: 07.05.2024**

Jaspreet Kaur

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Hanima Grewal, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. J. S. Dadwal, Advocate
for respondent No.2.

RAJESH BHARDWAJ J.

1. Present petition has been filed under Section 439(2) of Cr.P.C. for recalling of the order dated 17.02.2022 passed by this Court in CRM-M No.7695 of 2021, whereby accused respondent No.2 was granted the concession of anticipatory bail in case FIR No.0011 dated 10.01.2021, registered under Sections 376 and 420 of IPC (Section 377 IPC added later on) at Police Station Dehlon, District Ludhiana with a further prayer for cancellation of bail, granted to the accused-respondent No.2 vide the same order (Annexure P-2). Further prayer has been made that concession of interim bail granted in Second FIR No.145, under Sections 379-B, 323, 342, 506, 149 and 120-B of IPC at Police Station Pau, District Ludhiana



vide order dated 21.10.2022 in CRM-M No.49421 of 2022 (Annexure P-5) may be recalled and that respondent No.2 may be arrested in accordance with law.

2. It has been submitted by learned counsel for the petitioner that after having been granted anticipatory bail by this Court vide order dated 17.02.2022, two more FIRs i.e. FIR No.145, dated 01.09.2022, under Sections 379-B, 323, 342, 506, 149 and 120-B of IPC, at Police Station Pau, District Ludhiana and another FIR No.135, dated 15.09.2022, under Sections 65, 66(c), 66(d) of IT Act at Police Station Dugri, Ludhiana have been registered against respondent No.2. She submits that it is evident that the petitioner has misused the concession of bail granted by this Court. She submits that respondent No.2 (Satnam Singh) is already involved in a heinous offence under Sections 376, 377 of IPC and after having been granted bail by this Court, he threatened the petitioner. She submits that from the registration of two more FIRs as mentioned above, it is evident that the petitioner has misused the concession of bail, he does not deserve the concession of bail granted and thus the same being abuse of process of law, the anticipatory bail granted by this Court vide order dated 17.02.2022 be cancelled in the interest of justice.

3. Notice was issued in this case and respondent No.2 has filed the reply to the petition.

4. Learned counsel for respondent No.2 has submitted that the allegations made by the petitioner are totally false and frivolous. He submits that the complainant-petitioner has lodged these two FIRs as contended in a *malafide* manner so as to get the bail of petitioner



cancelled. He submits that by no stretch of imagination, it can be inferred that respondent No.2 has misused the concession of bail. He has submitted that the trial is already going on and that is virtually at the fag end as the majority of the witnesses already stands examined. He has submitted that as per the law settled, the bail granted to the petitioner can be cancelled only in case of misuse of concession of bail. However there being no evidence whatsoever in this regard, the petition being devoid of any merit deserves to be dismissed.

5. Learned counsel for the State, on instructions from ASI Sulakhan Singh, PS Dahlon, Ludhiana, has submitted that FIR No.145 was duly investigated and on conducting the investigation, finding no evidence in support of the allegations, the cancellation report had already been sent to the Court of Illaqa Magistrate by the Investigating Agency. He submits that cancellation report is pending adjudication in the Court of Competent jurisdiction. He submits that in the second FIR i.e. FIR No.135, the petitioner has already been granted the bail. He submits that in the present case out of 17, 16 prosecution witnesses already stand examined and the next date before the trial Court is 08.05.2024. He thus submits that trial of the present case is at its final stage.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that this Court vide order dated 17.02.2022 had granted anticipatory bail to respondent No.2. The complainant (prosecutrix) has thereafter approached this Court by way of filing the present petition praying for cancellation of bail granted by this Court on



the ground that two more FIRs i.e. FIR No.145 and FIR No.135 have been lodged against respondent No.2. It has been submitted that respondent No.2 is threatening the prosecutrix and thus, he has misused the concession of anticipatory bail, and hence the same deserves to be cancelled. The Court issued notice of motion and heard both the sides. As evident from the submissions made, the cancellation report was filed by the Investigating Agency in FIR No.145 whereas in FIR No.135, respondent No.2 has already been granted bail. The trial in the present case is virtually at its fag end as out of 17, 16 prosecution witnesses have been examined and the next date before the trial Court is 08.05.2024.

8. In the facts and circumstances of the case, the allegations made by the petitioner (prosecutrix) regarding the misuse of concession of bail by respondent No.2 are not substantiated. Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs. State of Punjab**, AIR 1980 SC 1632 has held as under:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by



mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

Hon'ble the Supreme Court in **P. Vs. State of Madhya Pradesh and another**, 2022 SCC OnLine SC 552 has held as under:-

"21. It is true that bail once granted, ought not to be cancelled. In Dolat Ram And Others v. State of Haryana (1995) 1 SCC 349, this Court has held that very cogent and overwhelming circumstances are necessary for cancellation of bail and bail once granted, should not be cancelled in a



mechanical manner. It is equally true that an unjustified or perverse order of bail is vulnerable to interference by the superior Court. So is an order where irrelevant material has been taken into consideration [Refer : Narendra K. Amin (Dr.) (Supra)]. The factors that are paramount for cancellation of bail have been succinctly stated in Prakash Kadam and Others v. Ramprasad Vishwanath Gupta (2011) 6 SCC 189 in the following words:

“18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

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24. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court



would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court. Some of the circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled are enumerated below: -

- a) If he misuses his liberty by indulging in similar/other criminal activity;
- b) If he interferes with the course of investigation;
- c) If he attempts to tamper with the evidence;
- d) If he attempts to influence/threaten the witnesses;
- e) If he evades or attempts to evade court proceedings;
- f) If he indulges in activities which would hamper smooth investigation;
- g) If he is likely to flee from the country;
- h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;
- i) If he attempts to place himself beyond the reach of his surety.
- j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.”

We may clarify that the aforesaid list is only illustrative in nature and not exhaustive.

9. Thus, there being no merit in the present petition, the same is hereby dismissed.

07.05.2024
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(RAJESH BHARDWAJ)
JUDGE

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