

2024:PHHC:099933



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM M-49155 of 2023
Date of Decision: 19.07.2024

State of Haryana	Versus	...Petitioner
Ajay Kumar @ Sonu		... Respondent

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

Present : Mr. Rajinder Kumar Banku, DAG, Haryana.
Mr. Prashant Puri, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 439(2) Cr.P.C. with a prayer to set aside the impugned order dated 24.01.2023 (Annexure P-1) passed by the Court of Additional Sessions Judge, Jhajjar, whereby, the concession of bail was granted to respondent No. 2 in a case arising out of the FIR No. 18 dated 11.01.2023 under Sections 306, 384 and 34 IPC, Police Station City, Bahadurgarh.
2. As per the case of the prosecution, on 26.12.2022, an audio clip was made viral on WhatsApp group. Consequently, the SHO of Police Station, City Bahadurgarh contacted Jagdish, concerned person, who complained that about 2/3 years ago Nafe Singh Rathi and the respondent No. 2 had encroached upon his shop

situated at Parnala Road. Jagdish did not move any written complaint to the SHO and stated that he would consult his son Gaurav Rathi, a practicing advocate and would move complaint later. On 11.01.2023, the intimation was received by the police regarding the admission of Jagdish in a serious condition in the hospital. When the police reached in the hospital, Jagdish was declared unfit for statement and he died during the treatment. Ultimately, on the basis of the complaint of Gaurav Rathi son Jagdish Rathi, the present FIR under Sections 306, 384 and 34 IPC was registered against respondent No. 2 and Nafe Singh Rathi.

3. Learned State counsel has vehemently argued that in the present case, the impugned order has been passed by the Additional Sessions Judge, Jhajjar by completely ignoring the audio clip made by deceased. In fact, respondent No. 2 was specifically named in the said audio clip and very serious allegations were levelled against him. Even, the said audio clip was a vital piece of evidence and could be treated as a dying declaration in the present case. The respondent No.2 and other co-accused had exhorted continuous pressure on Jagdish for transfer of his shop and for demolishing it and ultimately threatened to demolish his house. Thus, the respondent No. 2 and his accomplice wanted to grab the property of Jagdish and he was earlier forced to compromise with respondent No. 2 and others. Ultimately, Jagdish committed suicide on 11.01.2023 and the respondent No. 2

had been wrongly granted the concession of bail by the Court of Additional Sessions Judge, Jhajjar.

3. I have heard the learned State counsel and perused the case file carefully.

4. From a bare perusal of the impugned order, it is apparent that the Court of Additional Sessions Judge, Jhajjar, had applied his judicial mind to every aspect of the matter and had recorded the detailed findings on every issue. The arguments raised by the learned State counsel are also based on an audio clip, which had gone viral on 26.12.2022. However, the said audio clip could not be found in the mobile set, which was recovered from the deceased. Even, the prosecution clearly failed to prove that the said audio clip was proximate in time to the commission of the suicide by Jagdish. Still further, the authenticity of the contents of the audio clip would also be subject matter of trial/investigation in the present case.

5. Still further, it has been alleged that one FIR No. 51 of 2019 was registered against the accused in the present case in Police Station City Bahadurgarh. However, the said FIR was finally cancelled on the basis of a settlement deed dated 21.02.2022 and the affidavit dated 21.02.2022, which was got attested by the Executive Magistrate Bahadurgarh. Even, father of Jagdish, since deceased was also an ex-minister and the deceased himself was a political leader. Consequently, it cannot be believed that he had signed the settlement deed under pressure of respondent No. 2 or any other person. Even,

the prosecution could not show any evidence before the Court regarding harassment, pressure or any other kind pressure on Jagdish, since deceased, at the time of his suicide.

6. Thus, from a perusal of the impugned order, it is apparent that the Court of Additional Sessions Judge, Jhajjar has taken into consideration the various parameters, which have been laid down by the Hon’ble Supreme Court for grant of concession of anticipatory bail.

7. Even otherwise, the Hon’ble Supreme Court as well as this Court have held in number of matters that rejection of bail when the bail is applied for is one thing, whereas the cancellation of bail already granted is quite another. It is easier to reject a bail application in non-bailable case then to cancel the bail granted in such a case. The cancellation of bail certainly involves the review of a decision earlier made and can by and large be permitted only, if, by the 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 fact, the order of cancellation of bail is a very harsh order and interferes with the personal liberty of an individual.

8. Accordingly, the petition is dismissed.

19.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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