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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-53805-2022

Date of decision: 29.07.2024

Megha

...Petitioner

V/s

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Saurav Khurana, Advocate with
Ms. Darika Sikka, Advocate and Ms. Anisha Rani, Advocate
for the petitioner.
Ms. Priyanka Sadar, AAG Haryana.
Mr. Deep Inder Singh Walia, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439(2) read with Section 482 of Cr.P.C., 1973 for cancellation of bail granted to respondent No.2 vide order dated 08.01.2021 (Annexure P-3) passed by Judicial Magistrate Ist Class, Hisar in FIR No.336 dated 06.12.2020 registered for offences punishable under Sections 498-A, 406, 323 and 506 of IPC at Police Station Uklana.
2. The relevant portion of the order passed by Judicial Magistrate Ist Class, Hisar, reads as under:

“At this stage bail application on behalf of accused filed through their counsel. Notice of the same be given to Ld. APP for the State. Reply of the bail application not filed, however, learned APP opposed the same. Heard on-the-bail application. Trial of the case is likely to take long time to finalize. No useful purpose would be served by further detaining the accused in custody, therefore, considering the prevailing circumstances of outbreak of COVID-19 accused Hitesh is admitted to bail on furnishing bail bonds in the sum of 50,000/- with one surety in the like amount.

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Requisite bonds furnished, which are accepted and attested. Accused be released from the custody if not required in any other case. To come up on 18.03.2021 for awaiting the challan.

3. Learned counsel for the petitioner has argued that respondent No.2 has misused the concession of regular bail granted to him vide the impugned order by having threats extended to the petitioner-complainant. It has been further argued that the Court below, while exercising its discretion to grant bail to respondent No.2, has erred in not adhering to the statutory provisions of Section 437 of Cr.P.C., 1973. Learned counsel has further argued that the matter was earlier referred to Mediation and Conciliation Centre to explore the possibility of amicable settlement but the same could not be fructified. It has been further argued that recovery of the dowry articles/Istridhan was not made and hence the Court below ought to have dismissed the bail application filed by the private respondent. It has been further argued that the impugned order has been passed in a mechanical manner without application of mind. Thus, keeping in view the gravity of offence, cancellation of the bail granted to respondent No.2 is sought for.

4. Learned counsel appearing for the State has submitted that the challan (report under Section 173 of Cr.P.C.) has been submitted before the competent Court of jurisdiction on 20.01.2021 and trial is underway. It has been further submitted by the learned State counsel that the police has not received any complaint, made by the petitioner, about the private respondent having extended any threat etc. to the petitioner or having tried to influence witnesses(s), after being enlarged on bail.



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5. Learned counsel appearing for respondent No.2 has argued that the FIR in question is result of a matrimonial discord. Various conciliation attempts were made between the parties but to no avail. It has been further argued that the allegations pertaining to demand of dowry are false and the same have been made only to exert pressure upon the private respondent for arriving at a settlement.

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

7. It would be apposite to refer herein to a judgment of this Court passed in **CRM-M-9029-2023**, titled as ***Dinesh Madan vs. State of Haryana and another***, decided on 17.05.2024; relevant whereof reads as under:-

“17. As an epilogue to above discussion, the following principles emerge:

I. (i) There is a conceptual distinction, between “cancellation of bail” & “setting-aside of a bail order”. In a plea seeking “cancellation of bail”; the factors required to be considered are akin to supervening circumstances/events or mis-conduct of accused whereas in a plea seeking “setting-aside of a bail order”; the factors required to be considered are akin to the order in question being unjustified or illegal or not based on relevant consideration(s). In other words, a plea seeking “setting aside of a bail order” is more in the nature of laying challenge to an order granting bail before a superior Court upon merits thereof.

(ii) It would be pragmatic as also desirable, for the cause of ease and clarity, that a plea filed under Section 439 of Cr.P.C., 1973 clearly states as to whether the plea is for “cancellation of bail” or for “setting aside of a bail order.” or on both accounts.

II. Plea seeking cancellation of Regular Bail.

(i) A High Court has power to cancel regular bail granted by itself or by a Sessions Court or by a Magistrate’s Court.

(ii) A Sessions Court has a power to cancel regular bail granted by High Court or by itself or by a Magistrate’s Court. However, the Sessions Court can cancel regular bail granted by High Court only where the accused has violated any condition(s) imposed by the High Court (while granting bail)



or on account of such accused having misused liberty granted to him by trying to influence witness(s) or having tried to delay trial by absenting himself or having committed another offence(s) while on bail and other factors of akin nature. In other words, a Sessions Court can cancel bail granted to an accused by High Court only on account of such like supervening/subsequent events but cannot adjudicate upon veracity of the High Court order (whereby bail was granted to such accused.)

(iii) A Magistrate does have the power to cancel a regular bail granted by him in terms of Section 437(5) of Cr.P.C. 1973. However, a Magistrate does not have the power to cancel regular bail granted by the High Court or Sessions Court except in a situation wherein the accused has violated any condition(s) imposed upon him when granted such bail by the High Court or the Sessions Court.

(iv) In case cancellation of a regular bail granted by the Sessions Court is sought for; such plea ought to be ordinarily filed before the Sessions Court itself. However, since there is concurrent jurisdiction of the High Court as also Sessions Court in terms of Section 439(2) of Cr.P.C. 1973, the filing of such a plea straight away before the High Court is not ipso facto barred. At the same time, it would be expedient that such a plea (filed straight away before the High Court) must show cogent reason(s) for not approaching the Sessions Court in the first instance.

(v) The factors for consideration in a plea for cancellation of a regular bail are whether the accused has misused liberty granted to him by trying to influence witness(s) or has tried to delay trial or has committed another offence(s) while on bail, whether the accused has flouted the cancellation of bail, whether bail was procured by misrepresentation or fraud or concealing relevant material and similar factors of akin nature. There is no gainsaying that above factors are only illustrative in nature as it is not axiomatic to exhaustively enumerate them.

(vi) Where such plea raises ground(s) that bail has been granted on account of misrepresentation of facts or a fraud having been played on Court which has granted bail or concealment of material/relevant facts; it would be expedient that such plea be filed, in the first instance itself, before the Court which had granted bail in question.

(vii) The degree and nature of proof required to be shown by an applicant (seeking cancellation of regular bail) is that of preponderance of probabilities and not one of being beyond reasonable doubt.

xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx



VI. Where a plea made under Section 439(2) of Cr.P.C. 1973 raises grounds regarding “cancellation of bail” as also for “setting aside of bail order”, such plea has to be essentially made before the superior Court.”

8. The averments made in the petition as also the arguments raised by learned counsel for the petitioner, indubitably, show that petition has been filed to quash/setting-aside of the bail order granted to respondent No.2 vide order dated 08.01.2021 (Annexure P-3) passed by Judicial Magistrate Ist Class, Hisar. It is worthwhile to note herein that it is neither the stand of the petitioner nor of the State that the respondent No.2 has misused the concession of bail granted by the Judicial Magistrate Ist Class, Hisar by threatening/intimidating the witness(s) or by trying to influence the investigation/trial etc. Though the petitioner has averred in the petition and the learned counsel for the petitioner has raised similar submissions that respondent No.2 has openly threatened the petitioner but there is no material much less cogent/tangible material to substantiate these averments. The impugned order was passed on 08.01.2021 whereinafter challan (report under Section 173 of Cr.P.C., 1973) was submitted on 20.01.2021 and the trial is underway. The argument raised on behalf of the petitioner is that the complete recovery of dowry articles/Istridhan has not been made and hence the Judicial Magistrate Ist Class, Hisar ought not to have granted the bail to the respondent No.2. It is trite law that non-recovery of dowry articles/Istridhan cannot, by itself, be a ground for declining a plea for grant of bail to the private respondent. The factum, as to what were the dowry articles/Istridhan in question and whether complete recovery thereof has been made or not, is essentially required to be gone into during the course of



for grant of bail in a meticulous manner. This Court, keeping in view the entirety of the facts and circumstances of the case(s) in hand, does not find any good ground to hold that the Judicial Magistrate Ist Class, Hisar, while passing the impugned order, has overstepped its jurisdiction or has not exercised the same in right perspective. Therefore, the petition(s) in hand deserves rejection.

9. Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to quash/set-aside the bail earlier granted to respondent No.2 vide the impugned order. Therefore, the petition in hand deserves rejection.

Decision

10. As a sequel to the above discussion, the present petition filed under Section 439(2) of Cr.P.C. of 1973, seeking cancellation of bail order dated 08.01.2021 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Hisar, is dismissed.

11. It, indubitably, goes without saying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

July 29, 2024
Ajay