



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

CRM-M-53078-2024

Date of decision: 24.10.2024

Himanshi Sharma

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gourav Goel, Advocate and
Mr. Gaurav Garg, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking setting-aside of anticipatory bail granted to respondent No.2 vide order dated 30.09.2024 (Annexure P-3) passed by Additional Sessions Judge, Fast Track Special Court, Patiala in FIR No.68 dated 17.08.2024 registered for offences punishable under Sections 406, 498-A and 506 of IPC at Police Station Women, District Patiala.

2. The relevant portion of the order passed by the Additional Sessions Judge, Fast Track Special Court, Patiala, reads as under:

“The allegations regarding the dowry articles being entrusted or misappropriated or not returned is also a matter of evidence, which will be seen at the time of the trial. Hence, in view of the totality of the circumstances the interim order dated 24.09.2024 is, therefore, made absolute subject to the compliance of provisions contained in Section 482(2) BNSS and the applicant shall remain bound by the following conditions:-

(i) that the applicant shall not leave the country without the prior permission of the Illaqa Magistrate till presentation of challan and thereafter without the permission of the trial court;



(ii) that the applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer;

(iii) that the applicant shall continue to cooperate with the investigating agency;

(iv) that the applicant shall regularly attend the hearings before the trial court;

Copy of this order be sent to the concerned authorities. The present bail application be consigned the record room, as per rules.”

3. Learned counsel for the petitioner has argued that the respondent No.2 ought not to have been granted the concession of anticipatory bail by the Court below since there were serious allegations against the said respondent. 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 anticipatory petition filed by the respondent No.2. Furthermore, the learned Court below overlooked the established legal principle that, at the time of granting anticipatory bail, the allegations must be thoroughly considered and recovery of dowry articles should be made before granting the concession of anticipatory bail. 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 anticipatory bail granted to respondent No.2 is sought for.

4. I have heard learned counsel for petitioner and have perused the record.

5. 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.

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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.”

6. The averments made in the petition as also the arguments raised by learned counsel for the petitioner, indubitably, show that petition has been filed for setting-aside of the anticipatory bail order granted to the respondent No.2 vide order dated 30.09.2024 (Annexure P-3) passed by Additional Sessions Judge, Fast Track Special Court, Patiala. The sole plank of argument raised on behalf of the petitioner is that the complete recovery of dowry articles/Istridhan has not been made and hence the Court below ought not to have granted the anticipatory 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 anticipatory bail to respondent No.2.



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 trial. This issue cannot be delved into at the stage of consideration of a plea for grant of anticipatory bail in a meticulous manner. The order passed by the Additional Sessions Court is a well-reasoned speaking order and cannot be said to be suffering from vice of non-application of judicial mind. 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 Additional Sessions Court, 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.

7. As a sequel to the above discussion, the present petition filed under Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking setting-aside of anticipatory bail granted to respondent No.2 vide order dated 30.09.2024 (Annexure P-3) passed by Additional Sessions Judge, Fast Track Special Court, Patiala is dismissed.

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

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

(SUMEET GOEL)
JUDGE

October 24, 2024
Ajay