



CRM-M-52826-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

CRM-M-52826-2024

Date of decision: 24.10.2024

Rxxxxxx

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pardeep Kumar Kapila, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483(3) read with Section 528 of BNSS, 2023, seeking setting-aside/cancellation of the regular bail granted to respondent No.2 vide order dated 12.01.2023 (Annexure P-2) passed by the Special Court, SAS Nagar (Mohali) in FIR No.444 dated 02.11.2022 registered for offences punishable under Section 376 of IPC at Police Station Zirakpur, Punjab.
2. The relevant portion of the order passed by Special Court, SAS Nagar (Mohali), reads as under:

“10. Hence, without commenting upon the merits of the case and keeping in view all the facts and circumstances, the present bail application is allowed and accordingly. Applicant/accused is released on regular bail, on his furnishing bail bond in some of Rs 1 lakh with one surety of the same amount, to the satisfaction of the Ld. Dr. Magistrate/ Illaqa Magistrate, subject to the condition that he shall not directly or indirectly induce, threat or promise any prosecution witness as to dissuade him from disclosing true facts to the Court; shall not leave the country without the prior permission of the Court and shall appear on each and every date before this Court, failing which prosecution would be at liberty to file cancellation of the bail. Accordingly, bail application stands



CRM-M-52826-2024

2

*disposed off. Papers/bail application be consigned to the record room.
Police record be returned.”*

3. Learned counsel for the petitioner has iterated that the respondent No.2 has misused the concession of regular bail granted to him vide the impugned order as the same has been granted on the basis of compromise effected between the complainant and the father of respondent No.2 (herein) whereby it was agreed on behalf of respondent No.2, that he would marry the complainant once he is released from the jail. The agreement was made by the father of the respondent No.2 (herein) on his behalf, as the respondent No.2 (herein) was in custody at that time. However, after being enlarged on bail, the respondent No.2 (herein) started violating the terms of the compromise. It has also been further submitted that the respondent No.2, along with his family, is attempting to flee the city. It has been further iterated that on 09.02.2023, which was the birthday of respondent No.2, he allegedly assaulted the complainant and threatened to kill her and stated that he no longer intended to marry her as per the compromise. Thus, it has been argued that the concession of regular bail earlier extended to respondent No.2 deserves to be cancelled.

4. I have heard the learned counsel for the petitioner and have gone through the available records of the case.

5. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dinesh Madan vs. State of Haryana and another*** passed in ***CRM-M-9029-2023***, 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.”

6. Indubitably, the present petition seeks to raise grounds for cancellation of regular bail earlier granted to respondent No.2 vide order dated 12.01.2023 passed by the Special Court, SAS Nagar (Mohali). It is pertinent to mention herein that the complainant (petitioner herein) had earlier approached the Additional District Judge (SAS Nagar) for cancellation of bail earlier granted to the respondent No.2, which Court vide its order dated 05.07.2024 dismissed the petition and refused to set-aside the bail earlier granted. The prime contention, raised on behalf of the petitioner, is that the concession of regular bail was granted to the respondent No.2 on



arrived at between the parties, with the father of the accused, who is representing the accused-respondent No.2. It was agreed that after being released from the custody, respondent No.2 would marry the complainant. A perusal of the impugned order reflects that no doubt the factum regarding compromise was pleaded before the Court below but no specific direction requiring the accused-respondent No.2 to marry the complainant was given. In the instant case, no document(s) has been placed on record by the complainant to show that the matter was ever reported to the Police. Furthermore, no material has been placed on record to substantiate that the respondent No.2 has assaulted the complainant. The only evidence submitted is a photograph, which alone is insufficient to conclusively establish that the respondent No.2 assaulted or threatened the complainant. Additionally, the respondent No.2 has countered the allegations by claiming that it was, in fact, the complainant who assaulted him. Furthermore, the lack of any material raises questions about the credibility of the allegations. In cases of such serious accusations, timely reporting of the matter to the Police and supporting evidence(s) are critical to substantiate the charges. The absence of these elements weakens the case of the complainant. Moreover, it has been brought to the notice of this Court, that in the present case challan was presented on 24.02.2023, whereinafter the charges were framed on 03.08.2023 and the trial proceeded and till now, out of 16 prosecution witnesses so cited, 02 stand examined. Nothing tangible has been brought on record to show that any complaint/grievance was made/raised before the learned trial Court, during the course of trial so far, as to any maltreatment/beatings given by respondent No.2 to the complainant. The



absence of any such complaint further casts serious doubts on the case put forth by the petitioner-complainant seeking cancellation of bail. Accordingly, it is unequivocal that the unsubstantiated allegations without supporting evidence cannot be said to be a good ground for cancelling the regular bail earlier granted to respondent No.2 by the Court below.

6.1. Keeping in view the entirety of the facts and circumstances of the case in hand, no ground is made out to cancel the regular bail earlier granted to respondent No.2 vide the impugned order. Therefore, the petition in hand deserves rejection.

Decision

7. As a sequel to the above discussion, the present petition filed under Section 483(3) read with Section 528 of BNSS, 2023, seeking cancellation of regular bail order dated 12.01.2023 (Annexure P-2) passed by learned Special Court, SAS Nagar, 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

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