

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M-9884-2023

Reserved on: 05.03.2024

Pronounced on: 11.03.2024

Sonia Multani

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Loveleen Nanda, Advocate
for the petitioner.

Mr. Parvinder Singh, Advocate

Mr. Subhash Godara, Addl. A.G., Punjab

HARPREET SINGH BRAR, J.

1. The present petition is preferred under Section 439(2) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for cancellation of bail granted to respondent no. 2 vide order dated 25.09.2020 (Annexure P-2) passed by this Court in FIR no. 14 dated 30.01.2020 registered under Sections 406, 420, 120-B of the IPC registered at Police Station Balongi, District S.A.S. Nagar (Mohali).

2. The facts, in brief, are that co-accused Balwinder Singh dishonestly obtained General Power of Attorney dated 27.09.2005, executed by his father Bant Singh and his uncle Dev Singh, in order to sell their land measuring 34 kanal 18 marla in village Balongi. Balwinder Singh entered into an agreement dated 18.10.2005 with the petitioner for sale of 10 kanal 19 marla of land, using the said GPA. In furtherance of the same, the petitioner paid Rs. 20,00,000/- as earnest money and Rs. 41,00,000/- towards the total

consideration amount. Vide sale deed dated 15.12.2005, instead of selling the said land to the petitioner, Balwinder Singh dishonestly sold 2 kanal, 12 marla of land to one Balbir Singh. Concealing the factum of this sale, Balwinder Singh got his father and uncle to execute agreement to sell with acknowledgment of receipts of Rs. 1,20,53,125/- i.e. full payment for 203 marlas, thereby causing wrongful loss to the petitioner.

3. Learned counsel for the petitioner submits that respondent no. 2 was granted anticipatory bail by this Court in CRM-M-16959-2020 vide order dated 01.07.2020, which was made absolute vide order dated 25.09.2020 (Annexure P-2 colly) subject to the conditions envisaged under Section 438 Cr.P.C. The final report under Section 173 Cr.P.C. was presented on 06.09.2020 against Balwinder Singh, Balbir Singh and respondent no. 2. However, on 06.09.2020, HC Satnam Singh recorded a statement to the effect that respondent no. 2 could not be produced in Court as he is presently out of country (Annexure P-3). Respondent no. 2 remained absent from the trial on 27.10.2022, consequently, a notice was issued to him for 21.11.2022. Respondent no. 2 had left the country prior permission of this Court which amounts to violation of Section 438(2)(iii) Cr.P.C., which calls for cancellation of bail granted to him.

4. Learned counsel for respondent no. 2 contends that respondent no. 2 has not been named in the FIR and he was granted anticipatory bail by this Court which was made absolute vide order dated 25.09.2020. Respondent no. 2 left the country before the final report under Section 173 Cr.P.C. was presented, which further elucidates that he had no intentions to flee from due course of justice. He further contends that respondent no. 2 is regularly appearing before the learned trial Court on each an every date. Reliance in this regard is placed

on the judgments rendered by this Court in **Paramjit Singh v. State of Punjab** in CRA-S-2611-2023 and **Major Singh v. State of Punjab** in CRM-M-36490-2022.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that respondent no. 2 had left the country before the final report under Section 173 Cr.P.C. was presented on 06.09.2020. Respondent no. 2 has been appearing regularly on each and every date before the learned trial Court as discernible from the zimni orders relied upon by learned counsel for respondent no. 2. This Court finds force in the arguments advanced by learned counsel for respondent no. 2 that respondent no. 2 has not tried to conceal himself or evade the process of law and that his absence from the trial was due to bona fide omission.

6. The scope and power of the judicial review of an order granting bail has been illustrated by the Hon'ble Supreme Court in **Dolat Ram and others Vs. State of Haryana (1995) 1 SCC 349**, as follows:-

*“(i) interference or attempt to interfere with the due course of administration of justice;
(ii) evasion or attempt to evade the due course of justice;
(iii) abuse of the concession granted to the accused in any manner;
(iv) possibility of the accused absconding;
(v) likelihood of/actual misuse of bail;
(vi) likelihood of the accused tampering with the evidence or threatening witnesses.”*

7. A three Judge Bench of the Hon'ble Supreme Court in **Deepak Yadav Vs. State of Uttar Pradesh and another (2022) 8 SCC 559**, speaking through Justice Krishna Murari, has summarized the principles for grant or denial of bail. The power and discretion of the Court to cancel the bail of the

accused in the absence of overriding circumstances was illustrated and the following was observed:-

“33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

8. In view of the above discussion, this Court is of the considered view that a layman must be given the benefit of doubt as he may not be aware of the scope and impact of Section 438 Cr.P.C. Respondent no. 2 did not deliberately leave the country as an attempt to evade the due course of justice and as such, cancellation of bail for a harmless and naive violation of bail conditions, would not meet the objective standard of reason and justice. Reliance in this regard can be placed on the judgment rendered by this Court in **Naveen Rao v. Central Bureau of Investigation 2019(1) R.C.R.(Criminal) 537.**

9. Accordingly, the present petition stands dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

March 11, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |