

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2293-2024 (O&M)

Reserved on 14.01.2025

Pronounced on 21.01.2025

Satyavir Singh Badgujar

....APPELLANT

VERSUS

State of Haryana and another

....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Appellant in person.

Mr. Chetan Sharma, DAG, Haryana.

Mr. HPS Ishar, Advocate for Punjab and Haryana Bar Council

Mr. Anupal Singh Tanwar, Advocate for Mr. Abhimanyu Singh,
Advocate for respondents No.2 and 3.

Sandeep Moudgil, J. (Oral)

(1). The appellant has filed the present appeal under Sub-Section (2) of Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 seeking setting aside of the impugned order dated 31.05.2024 passed by this Court in CRA-S-2183-2024 vide the appellant has been granted the concession of anticipatory bail.

(2). Respondent No.2- Shishpal Beniwal applied for anticipatory bail before learned Special Judge/Additional Sessions Judge, Rohtak, which was dismissed vide order dated 20.05.2024. Feeling aggrieved of the same, respondent No.2 had filed an appeal i.e. CRA-S-2183-2024 and this Court vide order dated 31.05.2024 allowed the said appeal and granted the concession of anticipatory bail to respondent No.2.

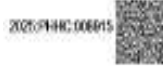


(3). Learned counsel for the appellant-complainant has contended that the accused-Shishpal Beniwal is threatening him for not agreeing to the settlement and there is a threat to his life and personal liberty along-with his family members. There is apprehension that he will misuse the concession of relief granted by this Court vide impugned order dated 31.05.2024 passed by this Court, in connivance with police personnel and court staff and may tamper with the evidence.

(4). It is further contended that the accused-Shishpal Beniwal has tried to obstruct the evidence of the prosecution by putting pressure on the prosecution witnesses. There is every likelihood that he will abscond and has also mislead the Court, as he filed the bail before the trial Court by changing his father's name. It is asserted that while granting relief of anticipatory bail to the present appellant neither any notice nor any opportunity of hearing was granted to the appellant, which is a mandatory condition, under Section (3) of Section 15-A of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the SC&ST Act).

(5). Learned State Counsel appearing on advance notice has contended that in the present case the accused has already joined the investigation and after completion of investigation, the challan stands presented. It is further contended that no complaint regarding the alleged threat and using caste relating words against the appellant has ever been received by local police.

(6). On the other hand, learned counsel for the respondent No.2 vehemently, contended that the present petition is not maintainable in the present form as there is no provision enshrined under Section 14A of the SC&ST which entitles to approach any Court of law for cancellation of bail.



He further averred that none of the principles of law enunciated by the Supreme Court for cancellation of bail in non-bailable offences have been infringed by respondent No.2 and once the Court has granted bail, the same cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. Reliance has been placed on (i) ***Dolat Ram v. State of Haryana, (1995) 1 SCC 349***, and (ii) ***Suvendu Mishra v. Subrata Kumar Mishra, (2000) SCC (Cri) 1508***.

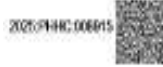
(7). Heard counsel for the respective parties.

(8). The primary question that arises for consideration is as to whether the petition filed under sub-Section (2) of Section 14A of SC & ST Act seeking setting aside of order whereby anticipatory bail was granted by this Court vide order dated 31.05.2024 is maintainable in the eyes of law more so when the order impugned is passed by the same Bench?

(9). Before proceeding further, it would apposite to reproduce Section 14 of the SC & ST Act wherein the remedy of appeal has been provided. Originally, in SC & ST Act, 1989, Section 439 of CrPC was to be invoked for the purposes of bail but by the Amendment Act, 2015, which has been introduced on the Statute book w.e.f. 26/1/2016, Section 14-A has been incorporated. Section 14-A is, therefore, reproduced below:-

14-A. Appeals.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974),



an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

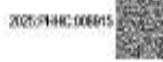
(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(10). A perusal of sub-Section (2) would show that it starts with "*Notwithstanding anything contained in sub-section (3) of Section 378 of the Criminal Procedure Code, 1973*" which has been prefixed to further provision of sub-section (2) of Section 14-A. Sub-section (2) carves out an exception to the general exclusion of an appeal against interlocutory orders which are not appealable under Section (1) of Section 14A. The intentment of the Legislature behind introduction of the said provision with a *non obstante* clause was apparently to give an overriding effect on the provisions of the CrPC over the SC&ST Act in respect of appeal because provisions of the CrPC are silent to provide remedy of appeal against an order granting or refusing bail. This is perhaps, in view of the scheme of the Amending Act, which provides for proceedings of trial on a day to day basis and to conclude the same not only expeditiously but within the time frame stipulated. That seems to be the underlying intent of the Legislature, while drafting the Amending Act and in not providing a remedy of appeal against any other interlocutory order passed



by the Special or Exclusive Special Court or for cancellation of bail before the superior courts.

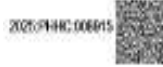
(11). The insertion of Section 14A in the SC&ST Act was made possible by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which introduced sweeping amendments to the original Act of 1989. These amendments aimed to make the Act more effective, victim-oriented, and equipped with special mechanisms for Special Courts and speedy trials. As a result of these amendments, which came into effect in 2016, the concurrent jurisdiction of this Court to grant regular bail under Section 439 of CrPC, 1973 was abolished and in its place, an appellate jurisdiction was conferred through an appeal under Section 14A(2) of the SC & ST Act.

(12). Although the provisions for appeal have been introduced, they still originate from an order refusing bail by the Special Court under Section 439 of the CrPC. The original statutory source of Section 439 remains intact; the only difference lies in the replacement of concurrent jurisdiction with appellate jurisdiction. A perusal of the opening words of Sub-section (2) of Section 14A of the SC &ST Act reveals that only the operation of Section 378(3) of the CrPC is specifically excluded, while the rest of the provisions remain intact. Understandably, the incorporation of Section 14A(2) removed the bar of "Leave to Appeal" as provided in Section 378(3) of the CrPC thereby allowing appeals to be filed on facts and law as a statutory and substantive right, without conferring discretion on the Court to grant leave. Therefore, unless the exclusion is specific with regard to Section 439 of the CrPC, 1973, it cannot be inferred.



(13). A Full Bench of the Bombay High Court **Aniket vs. State of Maharashtra & Ors. (Anticipatory Bail Application No. 1005 of 2023)** decided on 19.12.2023, had an occasion to consider whether interpretation that Section 42A of POCSO Act shall prevail over Section 14A of Atrocities Act, in the matter of grant or refusal of bail, would result into abrogating right of victim, to prefer an appeal under Section 14A of Atrocities Act against grant of bail to accused? The Full Bench found that the provisions of Section 14-A of SC&ST Act is *pari materia* with Section 34 of the Prevention of Terrorism Act, 2002 (since repealed) and Section 21 of the National Investigation Agency Act, 2008. It also read Chapter XXIX of the Cr.P.C. dealing with appeals particularly its Section 372 in conjunction with the opening *non obstante* clause of sub-Section (2) of Section 14A of SC & ST Act and observed that the legislature intended to give an overriding effect on the provisions of the CrPC in respect of appeal because provisions of the CrPC are silent to provide remedy of appeal against an order granting or refusing bail. It thus came to the conclusion that sub-section (2) of Section 14A of SC& ST Act above does not confer a victim with a right to prefer appeal against an order granting bail. The relevant extract of report of Full Bench thus reads as under:-

“30. We fail to understand as to why the provision, "Notwithstanding anything contained in sub-section (3) of Section 378 of the Criminal Procedure Code, 1973" has been prefixed to the further provision of sub-section (2) of Section 14-A. Still we propose to take the legislature to have intended to give an overriding effect on the provisions of the Cr.P.C. in respect of appeal because provisions of the Cr.P.C. are silent to provide remedy of appeal against an order granting or refusing bail. Even if we read the said provision to mean to have created a remedy of



appeal against an order of a Special Court or Exclusive Special Court granting or refusing bail, the same will have to be interpreted to mean that the remedy of appeal is provided against such an order which is passed by the Special Court or Exclusive Special Court having jurisdiction to try offences only under the S.C. & S.T. Act and none other. In a case wherein the accused is charged with offences under both, S.C. & S.T. Act and POCSO Act, the jurisdiction to try the said offence would exclusively be with a Special Court constituted under Section 28 of the POCSO Act. Needless to mention, the POCSO Act does not provide a remedy of appeal against an order granting or refusing to grant bail by such a Court. It is reiterated that, no such appeal has been provided under Cr.P.C. as well. At the cost of repetition, relying on Section 31 of the POCSO Act, we observe that, the provisions of the Cr.P.C. including the provisions as to bail and bonds shall apply to the proceedings before a Special Court inquiring into or trying an offence under the POCSO Act and under any other Statute including S.C. & S.T. Act.

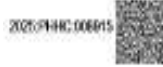
31. Chapter XXIX of the Cr.P.C. speaks of appeal. Section 372 of the Cr.P.C. reads thus :

"372. No appeal to lie unless otherwise provided :-

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

The above proviso has been introduced w.e.f. 31/12/2009 conferring a victim with a right to prefer an appeal against an order passed by the Court, acquitting the accused or convicting

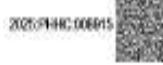


for a lesser offence or imposing inadequate compensation. We do not propose to reproduce each and every Sections of Chapter XXXI. Suffice to say, except the proviso to Section 372, the relevant Section providing right of appeal speak of such a right to be exercised only by the convict or the prosecution agency, namely the State. A right accrued to the victim to prefer appeal in terms of the said proviso is supposed to be exercised against an order passed by the Court either acquitting the accused or convicting for a lesser offence and none others.

(14). Besides the appellant in the prayer has specifically made a prayer to set aside the order dated 31.05.2024 passed by this Court vide which the accused was extended the concession of anticipatory bail. To say it otherwise, technically, the appellant-complainant is asking the same Bench to reconsider and set aside its own earlier order, thereby cancelling the bail.

(15). It is well settled that there is no power with a Court exercising criminal jurisdiction to review its judgments or orders in any manner, even in the exercise of inherent powers of this Court under [Section 482](#) Cr.P.C. The only exception recognized under the Code is correction of clerical errors or arithmetical mistakes. The bar contained in [Section 362](#) Cr.P.C. is absolute and after a judgment is signed, even the High Court in exercise of its inherent powers under [Section 482](#) Cr.P.C. cannot review or alter the same. The prohibition in [Section 362](#) Cr.P.C. against the Court altering or reviewing its judgment is subject what is "otherwise" provided by this Code or by any other law for the time being enforced.

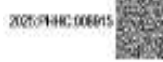
(16). The case in hand is where the applicant/complainant/victim has come forward with a case for invoking the power to cancel bail already granted on ground of threat that may be extended by the accused in violation of the



conditions of bail granted to him and misuse of that liberty. Exercise of that power, in absence of a provision "otherwise" provided in the Code or by any other law for the time being in force would in the opinion of this Court firmly bar the jurisdiction of this Court to review the judgment rendered in this appeal granting bail under [Section 14-A\(2\)](#) of the Act, which is placed by Section 362 of the Code. The power to cancel bail, therefore, exercised generally by criminal courts, whether it be a Magistrate, Court of Sessions or this Court comes from specific provisions of Section 437(5) or 439(2) of the Code, and, in the case of bail granted by this Court by virtue of the powers under Section 439(2) of the Code specifically.

(17). In **Sushil Kumar v. State of U.P., 2018 SCC OnLine All 8783**, the Allahabad High Court held that the powers under Section 14-A(2) exercised by appellate court to grant bail are generically different from those exercised under Section 439 of the Code that are original and concurrent (with the Sessions Judge) and such powers are appellate powers exclusively arising from orders granting or refusing bail and as such there is no statutory source for a power of cancellation to be exercised like those available to the Court under Section 439(2) of the Code when dealing with a bail application under the said provision. The relevant extracts of the said judgment read as under:-

“17. Turning to the provisions of Section 14-A(2), the powers exercised by appellate court to grant bail are generically different from those exercised under Section 439 of the Code that are original and concurrent (with the Sessions Judge). By contrast the powers under Section 14-A(2) of the Act are appellate powers exclusively from orders granting or refusing bail. The powers under Section 14-A(2) of the Act when exercised bring about a final determinative expression of opinion and judgment in appeal under Section 14-A(2) of the Act. In the context

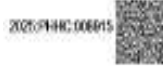


of this, power, in the opinion of this Court, there is no statutory source for a power of cancellation to be exercised like those available to the Court under Section 439(2) of the Code when dealing with a bail application under the said provision.

(18). The power to cancel bail granted by a criminal court under Section 439 of the CrPC is distinct from the review process. Instead, it stems from the separate statutory provision outlined in sub-Section (2) of Section 439 CrPC, which says that “a High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.” Similar express provision of power of cancellation of bail has been engrained in Section 437(5) CrPC.

(19). Under the Code of Criminal Procedure, the power to cancel bail is not exercised as a review power, which courts of criminal jurisdiction lack, but rather as a specific statutory power. This power is conferred to be exercised within defined parameters, allowing the court to cancel bail previously granted, with a direction to arrest and commit the person to custody. Generally, criminal courts, including Magistrates, Sessions Courts, as well as this Court, exercise the power to cancel bail under specific provisions, namely Section 437(5) or 439(2) of the Code. In cases where bail is granted by this Court, the power to cancel bail is exercised under Section 439(2) of the Code.

(20). It thus emerges out that once the bail is granted under the special statute i.e. SC & ST Act, then there is no provision under the said special Statute which expressly and specifically empower this Court to recall or cancel the bail already granted under sub-Section (2) of Section 14A and therefore, the application for cancellation of bail cannot be held to be maintainable.



(21). On a plain reading of the above statutory provisions as well as citations of law referred to above, it can safely be held that the power to cancel bail is in no way inherent in the Court that grants bail. The power of cancellation, where available, is traceable to a different and distinct statutory provision, may be part of the same provision, that empowers the Court to grant bail, but flowing from a different and distinct source. The power to cancel bail can neither be exercised in the nature of an exercise of a power of review or as an inherent power that is a concomitant of the power in the exercise of which bail has been granted.

(22). In view of the above discussion it is thus held that the present appeal filed by the complainant-appellant, in its present form, under sub-Section (2) of Section 14A of SC & ST Act seeking cancellation of anticipatory bail granted by this Court vide order dated 31.05.2024 is not maintainable, for, sub-section (2) of Section 14A of SC& ST Act does not confer a victim/complainant with a right to prefer appeal against an order granting bail and as such there is no power with this Court exercising criminal jurisdiction to review its own judgments or orders in any manner.

(23). Accordingly, this appeal is dismissed being not maintainable.

21.01.2025

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No