

2025:PHHC:007044



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

318

CRM-M No.63233 of 2024
Date of decision: 15.01.2025

Davinder Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sidhant Vermani, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

Mr. Kuljit Singh Bal, Advocate,
for respondents No.2 and 3.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition has been made by the petitioner for cancellation of anticipatory bail granted to the respondents No.2 and 3 in case arising out of FIR No.147 dated 13.09.2024 registered at Police Station Cantonment District Police Commissionerate Amritsar under Section 315 read with Sections 120-B and 34 of IPC.

2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner had lodged the aforementioned FIR against the

2025:PHHC:007044



respondents No.2, 3, his wife Sumit Kaur and brother-in-law Mehtab Singh on the allegations that they had intentionally got the pregnancy of Sumit Kaur, terminated on 26.05.2023 thereby preventing the birth of child of the complainant, in her womb from being born alive. The respondents No.2 and 3 moved application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Amritsar and vide order dated 11.10.2024 they were directed to join the investigation. The order of interim bail was made absolute on 21.11.2024.

3. It is argued by learned counsel for the petitioner that the order dated 21.11.2024 whereby the respondents No.2 and 3 were extended benefit of anticipatory bail is liable to be cancelled as these respondents availed the same by concealment of material facts and by misleading the Court. It is submitted that an application for grant of pre arrest bail as filed by Mehtab Singh one of the accused on 30.09.2024, in the aforementioned FIR and vide order dated 08.10.2024 the same has been dismissed as withdrawn by the Court of learned Additional Sessions Judge, Amritsar. While filing application for grant of anticipatory bail on 03.10.2024, the respondents No.2 and 3 intentionally mentioned the number of the FIR as 47 instead of 147 so that their application was entertained by some other Court and got the said number corrected only subsequently. The allegations as levelled against the co-accused Mehtab

2025:PHHC:007044



Singh were the same as against these respondents. As the application for grant of pre arrest bail of Mehtab Singh had been dismissed, therefore, the respondents No.2 and 3 whose case was on similar footing, were also not entitled for concession of bail. They had forged Whatsapp Chat record of the petitioner and while securing benefit of bail, has produced the same before the concerned Court thereby misusing the process of law. It is, therefore, argued that the petition deserves to be allowed and the order dated 21.11.2024 thereby granting anticipatory bail to the respondents No.2 and 3 is liable to be cancelled.

4. The respondent No.1-State has filed status report by way of affidavit. It is submitted that since the respondents No.2 and 3 after securing benefit of bail have not cooperated in the investigation, therefore, the prayer as made by the petitioner deserves to be allowed.

5. Learned counsel for respondents No.2 and 3, on the other hand, has submitted that the respondents have not misused the concession of bail as granted to them. No ground whatsoever has been made out for cancellation of their bail. The co-accused Mehtab Singh has been extended benefit of anticipatory bail by this Court vide order of even date passed in CRM-M No.64238 of 2024. It is, therefore, argued that the petition is devoid of any merit and is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable

2025:PHHC:007044



length and have gone through the record.

7. Before delving into the contentions as raised by learned counsel for the parties, I consider it necessary to discuss certain principles which govern the cancellation of bail as enunciated by Hon'ble Supreme Court in various pronouncements. Reference can firstly be made to **Myakala Dharmarajam vs. the State of Telangana**, (2020) 2 SCC 743, wherein it was observed that an order for cancellation of bail can be made only where such order suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Reliance can further be placed upon **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1, wherein it was observed that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses) or likelihood of his absconding. It was also observed that whether to grant bail or not is a matter of discretion of the Court. Similar position of law had been laid down in **Dolat Ram and others vs. State**

2025:PHHC:007044



of Haryana, 1995 SCC (1) 349.

8. In view of the proposition of law as laid down in the above discussed authorities, it is clear that the discretion under Section 483 (3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (which is pari materia with Section 439(2) of Cr.P.C.) is to be exercised only if it is proved that bail has been granted to an accused of a heinous crime in a manner, which smacks of arbitrariness, capriciousness or perversity and on being satisfied on the basis of material placed on record that the accused has actually misused such liberty. The petitioner has sought cancellation of concession of pre arrest bail as granted to the respondents No.2 and 3 on the grounds that they secured the said order by concealment of material facts. However, after hearing the contentions as raised in this regard and on going through the record, I am of the considered opinion that there is nothing on record to suggest that the respondents No.2 and 3 concealed any material fact or violated the terms and conditions for grant of bail or have not cooperated with the Investigating Agency.

9. No doubt, it is revealed from the record that initially the correct number of the FIR had not been mentioned in the application filed by the respondents No.2 and 3 before the Court of learned Additional Sessions Judge while seeking pre arrest bail but immediately after coming into notice of the said fact they had moved application for correction thereof.

2025:PHHC:007044



When the order dated 21.11.2024 had been passed by the concerned Court, the bail application of co-accused Mehtab had been dismissed as withdrawn vide order dated 08.10.2024 and it was not dismissed on merits. The respondents had joined investigation. A perusal of order dated 21.11.2024 has revealed that the Investigating Officer had made a statement before the Court that he never stated that the present respondents No.2 and 3 had not cooperated in the investigation and also that mobile phone of brother of one of the applicants was required and not of the present respondents No.2 and 3. In view of this fact, the plea taken by the respondent-State in the reply that the respondents No.2 and 3 did not cooperate in the investigation and did not handover mobile phone and hence the order qua grant of pre arrest bail was liable to be recalled, appears to be of no force. In view of the position of law as laid down in the authorities as cited above, it is explicit that order of cancellation of bail can be passed only where same suffers from any serious infirmities resulting into miscarriage of justice or the same smacks arbitrariness, capriciousness or perversity. It is not even made out that respondents No.2 and 3 had misused the liberty of bail as granted to them by violating certain terms and conditions of the agreement arrived at between them during the course of investigation proceedings. It is also not the allegation of the petitioner that respondents No. 2 and 3 has

2025:PHHC:007044



misused the concession of bail in any other manner by not appearing before the trial Court or by tampering with the prosecution evidence or there is any likelihood of their absconding. In view of the discussion as made above, this Court finds no reason to cancel the benefit of pre-arrest bail as granted to respondents No.2 and 3. Accordingly, the petition is dismissed.

15.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No