

S.B.Criminal Misc. Cancellation of Bail Application
No.58/2007

In

S.B.Criminal Misc. 2nd Bail Application No.5614/2007

Smt. Suman Rathore
v.
State of Rajasthan & Anr.

Date of Order :: 31st March, 2008

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.D.Purohit, for the petitioner.
Mr. S.N.Tiwari, Public Prosecutor.
Mr. Mahesh Bora, for the respondent No.2.

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REPORTABLE

On 20.11.2007, this Court, while accepting an application preferred under Section 438 Cr.P.C., ordered to release the accused respondent No.2 on bail in the event of his arrest in relation to a criminal case lodged at Police Station Shastri Nagar, Jodhpur for the offences punishable under Sections 420, 467, 468, 471 and 120-B IPC. The application aforesaid was the second bail application and it was contended that a charge sheet as per the provisions of Section 173 Cr.P.C. was already filed on 3.7.2007 and the CID (Crime Branch) after investigation came to the conclusion that the case against accused persons was of civil nature. On very next day to granting the application for bail in anticipation of arrest, the applicant-complainant through her power of attorney

preferred the instant application as per the provisions of Section 439(2) Cr.P.C. for cancellation of bail granted.

As per the applicant, the accused respondent No.2 concealed material facts from knowledge of the Court while getting the application under Section 438 Cr.P.C. considered. It was urged, that the respondent No.2 earlier preferred a petition under Section 482 Cr.P.C. for quashing the first information report, but that was dismissed being infructuous on filing charge sheet by the prosecution, and at the time of dismissal of the petition aforesaid, counsel for the respondent No.2 (petitioner in the petition under Section 482 Cr.P.C.) submitted that "the petitioner will surrender before the trial court and move a regular bail and a direction be issued to the trial court to decide the bail application on the same day". On basis of the statement aforesaid, a direction was given that, if, Shri Karan Chand Jain (respondent No.2) surrenders and moves a regular bail application before the trial court, the trial court shall decide the bail application on very day.

It was also stated that the respondent No.2 also concealed the fact that he preferred an application before learned Sessions Judge and that stood rejected on 11.4.2007.

while placing reliance upon the judgment of this Court in Sharda (Smt.) v. State of Rajasthan, 2001 Cr.L.R. (Raj.) 129, the contention advanced is that in the event of suppression of material facts there are chances of its cancellation.

In the case of Smt. Sharda (supra) learned Sessions Judge cancelled the anticipatory bail granted to the accused, facing charges for the offences under Sections 498-A, 307 and 302 IPC. The bail was cancelled on the count that at the time of granting anticipatory bail the fact about death of victim occurred subsequently at Ahmedabad and the statement recorded by the Magistrate was not brought into knowledge of the Court. The fact regarding pouring kerosene by the accused getting benefit of bail was also not brought into the knowledge. While affirming the order passed by learned Sessions Judge, this Court observed that "the position of law that considerations for cancelling the bail are totally different from those which are considered for granting bail. The Hon'ble Supreme Court in Aslam Babalal Desai v. State of Maharashtra, AIR 1993 SC 1, has enumerated many grounds for cancellation of bail. But, the present case is somewhat different in the manner that here the bail which was cancelled by the learned Sessions Judge was because some material facts were suppressed or new facts were not brought to his knowledge".

An argument is advanced that if, the fact regarding dismissal of the petition under Section 482 Cr.P.C. and the statement made on behalf of the accused respondent No.2 regarding his surrender would have been brought in knowledge of the Court, the Court may have not granted the application under Section 438 Cr.P.C.

On the other hand, as per counsel for the respondent No.2, this application under Section 439(2) Cr.P.C. has become infructuous in view of the fact that the trial court has already accepted an application preferred by the respondent accused under Section 437 Cr.P.C. Beside the above, it is contended that though it would have been better for the accused respondent No.2 to refer the facts relating to dismissal of the petition under Section 482 Cr.P.C. but, non-reference of that is of no consequence or cannot be a reason for cancellation of bail already granted being not having a material fact. It is asserted that the petition under Section 482 Cr.P.C. was dismissed by the Court without entering into merits and only on the count that the same become infructuous as a consequent to submission of charge sheet by the prosecution and the bail once granted ordinarily would not be cancelled unless supervening circumstances render liable to cancel the order granting bail. In support of the contention, reliance is placed by counsel for the petitioner upon the law

laid down by Hon'ble Supreme Court in Aslam Babalal Desai v. State of Maharashtra, AIR 1993 SC 1, holding as follows:-

“11. As stated in Raghubir Singh's case (AIR 1987 SC 149) the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”

In Dolat Ram and others v. State of Haryana, (1995)1 SCC 349, Hon'ble Supreme court held as follows:-

“4.Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have been 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

while considering the same issue, in *Kashmira Singh v. Duman Singh*, AIR 1996 SC 2176, it was held that “the ground regarding suppression of facts is still weaker. In the first place, knowledge of two bail applications of the co-accused having been rejected has been imputed to the accused without valid basis. Secondly, the fact that the co-accused had applied for bail and had later not pressed the application, had been disclosed since it was known to the accused. That was sufficient indication that the co-accused had not been enlarged on bail. His decision not to press for bail would be indicative of the fact that the Court was disinclined to grant bail or, he did not see sufficient grounds to press the bail application. Be that as it may, the fact remains that the Court was aware that the co-accused was not granted bail. That was sufficient for the Court when it considered the accused's application for bail. Besides, it was the prosecution/complainant's duty to bring to the Court's notice that two applications of the co-accused for bail were rejected. If the accused did not mention it, nothing prevented the opposite side from placing it on record. It seems to be an omission on the part of the prosecution/complainant's side but, for that it would be wrong to charge them with having suppressed facts. So also for the accused, more particularly because, there is no positive evidence to attribute knowledge to the accused. Hence we thing this ground is unsustainable”.

The exigencies prescribed by the Apex Court for cancellation of bail granted are illustrative and not exhaustive. The bail granted may be cancelled, if obtained by concealing facts, but those facts should be material, relevant and of such nature that on knowing about those the court in any event would have not granted the bail.

In the instant matter, no doubt that the accused respondent No.2 was having knowledge about dismissal of the petition under Section 482 Cr.P.C. and also rejection of the application under Section 438 Cr.P.C. by the Sessions Court but, the issue requires examination is whether such concealment is of such degree that warrant cancellation of bail already granted. Pertinent to note here that the petition under Section 482 Cr.P.C. was for quashing the first information report and the same stood rejected solely on the ground that challan was already filed by the prosecution before the competent court. It is not in dispute that the CID (CB) at one point of time mentioned that the dispute between the parties is more of civil nature. It is also not in dispute that other accused persons have already been granted bail and an application preferred by the petitioner under Section 437 Cr.P.C. has also been accepted by the trial court. On seeking guidance from the decision of the Hon'ble Supreme Court from the cases referred above, I am of

the view that cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Bail once granted ordinarily would not be cancelled and other supervening circumstances render liable to cancel the order granting bail, but in the instant matter, though it would have been better for the accused respondent No.2 to have mentioned about dismissal of the petition under Section 482 Cr.P.C. and request made by counsel appearing on his behalf regarding his surrender and consideration of bail application, however, in any event that is not such a fact that gives rise to a reason for cancelling the bail already granted. The bail was granted to the respondent accused on its own merits, specially looking to the circumstances that the challan was already filed, other accused were already released on bail and a fact was pointed out regarding nature of the dispute.

An additional factor is that after granting the application under Section 438 Cr.P.C., the trial court has also accepted the application preferred by the accused respondent No.2 as per the provisions of Section 437 Cr.P.C., hence, I do not consider it appropriate to accept the application for cancellation of bail already given. Accordingly, the same is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.