

31/10/17

Shri Prashant Sharma, Advocate for the petitioner.

Shri Girdhari Singh Chauhan, Public Prosecutor for
State/respondent No.1.

Shri D.P.Singh, Advocate for respondent No.2.

1. Case Diary is perused.
2. Learned counsel for the rival parties are heard.
3. The present petition filed u/S. 439(2) Cr.P.C. seeks cancellation/recalling of the order dated 8/3/2017 passed in Mccr.No.649/17 by which the respondent No.2 has been extended the benefit of anticipatory bail subject to the following conditions:-

"It is hereby directed that in the event of arrest, the applicant shall be released on bail on furnishing a personal bond in the sum of **Rs. 1,00,000/- (Rupees One Lac only)** with two solvent sureties of the like amount to the satisfaction of the Arresting Authority.

This order will remain operative subject to compliance of the following conditions :-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit an offence similar to the offence of which he is accused;
5. The applicant will not seek unnecessary adjournments during the trial;
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be,
7. Till the conclusion of investigation, the applicant will mark his attendance at the concerned Police Station once in a week."

Learned counsel for the rival parties are heard.

4. The sole ground raised by the petitioner seeking recalling of

the order of bail passed in favour of respondent No.2 is that condition No.7 enumerated as above which obliges the respondent No.2 to mark his appearance before the concerned police station till conclusion of investigation once every week, was not complied with.

5. The above said allegation made by the petitioner has turned out to be true in view of the response by the list of documents dated 11/10/2017 filed by the State disclosing that the respondent No.2 for the first time appeared at the police station on 25/8/2017 and furnished bail bonds in terms of the said order of bail whereafter he appeared on 1/9/2017, 8/9/2017 and 22/9/2017.

6. Pertinently, the return submitted by the learned counsel for the respondent No.2 is to the effect that no breach of any condition is committed as the order of anticipatory bail comes into effect only on the event of arrest and not prior to that for which the law laid down by the Division Bench of Rajasthan High Court in the case of **State of Rajasthan Vs. Mubin reported in 2011 Cr.LJ 3850** alongwith one more decision of the same High Court in the case of **Sandeep Kumar Vs. State of Rajasthan & another** (Misc.Bail Cancellation Appl. No.2975/09), decided on 20/1/2012 is pressed into service. It is submitted that the police officer never came to arrest the respondent No.2 and therefore the question of respondent No.2 furnishing bail bond in terms of the bail order dated 8/3/2017 did not arise and also that in view of the above the condition subject to which the bail was granted never became operational before 25/8/2017.

7. There is no dispute in regard to the proposition that an order of anticipatory bail is passed in anticipation of arrest and therefore becomes operational when the event of arrest takes place and it is only at that point of time that bail bonds are furnished to avoid arrest.

7.1 However, the present case cannot be decided solely based on

the said proposition as different aspect altogether lies in the foundation of the present dispute which deserves consideration.

7.2 The present application u/S. 439(2) Cr.P.C. for cancellation of bail was filed by the victim on 21/7/2017 in which notice was issued for the first time on 31/7/2017 which was dispatched on 4/8/2017 by registered post to the respondent No.2. The notice as served was received back in the Registry on 29/8/2017.

7.3 Learned counsel for the respondent No.2 does not dispute that the said notice issued by this court was received by the respondent No.2 on 25/8/2017.

7.4 It is clear from the record that only after receiving notice on 25/8/2017 of the present petition that the respondent No.2 rose from his stupor and for the first time marked his appearance before the police station on 25/8/2017.

7.5 Before 25/8/2017 the respondent No.2 was blissfully ignorant of the requirement of appearance before the police station concerned once every week.

7.6 The condition No.7 which obliges the respondent No.2 to attend police station once every week was imposed to achieve the object that without adopting stringent mode of arrest the respondent No.2 is made to cooperate in the process of investigation which may come to it's expeditious logical end. By not attending the police station once every week notwithstanding the fact that the police had not arrested the respondent No.2, the respondent No.2 has committed breach of one of the conditions subject to which the order of anticipatory bail was passed.

7.7 Strictly speaking the learned counsel for the respondent No.2 may be right that the order of anticipatory bail comes into effect when the event of arrest takes place, but if the same is passed subject to the condition of attending the police station once every

week, then the benefited person is required to attend the police station once every week and mark his appearance irrespective of the fact that the police arrests him or does not arrest.

7.8 If any other view is taken by this court, especially the one projected by the respondent No.2 then it would render the condition No.7 otiose and the entire purpose of compelling the person benefited to participate in the investigation process would stand lost.

8. In view of the above, this court is of the considered view that the respondent No.2 has committed breach of condition No.7 rendering the order of bail susceptible to cancellation.

9. Accordingly, this petition stands allowed and the order of grant of anticipatory bail dated 8/3/2017 passed in Mcrc.No.649/17 stands cancelled.

10. Let the order passed by this court today be communicated to the trial court concerned to take appropriate steps for making arrest of the respondent No.2 immediately.

(Sheel Nagu)
Judge
31/10/2017

(Bu)